

[REDACTED]

IPCO

Investigatory Powers
Commissioner's Office

PO Box 29105
London
SW1V 1ZU

Gists are shown in italics and are double-underlined

Additional disclosure 18.10.17 is highlighted

Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ

In the matter of IPT/15/110/CH

20 September 2017

CLOSED

Sir,

Bulk Communications Data and Bulk Personal Datasets

This reply is pursuant to your letter of 2 August 2017 sent under section 68(2) RIPA 2000. This is our closed response.

As you are aware, as from 1 September 2017, both the Intelligence Services Commissioner (ISCom) and the Interception of Communications Services Commissioner (IOCCO) ceased to exist and their functions passed to a single commissioner; the Investigatory Powers Commissioner - Lord Justice Adrian Fulford QC.

It should also be noted that while the letter outlines 13 questions which refer to sharing with industry partners by GCHQ (and in the alternative, with foreign partners and UK law enforcement), in the context of the recent hearing before the Tribunal and the discussions on Day 4 (9 June 2017) *where relevant our reply also addresses any similar sharing by the other United Kingdom Intelligence Community (UKIC) bodies.*

While we have not sought to define "sharing" in this response we do consider it relevant to state that similar to the handling issues relating to the product of interception, a disclosure made to an LEA or foreign partner of information, for example within an intelligence report, may contain material derived directly from BPD or BCD and not be considered as a copy or extract of BPD or BCD

[REDACTED]

[REDACTED]

if such material did not identify itself as the product of a section 94 direction (i.e. BCD) or BPD. We consider in such a case this would not amount to the sharing of a BPD or BCD data set.

IOCCO and ISCom have stated in earlier correspondence that the oversight of non-public authorities is not covered by the RIPA 2000 oversight regime.

Industry partners

For ease of replying to the detailed list of questions please note the following general statement as to oversight and inspection of "industry partners"

There is no material in the corporate record of either ISCom or IOCCO to indicate the issue of sharing BPD or BCD data sets either in their entirety or as a sub-set with industry partners was considered or inspected by the Commissioners during their inspection regimes prior to the creation of the Investigatory Powers Commissioner's Office. There is no material to suggest this matter was the subject of active steps in respect of the audit or inspection of data that may have shared with industry partners.

As we say in Open, neither ISCom nor IOCCO were made aware of any UKIC practice of the UKIC's sharing BPD/BCD data sets with industry partners. It should also be noted that the term "active oversight" is not found within the relevant legislation. The oversight obligations of IOCCO and ISCom are found within Part IV of RIPA 2000 and any directions given under that act and the relevant handling arrangements.

UK Law enforcement

For ease of replying to the detailed list of questions please note the following general statement as to oversight and inspection of sharing BPD or BCD data sets with UK law enforcement partners

There is no material in the corporate record of ISCom to indicate the issue of any potential sharing of BPD data sets with UK Law enforcement partners was considered or inspected during their inspection regime. There is no material in the corporate record of IOCCO to indicate the issue of any potential sharing of BCD data sets with UK Law enforcement partners was considered or inspected during their inspection regime. [REDACTED]

[REDACTED]

Foreign Partners

For ease of replying to the detailed list of questions please note the following general statement as to oversight and Inspection of sharing BPD or BCD data sets with foreign partners:

There is material in the corporate record of ISCom and IOCCO that ISCom and IOCCO addressed whether any sharing had taken place.

[REDACTED]

Answers to specific questions

[REDACTED]

[REDACTED]

1. When did the Commissioners first become aware of the practice of GCHQ of sharing data sets with industry partners? How did the Commissioners find this out?

Industry partners

See the general statement on oversight of sharing with industry partners.

There is reference in the Amended Witness statement of GCHQ witness (dated 21.06.17) at paragraph 41 to the briefing of Sir Mark Waller in October 2015 and April 2016. A review of the material held by ISCom suggested that while the Commissioner was informed that GCHQ worked with industry partners there is no material to suggest that the Commissioner was informed of the specific instances referred to in the re-amended witness statement of the GCHQ witness supplied in the open bundle. Sir Mark Waller has confirmed he was never made aware of any practice of GCHQ sharing bulk data with industry.

Foreign partners

[REDACTED]

UK Law enforcement partners

See the general statement on oversight of sharing with law enforcement partners.

2. What did the Commissioners do when first informed of this type of sharing to ensure that it was subjected to active oversight (i.e.? Actual audit and review of the conduct of industry partners, not merely being within the scope of oversight in principle)?

Industry partners

See the general statement on oversight of sharing with industry partners.

Foreign partners

See the general statement on oversight of sharing with foreign partners.

UK Law enforcement partners

See the general statement on oversight of sharing with industry partners.

On being notified of the matters raised in this litigation the IPC ordered that an immediate inspection should be undertaken of any sharing of BPD/BCD datasets by the UKIC. A summary of the findings of the initial inspections in August and September 2017 has been provided to the Tribunal.

3. Why have the Commissioners “[never] conducted a formal inspection or audit of industry?” (letter of 2 June 2017)

Industry partners

[REDACTED]

[REDACTED]

The Commissioners did not carry out an audit or inspection of industry because they were unaware that this sharing occurred. The Commissioner was unaware that there was any practice of sharing with industry partners.

Foreign partners

The formal inspection or audit of Foreign Partners was not within the remit of the Commissioners. [REDACTED]

UK Law enforcement partners

See the general statement on oversight of sharing with UK law enforcement partners.

