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Jeremy Fleming
GCHQ Cheltenham
Hubble Road
Cheltenham
GL51 0EX

19 May 2017

Dear Mr Fleming,

We are writing to request the release of information about international co-operation and intelligence sharing by Government Communications Headquarters (GCHQ).

It is our understanding that the relationships GCHQ maintains with foreign intelligence agencies are core to how the Agency collects information. GCHQ claims that it “*cannot work in isolation*” and that it practices “*international collaboration and information-sharing on a greater scale than ever before*”.¹

However, guidance surrounding how, when, and the quantity of information that can be shared and with what safeguards remains secret. Neither the public nor Parliament knows under what conditions new co-operation agreements can be formed, what kind of information can be exchanged, the purposes and conditions upon which information can be exchanged, and importantly, under what legal framework.

Since the disclosures of Edward Snowden in June 2013, international intelligence partnerships and the agreements underpinning them have come under scrutiny. The lawfulness of GCHQ’s information sharing relationship with the US National Security Agency (NSA) is of particular concern, and is being considered by the European Court of Human Rights in *10 Human Rights Organisations v UK*.²

¹ *International Partners* – GCHQ, 29 Sept 2016: <https://www.gchq.gov.uk/features/international-partners> (accessed 18 May 2017)

² *10 Human Rights Organisations v. United Kingdom*, Application No. 24960/15

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It has been reported that the US Government paid over £100m to GCHQ between 2009-2013, “to secure access to and influence over Britain’s intelligence gathering programmes”;³ that GCHQ has the ability to search for UK communications data in the NSA’s bulk stores;⁴ and that GCHQ and the NSA expanded their agreement in 2007 to permit NSA to retain and analyse data that would unmask UK citizens’ identities.⁵

Although the original UKUSA arrangement was publically disclosed in 2010,⁶ it remains that there is an unacceptable lack of information in the public domain setting out the rules that underpin the arrangement in the digital age, any safeguards that might be in place, or how human rights are protected.

The original, now declassified, UKUSA arrangement signed in 1946 does not assist us in understanding the current legal framework governing information sharing and exchange. For example, the arrangement appears to contain no prohibitions on the use of information to commit human rights abuses, nor on the onward sharing of information to additional parties and the laws they would be bound to obey in using that information.

Civil society groups have made efforts to release intelligence sharing arrangements in the past, but requests have been rejected, with certain legal questions also now before the courts.⁷

Three major recent reviews into investigatory powers (*A Question of Trust*,⁸ *Privacy and Security*⁹ and *A Democratic Licence to Operate*¹⁰) found that the existing scheme under

³ *Exclusive: NSA pays £100m in secret funding for GCHQ* – Nick Hopkins and Julian Borger, The Guardian, 1 August 2013

⁴ *NSA collects millions of text messages daily in 'untargeted' global sweep* – James Ball, The Guardian, 16 January 2014

⁵ *US and UK struck secret deal to allow NSA to 'unmask' Britons' personal data* – James Ball, The Guardian, 20 November 2013

⁶ *Newly released GCHQ files: UKUSA Agreement* – National Archives, 2010

⁷ *Privacy International v. United Kingdom*; available at: <https://privacyinternational.org/node/83>

⁸ *A Question of Trust: Report of the Investigatory Powers Review* – David Anderson Q.C., June 2015

⁹ *Privacy and Security: a modern and transparent legal framework* - Intelligence and Security Committee, March 2015

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Regulation of Investigatory Powers Act (RIPA) was inadequate to govern such international information exchanges. Each made recommendations to place the practice onto a firm statutory footing in any future legislation. In addition, there was widespread agreement during the passage of the Investigatory Powers Act that international intelligence sharing must have a clear statutory footing and be robustly regulated. When the draft Investigatory Powers Bill failed to provide such statutory guidance the Intelligence and Security Committee responded that “*the proportion of intercept material obtained from international partners is such that it is not appropriate to exclude it from legislation which purports to cover interception*” and recommended that “*legislation must set out these arrangements more explicitly, defining the powers and constraints governing such exchanges*”.¹¹

Upon your appointment, you committed to “*building on his (former Director, Robert Hannigan’s) legacy and in particular, the role he has played in increasing the transparency of GCHQ’s crucial work*”.¹² We welcome your commitment to increase transparency of the Agency’s work. To that end, we request you make publically accessible:

1. All agreements, memoranda of understanding, or other arrangements with foreign countries concerning the sharing of raw data and other information between GCHQ and any other country or agency.
2. All policies, guidelines, opinions, reports, and memoranda concerning:
 - a. The circumstances in which the GCHQ may share information with another country, and details of any limitations;
 - b. The circumstances in which GCHQ may request or otherwise acquire information from another country, and details of any limitations;
 - c. Any limitations on GCHQ’s retention, use, or dissemination of information requested or otherwise acquired from another country;

¹⁰ *A Democratic License to Operate: Report of the Independent Surveillance Review* – Royal United Services Institute for Defence and Security Studies, July 2015

¹¹ *Report on the draft Investigatory Powers Bill* – Intelligence and Security Committee, February 2016, para. xii, p. 12

¹² *Foreign Secretary Appoints New Director GCHQ* – gchq.gov.uk, 20 March 2017

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- d. The circumstances, if any, in which GCHQ may request or otherwise acquire information from another country where GCHQ itself could not lawfully acquire the same information.

Yours sincerely,



Martha Spurrier

Director of Liberty