Case No. IPT/15/110/CH

IN THE INVESTIGATORY POWERS TRIBUNAL
BETWEEN:

PRIVACY INTERNATIONAL

Claimant

and

(1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS
(2) SECRETARY OF STATE FOR THE HOME DEPARTMENT
(3) GOVERNMENT COMMUNICATIONS HEADQUARTERS
(4) SECURITY SERVICE
(5) SECRET INTELLIGENCE SERVICE

Respondents

RESPONSE TO THE CLAIMANTS' REQUEST FOR FURTHER INFORMATION CONCERNING THE FIFTH WITNESS STATEMENT OF THE GCHQ WITNESS

Of paragraphs 10 and 11:

"10. [GCHQ's contracts with industry partners] cover the work of several thousand individuals. All those involved with operational systems are fully vetted. The great majority do their work at GCHQ sites where they work under exactly the same conditions as GCHQ staff and use the same GCHQ infrastructure. They have the same training requirements for access to GCHQ systems as GCHQ staff in the same area and are subject to the same level of audit.

11. While, as noted above, GCHQ does not use contractors for operational intelligence analysis, it is necessary for some contractors to have access to operational data for the purposes of systems and applications development. This access may be on GCHQ operational systems, or through the provision of sample data for use within a new application while it is being developed. In all cases the data involved will be no more than is necessary for the purpose for which it is to be used."

1. **Paragraph 10 explains that those contractors involved with GCHQ's operational systems are "fully vetted". Paragraph 11 explains that certain contractors have access to operational data other than on GCHQ operational systems. Please identify which contractors, who have access to operational data, are not *"fully vetted"*.**

Response

All contractors who have access to operational data are fully vetted.

Of paragraphs 23(d) and 25:

"23(d). [Contractors that have access to databases containing BPD or BCD] (typically between 100-200 individuals) access BPD/BCD only when necessary for purposes of system maintenance and development".

"25. ... It might be necessary for contractors to access sensitive data if, for example, maintenance or development work on a part of the system dedicated to holding material that included sensitive data required the running of test queries that resulted in the returning of such data."

2. **Are all queries of databases containing BPD or BCD made by contractors:**

    a. **Logged?**

    b. **Auditable?**

    c. **Audited?**

Response

All queries of databases containing BPD or BCD made by contractors are logged and auditable. Random auditing occurs across GCHQ systems.

3. **What records are kept of, and what controls are exercised over, *"test queries"*?**

Response

Test queries are auditable in the same way as any other query. An extract, gisted as appropriate, from GCHQ's Compliance Guide which sets out the safeguards in place in relation to system testing, including test queries, is served with this Response. A CLOSED version has been served on the Tribunal.

Of paragraph 29(b):

"29(b). One database containing BPD has been accessed remotely by a small number of individuals (fewer than 20) working for industry partners. All of these accesses were for the purposes of system testing and have occurred since 2015 when the database came into existence. We cannot demonstrate exactly what data was accessed on these occasions. However none of the BPDs held on this particular system were

assessed as containing sensitive data, so it is highly unlikely that such data was accessed."

4. **Were records kept of the access described in paragraph 29(b)? If so, when and why were such records deleted?**

Response

The records have not been deleted. GCHQ has a log of specific activities performed by each user on the system, including any searches performed with search term(s) used, the necessity and proportionality statement entered and the intelligence requirement code (a code which identifies the purpose of the work in question). Whilst the number of results returned during a search is logged, the content of those results is not.

Of paragraph 31:

"31. GCHQ shares samples of operational data with industry partners to enable them to develop systems and techniques that will improve GCHQ's capability to exploit the data. Samples of data are taken from GCHQ systems and transferred securely, often via removable media, to industry partners' own IT networks, which will have been accredited by GCHQ accreditors and will be accessed only within GCHQ-accredited premises or accredited areas within larger premises and by vetted staff."

5. **What is the scale of data included in such a *"sample of operational data"*?**

Response

The amount of data included in a sample of operational data varies. Each request to share such samples is assessed and approved on what is necessary and proportionate to complete the task effectively.