4. Do the Commissioners intend to conduct such an inspection or audit in the future? If so, when?

Industry Partners

You will be aware that ISCom and IOCCO ceased to exist on the 31 August 2017. As noted above the IPC has ordered that an inspection be undertaken of any sharing of BPD/BCD datasets by the UKIC. IPCO is also currently exploring whether the Investigatory Powers Act 2017 permits the formal inspection of “industry partners” given that they are not public authorities for the purposes of s.229(1).

The Investigatory Powers Commissioner, on being notified of these matters, ordered an immediate oversight inspection to be undertaken of any examples of sharing disclosed by the UKICs. At date of writing there has been an initial inspection and a summary of the findings of that inspection has been provided to the Tribunal.

Foreign partners and UK law enforcement.

The Investigatory Powers Commissioner, on being notified of the issue of potential sharing, ordered an immediate oversight inspection to be undertaken of any examples of sharing disclosed by the UKICs. At date of writing there has been an initial inspection and a summary of the findings of that inspection has been provided to the Tribunal.

5. Have the Commissioners ever inspected or audited what data has in fact been shared with industry partners, including the types of data and its potential intrusiveness.

Industry Partners

See the general statement on oversight of sharing with industry partners. The Investigatory Powers Commissioner, on being notified of the issue of potential sharing, ordered an immediate oversight inspection to be undertaken of any examples of sharing disclosed by the UKICs. At date of writing there has been an initial inspection and a summary of the findings of that inspection has been provided to the Tribunal.

Foreign partners and law enforcement

[REDACTED]

[REDACTED]

[REDACTED]

The Investigatory Powers Commissioner, on being notified of the issue of potential sharing, ordered an immediate oversight inspection to be undertaken of any examples of sharing disclosed by the UKICs. At date of writing there has been an initial inspection and a summary of the findings of that inspection has been provided to the Tribunal

6. Have the Commissioners ever inspected or audited the procedures and safeguards adopted for sharing with industry partners and use of such data by industry partners?

Industry Partners

See the general statement on oversight of sharing with industry partners. The Investigatory Powers Commissioner, on being notified of these matters, ordered an immediate oversight inspection to be undertaken of any examples of sharing disclosed by the UKICs. At date of writing there has been an initial inspection and a summary of the findings of that inspection has been provided to the Tribunal.

Foreign partners and UK law enforcement.

[REDACTED]

The Investigatory Powers Commissioner, on being notified of the issue of potential sharing, ordered an immediate oversight inspection to be undertaken of any examples of sharing disclosed by the UKICs. At date of writing there has been an initial inspection and a summary of the findings of that inspection has been provided to the Tribunal.

7. Have the Commissioners ever inspected or audited whether those safeguards are complied with?

Industry Partners

See the general statement on oversight of sharing with industry partners. IPCO is currently exploring whether the Investigatory Powers Act 2017 would permit the formal inspection of “industry partners” given that they are not public authorities for the purposes of s.229(1)

Foreign partners and UK law enforcement

[REDACTED]

The Investigatory Powers Commissioner, on being notified of these matters, ordered an immediate oversight inspection to be undertaken of any examples of sharing disclosed by the UKICs. At date of writing there has been an initial inspection and a summary of the findings of that inspection has been provided to the Tribunal.

8. Are the Commissioners aware of what use has in fact been made of shared datasets by industry partners?

Industry Partners

See the general statement on oversight of sharing with industry partners.

[REDACTED]

[REDACTED]

Foreign partners and UK law enforcement

[REDACTED]

9. Do industry partners make and keep adequate records to enable the Commissioners to examine whether each search or other processing, analysis or use of bulk data by industry partners is necessary and proportionate and whether all the appropriate safeguards are complied with?

Industry Partners

See the general statement on oversight of sharing with industry partners.

Foreign partners and UK law enforcement

[REDACTED]

10. What steps have the Commissioner taken to audit (and ensure that industry partners minimise) what David Anderson QC calls the “privacy footprint” of data shared with and used by industry partners (Bulk Powers review 9.23)? In particular, have the Commissioners examined whether procedures could be amended to reduce privacy intrusion by Industry partners? If so, what were the results of the examination of this issue?

Industry Partners

See the general statement on oversight of sharing with industry partners.

Foreign partners and UK law enforcement

There is no material in the corporate record of ISCom and IOCCO to indicate that the Commissioners considered the ‘privacy footprint’ in relation to procedures relating to any sharing that might take place.

11. The Claimant notes that “GCHQ’s systems do not currently enable us easily to conduct a similar audit of their analysts’ use of BCD”. Does the same apply to the use of data by GCHQ’s industry partners?

Industry Partners

See the general statement on oversight of sharing with industry partners.

Foreign partners and UK law enforcement

See the general statement on oversight of sharing with foreign and UK law enforcement partners. [REDACTED]

12. Do industry partners comply with retention, storage or destruction requirements? If so, how do the Commissioners know this

[REDACTED]

[REDACTED]

Industry Partners

See the general statement on oversight of sharing with industry partners.

Foreign partners and UK law enforcement

See the general statement on oversight of sharing with foreign and UK law enforcement partners. [REDACTED]

13. Do Industry partners limit their use of bulk data to work that is strictly necessary and proportionate? If so, how do the Commissioners know this?

Industry Partners

See the general statement on oversight of sharing with industry partners.

Foreign partners and UK law enforcement

See the general statement on oversight of sharing with foreign and UK law enforcement partners. [REDACTED]

I trust the above answers your questions. Should you require any additional information please do not hesitate to contact me.

<signed>

Yours sincerely

Graham Webber
Interim Chief Executive
Investigatory Powers Commissioner's Office

[REDACTED]

