

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Alexander Hanff (reference 17198)

Responding Unit: Office for Security and Counter-Terrorism (OSCT)

Chronology

Original Fol request:	21 December 2010
Acknowledgement:	None sent
Public interest test extension letter:	14 January 2011
OSCT response:	16 February 2011
Request for internal review:	16 February 2011

Subject of request

1. On 21 December 2010, Mr Hanff made a request for information held by the Home Office, for the period 1 January 2010 to 7 December 2010, in respect of communications with Communications Service Providers (CSPs) regarding the Regulation of Investigatory Powers Act (RIPA). The full wording of Mr Hanff's request is at Annex A to this report.

The response by OSCT

2. OSCT provided Mr Hanff with a substantive response on 16 February 2011, in which they advised him that the first three parts of his request, for all communications, a list or transcripts/recordings of phone calls, and a list or minutes of meetings relating to any CSP on the subject of RIPA could not be provided as this would exceed the cost limit under section 12 of the Act. In respect of the information sought at the fourth part of the request, OSCT found that the information was exempt from disclosure under section 35(1)(a) of the Act (formulation or development of government policy).

Request for an internal review

3. Mr Hanff asked for an internal review of the handling of his request as he did not accept that the cost limit would be exceeded by responding to the first three parts of his request. Mr Hanff's reasoning was that 'all the communications requested should be filed in an organised fashion.'
4. Mr Hanff did not accept the reason for refusing to provide the information he sought at part four of his request, stating he believed it

was in the public interest that the information was made available. The full wording of Mr Hanff's internal review request is at Annex B to this report.

Procedural issues

5. Mr Hanff's initial request for information was received on 21 December 2010 and OSCT provided a substantive response on 16 February 2011. Under section 10(1) of the Act the time for compliance with a request is 20 working days following the date of receipt. There are exceptions, one of which is where qualified exemptions are being considered for which the public interest test is being deliberated. Section 10(3) of the Act allows us to exceed the 20 working day response target where reasonably necessary to consider the public interest test fully.
6. OSCT wrote to Mr Hanff on 14 January advising him that a qualified exemption was being considered and that they now aimed to provide a full response by 21 February. A substantive response was in fact provided to Mr Hanff on 16 February; OSCT therefore complied with section 10(1) of the Act.
7. The response also complied with sections 17(1)(a), 17(1)(b) and 17(1)(c) of the Act as it specified that a qualified exemption applied to some of the information, named the exemption, in this case section 35(1)(a), and stated why it applied.
8. It does not appear that Mr Hanff's request was acknowledged. Whilst not a requirement of the Act, it is considered good practice to do so.
9. Mr Hanff was informed in writing of his right to request an independent internal review of the handling of his request, as required by section 17(7)(a) of the Act.
10. The response from OSCT did not however inform Mr Hanff of his right of complaint to the Information Commissioner which was a breach of section 17(7)(b) of the Act. This section informs the requester that should they remain dissatisfied after an internal review has been conducted they have the right of complaint to the Information Commissioner as established by section 50 of the Act.

Consideration of the response

11. I have considered the OSCT response.
12. The response to the first three parts of Mr Hanff's request cited the cost limit under section 12 of the Act as the reason why the information could not be disclosed. Mr Hanff makes the point in his request for an internal review that 'since all the communications requested should be

filed in an organised fashion, I do not accept that it would exceed the £600 limit to provide me with copies of those communications.'