6. **If an industry partner were given, via removable media, a sample of operational data, what (if any) controls would be exercised over the subsequent use of that data? In particular:**

    a. **Are queries of the data logged?**

    b. **Are records kept of the analysis of the data generated?**

    c. **What, if anything, has the Commissioner done to review the use of such data?**

Response

In terms of general controls, the data will be held on systems that are accredited by GCHQ and only accessed by individuals who have full DV screening, have been inducted in the handling system used in the UK for sensitive intelligence, and undertaken GCHQ's mandatory training. The data is destroyed or returned to GCHQ once the task for which it was provided has been completed. Industry partners with whom GCHQ has a significant and ongoing relationship involving access to GCHQ equities will also have a Security Officer in place, trained by GCHQ. They are responsible for ensuring security clearance and sensitive intelligence handling induction are in place, making sure sensitive material is correctly received, protected and dispatched, investigating and reporting on breaches of security, if any, and holding a list of personnel who have been inducted in the sensitive intelligence handling system.

As for the individual queries:

a. **Queries of data not held on GCHQ systems will not be logged by GCHQ. However, importantly, the principal purpose of industry partners' use of the data is to build and develop systems, not to run queries.**

b. **No intelligence analysis of the data takes place. It is used purely for the purposes of developing and testing systems.**

c. **The Commissioner is aware of the use made by GCHQ of industry partners. However, to date he has not requested to look into the use made of such data in detail.**

Of paragraph 33(a):

"33(a). No BPD has been transferred by GCHQ to industry partners in this period."

7. **If a BPD were assumed to include a dataset of raw sigint data, does this statement remain correct?**

Response

The Respondents do not accept the definition of BPD which is suggested by the Claimants. It is neither necessary nor appropriate to answer a request on the basis of an incorrect definition.

Of paragraph 33(b):

"33(b). As for BCD, in the period 2010-11 some samples of operational data that might have contained some section 94 data were transferred to industry partners. The possibility that some BCD data was included in the operational data that was transferred arises from the relevant records, but it is not possible to be certain one way or the other because the samples have now been deleted. Except for the possible

transfer in 2010-11, no BCD has been transferred by GCHQ to industry partners in this period."

8. **Are all queries of such operational data:**

    a. **Logged?**

    b. **Auditable?**

Response

See the response to request 6 above.

9. **Is the consequent use made of such operational data:**

    a. **Logged?**

    b. **Auditable?**

Response

The reference to *"consequent use"* is vague but appears to be a reference to the use of the data after it has been *"queried"*. As is noted above, the principal purpose of industry partners' use of the data is to build and develop systems, not to run queries. Once it has been used for that purpose it is deleted or returned to GCHQ.

Of paragraph 39:

"39. For those researchers who have access to GCHQ operational data, or have done so in the past, the data to which they have access is heavily circumscribed and restricted to what they need for their project. None of this data consists of BPD or BCD, nor has it in the past. These researchers' projects aim to improve our analytic tools and techniques using operational data, in a similar way to our use of industry partners."

10. **If a BPD were assumed to include a dataset of raw sigint data, does this statement remain correct?**

Response

The Respondents do not accept the definition of BPD which is suggested by the Claimants. It is neither necessary nor appropriate to answer a request on the basis of an incorrect definition.

Of paragraph 40:

"40. … The rest of paragraph 84(d) [of the Claimant's skeleton argument] *is untrue…"*

11. The Respondents' departure from the 'neither confirm nor deny' principle is noted. Is it correct that the sigint selectors/targeting database (identified as the *"target dictionary"* in paragraph F.3.2 of the Heilbronn Institute Problem Book) is made available to some researchers?

Response

The request does not concern BPD or BCD. In the circumstances, it is irrelevant to the present proceedings and a response is not required.

Of paragraph 41:

"41. The Commissioners have been briefed in general terms about GCHQ's use of industry in the course of their inspections of GCHQ."

12. When was the briefing?

Response

See paragraph 41 of the Amended Fifth Witness Statement of the GCHQ Witness dated 7 July 2017.

13. What were the Commissioners told at the briefing?

Response

Beyond the fact that the Commissioners have been briefed in general terms about GCHQ's use of industry, nothing further of relevance to the present proceedings requires to be disclosed.

14. What was the response from the Commissioners to the information they were told?

Response

See the response to request 13 above.

15. What, if any, audit was carried out in consequence?

Response

No audit was carried out.

ANDREW O'CONNOR QC
RICHARD O'BRIEN

26 July 2017