



Home Office

Direct Communications Unit

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**Becky Hogge,
Executive Director,
Open Rights Group,
7th Floor, 100 Grays Inn Road,
London WC1X 8AL**

Dear Ms Hogge

Our Reference: 10142

Thank you for your e-mail of 28 August 2008 concerning the Interception Modernisation Programme.

In your e-mail you ask for the agenda and minutes of all meetings of the Intelligence and Security Liaison Group (and prior and subsequent re-naming of this entity). I regret to inform you that the Home Office is not aware of the existence of this group or of a similarly named group; or indeed of previously titled entity of that name. As such the Home Office does not hold the information you request, but if you could provide us with more specific details this may help us to identify the group that you are referring to.

You have asked for the agenda and minutes of all meetings of the Government-Industry Forum. We are pleased to let you know that we have released the agenda for the Government-Industry Forum held on 17 October 2007 (enclosed with this letter), as defined within the scope of your request. A small amount of personal data has been redacted as it is exempt under section 40 (2) of the Act. This exemption is absolute and therefore does not require the public interest to be engaged.

You ask for any feasibility studies, or budgetary forecasts produced by the Home Office or their consultants relating to the Interception Modernisation

Programme, including breakdown in terms of costs to the taxpayer and private industry. You also go on to ask for copies of correspondence regarding the Interception Modernisation Programme, including expressions of concern from either communications service providers, civil servants, elected officials or civil society. We understand this to mean all correspondence regarding the IMP, including but not limited to those containing expressions of concern.

Under section 12 of the Freedom of Information Act, the Home Office is not obliged to comply with any information request where the prescribed costs of supplying you with the information exceed £600. The £600 limit applies to all central government departments and is based on work being carried out at a rate of £25 per hour, which equates to 3½ days work per request. Prescribed costs include those which cover the cost of locating and retrieving information, and preparing our response to you. They do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or disbursements such as photocopying or postage.

The above requests are very broad-ranging and we have undertaken some analysis on how they could be answered. The findings of our investigations show that providing a full response to either request would exceed the £600 limit and we are therefore unable to provide you with the information you ask for.

If you wish to refine your request we will consider it further. You should, however, be aware that if you break either request down into a series of smaller requests, we might, depending on the circumstances of the case, decline to answer if the aggregated cost of complying exceeds £600, as permitted by the Fees Regulations.

In redefining your request, you should also note for future reference that any subsequent requests will be considered under the Freedom of Information Act and may or may not fall under the exemptions contained therein.

Your other enquiries appear to relate to the Interception Modernisation Programme (IMP) and in responding to this request I am assuming that you are again referring to the IMP when you ask for the draft or other plans for the technical architecture of the system.

There are a multitude of systems employed in this Programme; unfortunately I am therefore unable to answer this request without further clarity as to which 'system' you refer to.

You ask for the agenda and minutes of any meetings between communication service providers and the Home Office on the subject of the Interception Modernisation Programme. We neither confirm nor deny whether we hold the information you requested by virtue of sections 23(5) and 24(2) (Information supplied by, or relating to, bodies dealing with security matters and national security), section 31(3) (law enforcement), 35(3) (formulation of Government policy) and section 43(3) (prejudice to commercial interests) of the Freedom of Information Act. These sections exempt us from our duty to say whether or not we hold the information you ask for.

Further explanation of this decision, including where applicable the relevant public interest tests, can be found in the annex A to this letter. This response should not be taken as conclusive evidence that the information you have requested exists or does not exist.

If you are dissatisfied with any aspect of this response you may request an independent internal review of our handling of your request by submitting your complaint within two months to the address below quoting reference FOI: 10142:

Information Rights Team
Information Management Service
Home Office
4th Floor, Seacole Building
2 Marsham Street
London
SW1P 4DF Email: info.access@homeoffice.gsi.gov.uk

During the independent review the department's handling of your information request will be reassessed by members of staff who were not involved in providing you with this response. Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

I realise that you may be disappointed with this response. However we have considered the application of exemptions with great care in this case, and the Home Office always seeks to provide as much information as it is able to.

Yours sincerely

J Fanshaw

Annex to Becky Hogge Letter

Section 40 public interest test

We can neither confirm nor deny whether we hold agendas and minutes between communication service providers and the Home Office on the subject of the Intercept Modernisation Programme by virtue of the following exemptions:

Section 23(5) – Information relating to security bodies

Section 24(2) – National Security

Section 31(3) – Law enforcement

Section 35(3) – Formulation of government policy

Section 43(3) – Prejudice to commercial interests

Section 23(5) and 24(2) of the Freedom of Information Act state:

23(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(5) The duty to confirm or deny does not arise of, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

24(1) Information which does not fall within subsection 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

Section 23(5) is an absolute provision and consequently there is no further consideration required.

