

B E T W E E N:

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

CLAIMANT'S REQUEST FOR FURTHER INFORMATION AND DISCLOSURE
CONCERNING THE RESPONDENTS' OPEN RESPONSE

The Claimant requests the following further information and disclosure in respect of the Respondents' Open Response

Of paragraph 17


"Among the range of information collected are sets of data that contain personal information about a wide range of individuals, the majority of whom are unlikely to be of any intelligence interest. Typically these datasets are very large, and of a size which means they cannot be processed manually. Such datasets have generally been referred to within the Intelligence Services as 'Bulk Personal Datasets'."

1. Prior to the publication of the Intelligence and Security Committee Report on 12 March 2015, had it been acknowledged to the public that the Respondents obtained Bulk Personal Datasets? If yes, when and how?

2. Please identify each of the Bulk Personal Datasets that the Respondents have obtained, the power or powers (or combinations thereof) used to obtain such Datasets (identifying statutory title and section/regulation etc.) the date on which collection began and its scale and extent.

Of paragraph 22

“Directions have been issued under section 94 of the Telecommunications Act 1984 requiring communications service providers (“CSPs”) to provide bulk communications data (“BCD”), which has subsequently been stored and accessed by the Intelligence Services (“the Section 94 Regime”).”

3. Prior to the publication of the section 94 “Arrangements” on 4 November 2015, had it been acknowledged to the public that the Respondents have used section 94 to obtain BCD? If yes, when and how?
4. Prior to the publication of the section 94 “Arrangements” on 4 November 2015, had it been acknowledged to the public that BCD obtained under section 94 have been stored and accessed by the Intelligence Services? If yes, when and how?
5. When was section 94 first used to require provision of BCD?
6. How many section 94 directions requiring provision of BCD have been in force at any time since the coming into force of the Human Rights Act 1998, and since the coming into force of RIPA? 
7. For each such direction, please state:
 - a. which Secretary of State issued it;
 - b. the date on which it was issued;
 - c. the date on which BCD began to be provided;
 - d. the categories of BCD which it required to be provided;
 - e. the CSPs to which it was addressed;
 - f. whether it remains in force;
 - g. if it does not remain in force, the date on which it was cancelled;

- h. the date on which the Intelligence and Security Committee was informed of the direction; and
- i. the date on which the (i) Intelligence Services Commissioner; and (b) Interception of Communications Commissioner were each informed of the direction.

Of paragraph 55

“By s. 28(2) of the DPA, a Minister may certify that exemption from the data protection principles is so required. Copies of the ministerial certificates for each of the Intelligence Services are available on request.”

- 8. Please supply copies of such ministerial certificates as exist for each of the Intelligence Services, as varied from time to time.

Of paragraph 60

“Both sets of Handling Arrangements apply to each of the Intelligence Services...They came into force on 4 November 2015. They are mandatory and are required to be followed by staff in the Intelligence Services. Failure by staff to comply with the Handling Arrangements may lead to disciplinary action, which can include dismissal and prosecution...”

- 9. Why was each set of Arrangements introduced?
- 10. What arrangements were in place prior to 4 November 2015? Please provide copies of all arrangements that were previously in place for the handling of Bulk Personal Datasets or Bulk Communications Data obtained under s.94.
- 11. Has the Intelligence Services Commissioner and/or the Interception of Communications Commissioner approved either set of Arrangements? If yes, when?
- 12. For each of the Intelligence Services and each set of Handling Arrangements, please state:

- a. The number of instances of non-compliance that have been detected;
- b. the number of staff members identified as responsible;
- c. the number of staff who have been (i) prosecuted; (ii) dismissed; and (iii) otherwise disciplined for non-compliance; and
- d. the means by which the instances of non-compliance were detected.

Of paragraph 69

“A formal procedure must be followed prior to any acquisition or use as set out at §§4.6 to 4.7:

‘...’

4.7 Staff in each Intelligence Service must always complete the formal internal authorisation procedure before the dataset is loaded into an analytical system for use...”

13. What authorisation, if any, is required before a new dataset is obtained (whether or not it is later loaded into an analytical system)?
14. Please supply copies of any relevant authorisation procedures which have been in force at any time since the coming into force of the Human Rights Act 1998, stating the dates of each version’s applicability.
15. What authorisation, if any, is required before a dataset which has not been loaded into an analytical system may be used?
16. Please supply copies of any relevant authorisation procedures which have been in force at any time since the coming into force of the Human Rights Act 1998, stating the dates of each version’s applicability.
17. Do the provisions of any Code of Practice apply to the acquisition or use of any dataset, in particular any dataset of bulk communications data?

