

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Phillip Main (reference 13690)

Responding Unit: Information Access Team (IAT)

Chronology

Original Fol request:	17 December 2009
IAT response:	6 January 2010
Request for internal review:	6 January 2010

Subject of request

1. In his original request, Mr Main asked for clarification of a point relating to the Home Office response to a separate request from Mr Peter John. In that request, Mr John had asked for information about the Detica CView system and had also stated the following:

'In early Fol responses you told me: "Unlawful interception under section 1 of the Regulation of Investigatory Powers Act 2000 attracts a penalty, on conviction on indictment, of imprisonment for a term not exceeding two years or to a fine, or to both. In the case of a summary conviction a person found guilty of an offence will be liable to a fine not exceeding the statutory maximum."

'That being the case, and assuming no trial has been authorised by the Secretary of State, and bearing in mind the EC Infraction Proceedings currently facing the UK Government, where can the public report concerns about criminal offences by Internet Service Providers who intercept and monitor the content of communications traffic without the consent of sender or recipient?'

2. The response to Mr John's request was that the information requested relating to the Detica CView system was not held. The response, which appeared on the *whatdotheyknow* website, did not answer the question set out at paragraph 1 above.
3. Mr Main's request asked for clarification of the point originally raised by Mr John, namely to which regulatory or government body the public should make complaints about criminal offences by Internet Service Providers who intercept and monitor the content of communications traffic without the consent of sender or recipient.

IAT Response

4. The IAT response was combined with that to two other requests from Mr Main. The combined response was, in summary, as follows:

'We have considered your requests and we consider them to be vexatious when considered in conjunction with the previous requests you have submitted on this topic. Section 14(1) of the Act provides that the Home Office is not obliged to comply with a request for information of this nature.'

Procedural issues

5. The IAT response of 6 January was sent 11 working days after receipt of the request, well within the limit of 20 working days imposed by section 10(1) of the FoI Act.

Mr Main's request for internal review

6. Mr Main asked for an internal review of the IAT response to this request only (i.e. not of the responses to the other two requests which were judged to be vexatious) in an e-mail of 6 January. He said that he had asked only for the information that appeared to be missing from the reply to Mr John. Mr Main did not explicitly challenge or mention the response that his three requests were considered to be vexatious

Consideration of the response

7. As Mr Main says, his original request only asked for clarification of a point in an earlier response to a request from Mr John. It is questionable whether this was a Freedom of Information request, in that it was more in the nature of a general enquiry than a request for a piece of information which the Home Office holds. Nevertheless, although Mr John has not himself complained, that response should have provided the information asked for on this narrow point so far as the Home Office is able to do so. It is difficult to conclude that Mr Main's request, which could have been answered fairly easily, was vexatious.
8. This report does not consider whether the decision that Mr Main's two other requests were, when considered with others, were vexatious.

Conclusions

9. Mr Main's request of 17 December 2009 should not have been judged as vexatious. It is questionable whether it should have been treated as an FoI request at all (as opposed to a general enquiry). Although it is understandable why the request should have been considered together with Mr Main's other requests, it is on such a narrow point that it should have been handled separately and answered to the extent that the Home Office is in a position to do so. The question originally raised by Mr John and subsequently Mr Main is answered in the covering letter to this report, to the extent that we are able to do so.

**Information Access Team
Home Office
24 February 2010**