13. As Mr Hanff suggests, information relating to RIPA is filed in an organised fashion. However, that does not in itself mean that the information requested can be located, retrieved and extracted within the cost limit.
14. Having consulted with OSCT, I am satisfied that the cost limit under section 12 of the Act was correctly engaged. RIPA is a broad piece of legislation which impacts on the work of many teams and individuals within the Home Office. In addition, the timeframe of Mr Hanff's request is extensive. To ascertain what information is held would require a large number of staff who might have relevant information to be identified and for a manual search to be undertaken of their files, both paper and electronic. As part of this trawl, many thousands of documents would need to be identified, retrieved and examined.
15. Mr Hanff has also asked for the handling of the fourth part of his request to be reviewed: OSCT found that this information was exempt under section 35(1)(a) (formulation or development of government policy).
16. Section 12(4) of the Act can be engaged where one person makes two or more requests. This section allows for the aggregation of these requests for the purpose of calculating costs in circumstances that are set out in Regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. This Regulation provides that multiple requests can be aggregated where two or more requests relate to the same or similar information.
17. The Information Tribunal considered this issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124]. The Tribunal found that the public authority was entitled to aggregate the requests for information for the purposes of the Fees Regulation and correctly applied section 12 of the Act.
18. Mr Hanff's request is made up of four parts all relating to RIPA. It is my view therefore that section 12(4) applied to the whole of the request in terms of the costs being aggregated, and not just the first three parts. The effect of this is that it is not necessary to consider whether or not section 35(1)(a) applies.
19. In his request for an internal review, Mr Hanff suggested that the information he has requested is a matter of public interest. In paragraph 23 of the decision in the case of *Randall v the Information Commissioner* [EA/2007/0004], the Information Tribunal commented that "the effect of section 12 is absolute, regardless of the significance of the information involved; if the limit is exceeded, the effect is that the obligation to disclose information in section 1 does not apply.

Questions of public or private interest have no bearing, with regard to section 12. The effect of section 12 is in marked contrast to several of the exemptions in the Act which are subject to a public interest test, set out in section 2. This requires a balance to be struck between the public interest in disclosure and any particular exemption claimed. Section 2 does not apply to section 12.”

Advice and assistance

20. In their response, OSCT provided assistance to Mr Hanff by suggesting he might refine his request in terms of identifying a specific topic or aspect of RIPA so that it might fall to be dealt with under the cost limit.

Conclusion

21. Having considered the response, I am satisfied that OSCT were correct in their citing of section 12 in respect of the first three parts of Mr Hanff’s request. I believe however that this section should have been applied to the whole of the request, and that it was therefore unnecessary to go on to consider the exemption under section 35(1)(a) in respect of the fourth and final part of the request. .
22. By failing to inform Mr Hanff of his right of complaint to the Information Commissioner, OSCT breached section 17(7)(b) of the Act. I am however satisfied that sections 10(1) and 17(7)(a) were complied with.
23. Although sections 17(1)(a), (b) and (c) of the Act were also complied with, the fact that it was unnecessary to consider the exemption under section 35(1)(a) now makes the citing of these sections redundant.

Information Access Team
Home Office
16 March 2011

Annex A

On Tuesday 7th December 2010, Home Office staff in a meeting with various civil society organisations, disclosed that the consultation on a review of Regulation of Investigatory Powers Act (RIPA) was initially targeted at Communications Service Providers (CSP).

Please provide a copy of all communications with any CSP regarding RIPA from 1st January 2010 - 7th December 2010.

Please provide a list and where possible, transcripts/recordings of phone calls with any CSP regarding RIPA from 1st January 2010 - 7th December 2010.

Please provide a list of meetings and where possible, minutes of those meetings with any CSP regarding RIPA from 1st January 2010 - 7th December 2010 (whether they took place at the Home Office or at the offices of CSP involved).

Finally, please provide copies of all internal communications (including emails and memos) which discussed the management of the review consultation including (but not limited to) any communications which discussed the management of the review consultation, length of review consultation and which parties should be invited to engage; from 1st January 2010 - 20th December 2010.

Annex B

I am writing to request an internal review of Home Office's handling of my FOI request 'Request for disclosure of communications with CSPs regarding RIPA review'.

First of all, since all the communications requested should be filed in an organised fashion, I do not accept that it would exceed the £600 limit to provide me with copies of those communications.

Second, I do not accept the Home Office's reason for refusing to provide the information I asked for in my 4th paragraph. This is very clearly in the public interest as it is regarding a piece of legislation which impacts public rights every single day. To suggest that it is not in the public interest to clarify whether or not the upcoming changes to the law are a result of a consultation period loaded to the favour of industry, is quite frankly ridiculous.

It seems to me that the very reason I requested the information in the first place (to see if the Home Office were showing favour to the telecoms industry) could be the reason the Home Office have refused to answer the request as such I fully intend to follow this through until the information is made available.