Of paragraph 75

“Specific, detailed measures are also set out which are designed to limit access to data to what is necessary and proportionate, to ensure that such access is properly audited, and to ensure that disciplinary measures are in place for misuse:

‘5.2 In relation to information in bulk personal datasets held, each Intelligence Service is obliged to put in place the following additional measures:’...”

18. Has each Intelligence Service put in place all the measures listed in paragraph 75?

If yes, please state for each Intelligence Service the date by which the measures had been put in place, and supply copies of any documents recording or evidencing the procedures established. If no, please state for each Intelligence Service which measures have been put in place since which date(s), and supply copies of such procedures as have been established.

19. What authorisation, if any, does a staff member need to access or use BPD which have been loaded onto an analytical system?

20. Please supply copies of any relevant policies in force since the coming into force of the Human Rights Act 1998, stating the dates between which each version has been in force.

21. What arrangements, if any, are in place to record access to and use of BPD?
Please supply copies of any relevant policies in force since the coming into force of the Human Rights Act 1998, stating the dates of each version’s applicability.

Paragraph 80

“Disclosure of the whole or subset of any BPD is subject to internal authorisation procedures in addition to those that apply to an item of data...”

22. What internal authorisation procedures apply to disclosure of an item of data?
Please supply copies of any relevant policies in force since the coming into force of the Human Rights Act 1998, stating the dates of each version's applicability.

Of paragraph 101

"...each Intelligence Service is obliged to put in place the following additional measures:

- *Access to BCD must be strictly limited to those with an appropriate business requirement to use these data and managed by a strict authorisation process;*
- *...*
- *Where Intelligence Service staff intend to access BCD relating to the communications of an individual known to be a member of a profession that handles privileged information or information that is otherwise confidential (medical doctors, lawyers, journalists, Members of Parliament, Ministers of religion), they must give **special consideration** to the necessity and proportionality justification for the interference with privacy that will be involved;'*..."

23. Has each Intelligence Service put in place all the measures listed in paragraph 101? If yes, please state for each Intelligence Service the date by which the measures had been put in place, and supply copies of any documents recording or evidencing the procedures established. If no, please state for each Intelligence Service which measures have been put in place from which date(s), and supply copies of such procedures as have been established.

24. Where Intelligence Staff access BCD relating to the communications of professionals who handle privileged or otherwise confidential information, do the Agencies have specific policies to govern the use and/or dissemination of such BCD as are accessed? If yes, please supply copies of the policies which have been in force since the coming into force of the Human Rights Act 1998, stating the dates of each version.

25. What arrangements, if any, are in place to record access to and use of BCD? Please supply copies of any relevant policies in force since the coming into force of the Human Rights Act 1998, stating the dates of each version.

Of paragraph 102

"The disclosure of BCD outside the Agency which holds it can only occur if certain conditions are complied with..."

'4.4.1 ...The disclosure of an entire bulk communications dataset, or a subset, outside the Intelligence Service may only be authorised by a Senior Official or the Secretary of State'..."

26. For each Intelligence Service, please state how many times since the coming into force of the Human Rights Act 1998 (i) an entire BCD dataset; (ii) a subset of a BCD dataset; and (iii) an individual piece of data from a BCD dataset has been disclosed to:

- a. Another UK Intelligence Service.
- b. A recipient in the UK other than an Intelligence Service (and, if applicable, please specify generically the type of recipient, e.g. an external data analysis contractor).
- c. A recipient outside the UK (again specifying generically the type of recipient).
- d. A foreign intelligence service.

27. What authorisation procedures, if any, apply for disclosure? Please supply copies of any relevant policies in force since the coming into force of the Human Rights Act 1998, stating the dates of each version's applicability.

28. What level of 'Senior Official' has and currently can authorise the disclosure of (a) an entire bulk communications dataset; and (b) a subset.

Of Paragraph 110

"§§4.6.4 to 4.6.7 address oversight by the Interception of Communications Commissioner..."

29. When was the Interception of Communications Commissioner first notified that section 94 had been used to require CSPs to provide BCD?