Section 24(2) public interest test

Public interest considerations in favour of confirming whether the information is held – all exemptions

To confirm or deny whether the requested information is held would reveal whether the Home Office has communicated with communication service providers on the subject of the IMP. The issues surrounding IMP are of

significant public interest. There is a large amount of speculation about the options which may be under consideration with little firm information in the public domain. Increased openness with regard to what options the programme is considering and with whom discussions have or have not been held would increase understanding and transparency in this area and inform the public debate.

Public interest considerations in favour of maintaining the exclusion of the duty to either confirm or deny – section 24(2)

In this instance, maintenance of the exclusion of the duty to confirm or deny whether the department holds the information you have requested information is required for the purpose of safeguarding national security. It is important to protect the space within which policy is formulated and to enable the widest possible range of information gathering to take place to ensure that the best solutions are considered. To reveal what discussions, if any, have taken place at this stage would be prejudicial to that process and would be likely to result in less candid views being aired and poorer decision making. As the Interception Modernisation Programme is clearly one which has an impact on national security issues, any decision which would hinder the policy making process and limit the options and solutions to be considered would be likely to also be damaging to national security.

Balance of the public interest – section 24

We have determined that safeguarding national security interests is of paramount importance and that in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming or denying whether we hold the information in question.

Section 35(3) – Formulation of government policy

Section 35 of the Freedom of Information Act provides that:

1. Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy,
- (b) Ministerial communications,
- (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or
- (d) the operation of any Ministerial private office.

3. The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

We believe that any information falling within the scope of your request, would, if held, be exempt under section 35(1) above. Therefore, under section 35(3), the department is not obliged to confirm or deny whether it holds any such information.

Public interest considerations in favour of confirming whether the information is held – section 35

See above

Public interest considerations in favour of maintaining the exclusion of the duty to either confirm or deny – section 35

It is not in the public interest to compromise the Government's ability to discuss and formulate policy options in private and in particular it is not in the public interest to confirm in this instance whether or not the Home Office has entered into conversations with communications providers. It is important in the early stages of policy formulation for the Government to be able to consider and discuss a variety of options in a private space. To reveal at this stage that conversations have or have not taken place with would prematurely reveal information about the policy formulation process and the options under consideration. Those involved in policy formulation would be likely to be less candid with their views and unlikely to propose new and challenging ideas if they thought that they would be released prematurely. Those outside of Government involved in discussions about policy would also be less likely to engage if they believed that their views would be made public.

Balance of the public interest – section 35

We believe that the need to protect the space in which government policy can be discussed and formulated, without premature disclosure overrides the factors in favour of disclosure. Furthermore the Government will be addressing the public interest in this issue by bringing forward a consultation paper in early 2009.

Section 31(3) – Law Enforcement

Section 31(1)(a) of the Freedom of Information Act states:

31(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to prejudice-

(a) the prevention or detection of crime

(3) The duty to confirm or deny does not arise if, or to the extent that, in compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

We believe that confirming or denying whether we hold the information you have requested would prejudice the prevention and detection of crime for the reasons outlined below.

Public interest considerations in favour of confirming whether the information is held – section 31

See above.

Public interest considerations in favour of maintaining the exclusion of the duty to either confirm or deny – section 31

It is important to protect the space within which policy is formulated and to enable the widest possible range of information gathering to take place to ensure that the best solutions are considered. To reveal what discussions, if any, have taken place at this stage would be prejudicial to that process and would be likely to result in less candid views being aired and poorer decision making. As the Interception Modernisation Programme is clearly one which has an impact on the ability to both detect and prevent crime, any decision which would hinder the policy making process and limit the options and solutions to be considered would be likely to also be prejudicial to law enforcement.

Balance of the public interest test

We have determined that protecting the ability to prevent and detect crime is of vital importance. Subsequently, in all circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming or denying whether we hold the information in question.

Section 43(3) – Commercial Interests

Section 43(2) and (3) state:

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

(3) The duty to confirm or deny does not arise if, or to the extent that, in compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (2).

We believe that to confirm or deny whether we hold the information requested would be prejudicial to the commercial interests of both the department and communication service providers for the reasons outlined below.

Public interest considerations in favour of confirming whether the information is held – section 43

See above.

Public interest considerations in favour of maintaining the exclusion of the duty to either confirm or deny – section 43

There has been considerable speculation about the IMP and in particular, about what the policy proposal(s) stemming from the Programme might be. These speculative suggestions have been wide ranging and some have

attracted criticism and negative publicity. If we were to confirm whether we hold the information requested, this could lead to further speculation about which meetings may or may not have taken place with whom and their content. To be associated in a speculative way, with the Programme at this stage could result in criticism for communications providers which could be damaging to their commercial interests. In addition, confirming whether conversations have or have not taken place would be likely to result in a loss of trust between the department and communications providers. This is likely to make such providers less willing to work with the department on future projects and would therefore reduce the competitiveness of the tendering process, which would affect the commercial interests of the department.

Balance of the public interest test

It is not in the public interest to prejudice the commercial interests of private companies or to make a decision in this case which would result in a less effective use of public funds. In the circumstances of the case we have concluded that these factors outweigh those in favour of confirming whether or not the information you have requested is held at the present time.