30. Has the Commissioner been notified of all section 94 directions which have been issued? If yes, since when has this been the case?
31. Does the Interception of Communications Commissioner currently discharge all of the oversight functions set out in paragraph 110? If yes, since when has this been the case? If no, which of the functions listed does he currently discharge, and since when has he done so?
32. Please provide copies of all oversight reports produced by the Interception of Communications Commissioner relating to BCD.

Of Paragraph 119

"Prior to the Direction being issued, the Intelligence Service Commissioner had overseen the acquisition, use, retention and disclosure of BPD on a non-statutory basis."

33. When was the Intelligence Services Commissioner first notified that the Agencies acquire and use bulk personal datasets?
34. When did the Commissioner begin to oversee the acquisition, use, retention and disclosure of BPD on a non-statutory basis?
35. Why was the Direction issued?
36. How, if at all, did the nature and/or scope of the Commissioner's oversight change as a result of the Direction?
37. Please provide copies of all oversight reports produced by the Intelligence Services Commissioner relating to BPD.

Of Paragraph 139

“In addition, the ISC plays an important part in overseeing the activities of the Intelligence Services. In particular, the ISC is the principal method by which scrutiny by Parliamentarians is brought to bear on those activities.”

38. When was the ISC first notified that the Agencies acquire and use bulk personal datasets?
39. When was the ISC first notified that section 94 has been used to require CSPs to provide BCD?
40. Has the ISC been notified of all section 94 directions which have been issued? If yes, since when has this been the case?

Of paragraph 179

“For the avoidance of doubt the Respondents additionally contend that the BPD Regime satisfied both elements of the ‘in accordance with law’ requirement prior to the date on which the Handling Arrangements came into force. Prior to that BPD was handled in accordance with internal guidance or practice which was similar to the Handling Arrangements, and was sufficiently foreseeable.”

41. Is it the Respondents’ case that the BPD Regime was “in accordance with law” at all times prior to the date on which the Handling Arrangements came into force?
42. Was adherence to the “internal guidance” mandatory? Please supply copies of all versions of the “internal guidance” applicable at any time since the coming into force of the Human Rights Act 1998, stating the dates of each version’s applicability. Where previous versions have been amended or repealed, please explain in each case why they were amended or repealed.

43. Was the “*practice*” codified prior to the drawing up of the Handling Arrangements? If yes, please supply copies of all versions of the codifying documents applicable at any time since the coming into force of the Human Rights Act 1998, stating the dates of each version’s applicability. Where previous versions have been amended or repealed, please explain in each case why they were amended or repealed.
44. Was the “*practice*” subject to any form of external scrutiny, for instance by the Intelligence Services Commissioner, the Interception of Communications Commissioner, the ISC or otherwise; and if so, by whom?
45. On what basis do the Respondents contend that unpublished guidance or practice was “*sufficiently foreseeable*”?

Of paragraph 189

“For the avoidance of doubt the Respondents additionally contend that the Section 94 Regime satisfied both elements of the ‘in accordance with law’ requirement prior to the date on which the Section 94 Handling Arrangements came into force. Prior to that BCD was handled in accordance with internal guidance or practice which was similar to the Section 94 Handling Arrangements, and was sufficiently foreseeable.”

46. Is it the Respondents’ case that the Section 94 Regime was “in accordance with law” at all times prior to the date on which the Handling Arrangements came into force?
47. Was adherence to the “*internal guidance*” mandatory? Please supply copies of all versions of the “*internal guidance*” applicable at any time since the coming into force of the Human Rights Act 1998, stating the dates of each version’s applicability. Where previous versions have been amended or repealed, please explain in each case why they were amended or repealed.

48. Was the “*practice*” codified prior to the drawing up of the Handling Arrangements? If yes, please supply copies of all versions of the codifying documents applicable at any time since the coming into force of the Human Rights Act 1998, stating the dates of each version’s applicability. Where previous versions have been amended or repealed, please explain in each case why they were amended or repealed.
49. Was the “*practice*” subject to any form of external scrutiny, for instance by the Intelligence Services Commissioner, the Interception of Communications Commissioner, the ISC or otherwise; and if so, by whom?
50. On what basis do the Respondents contend that the “*internal guidance or practice*” was “*sufficiently foreseeable*”?

THOMAS DE LA MARE QC

BEN JAFFEY

8 January 2015