



Investigatory Powers Bill: Is the definition of a Bulk Personal Dataset entirely clear?

We welcome and support the debate around the use of Bulk Personal Datasets. If the powers can not be explained and justified, they should not be available for use.

Your Medical Records: an exclusively domestic political football?

The protection offered for medical records in clause 187 amounts to nothing more than one extra checkbox on a SIA form. In the Bill, there is no requirement for transparency, and no requirement for accountability. Both of these should be rectified.

We note that the SIS statement to the Investigatory Powers Tribunal that “SIS can confirm that it does not hold, and has never held, a bulk personal dataset of medical records, whether sourced from UK or overseas...”.¹ Therefore, a statutory ban on the use of medical records has no effect on overseas operations.

As such, the only reason not to legislate against a complete ban on medical records as a Bulk Personal Dataset is that HMG wishes to use against its own citizens what is unpalatable against others. Reading the guidance for the SIAs, it is clear that the ability to constrain domestic political considerations does give domestic agencies far greater latitude than those overseas.²

What *isn't* a Bulk Personal Dataset?

The Bill before Parliament currently says:

“ 182 (2) In this section, “personal data” has the same meaning as in the Data Protection Act 1998”

However, all of the evidence given to the Independent Reviewer of Terrorism Legislation³ covered past scenarios where Bulk Personal Datasets had been effective, and so used the current definition of a Bulk Personal Dataset:

*“GCHQ agreed with Cabinet Office in 2010, as part of the Review of Agency Handling of Bulk Personal Data, that, **to be considered personal data, a dataset has to contain at least the actual names of individuals.**”⁴*

¹ Paragraph numbered 12, page 71: <https://privacyinternational.org/sites/default/files/7.%20Witness%20Statements%20of%20Respondents.pdf>

² Compare the issues, tone, and approach of the SIS guidance at https://privacyinternational.org/sites/default/files/35.%20Secret%20Intelligence%20Service.%20SIS%20Bulk%20Personal%20Data.%20Guidance%20on%20the%20Authorisation%20Process%20October%202015%20to%20present_0.PDF and the Security Service at https://privacyinternational.org/sites/default/files/17.%20Security%20Service.%20BPD.%20Bulk%20Personal%20Data%20Policy%20.%20November%202015_0.PDF

³ Paragraph 2.73. <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2016/08/Bulk-Powers-Review-final-report.pdf>

⁴ Footnote 1. GCHQ guidance on BPDs: https://privacyinternational.org/sites/default/files/7.%20GCHQ.%20Guidance%20for%20completing%20the%20BPD%20form%20June%202014%20to%20present_0.PDF

Whereas, the Data Protection Act says:⁵

“personal data” means data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

In practice, it appears that protections for personal data from part (b) have been dropped, creating a significant loophole.

There is no “actual names” requirement in the Data Protection Act, but one has been created to limit applicability of restrictions, and the broader protection of identifiability “from those data or other information” has been dropped. This will leave the vast majority of personal data outside of this legal framework and protections. We can demonstrate that is true in practice.

As part of other work in the non-secret parts of Government, we have made Freedom of Information requests to many Government departments looking at their use of Bulk Personal Datasets.⁶ Departments cite the Cabinet Office as the source of the working definition, while claim that it is the Data Protection Act compliant⁷.

When the lists of purposes are examined⁸, what is clear is that all Bulk Personal Datasets are interpreted in this way:

**If a dataset does not contain names,
it is the BPD rules do not apply.**

To take a communications example, it’s like saying the itemised bit of your bank statement isn’t a BPD because it only contains the account numbers as an identifier, not the holder’s name.

That contradicts what the Investigatory Powers Bill suggests is current practice. In effect, these clauses do not cover the data that a plain reading of the legislation will expect them to cover, because the definition from the Data Protection Act has been misapplied.

Which definition does the Government expect to use into the future? The one in the Bill, or the one which it uses as the basis for the published operational case and the evidence to the Independent Review of Bulk Powers? They are different and contradictory.

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⁵ <http://www.legislation.gov.uk/ukpga/1998/29/section/1>

⁶ This is now a term which has extended across the non-secret parts of Government with common meaning.

⁷ See <https://medconfidential.org/2016/when-is-personal-data-not-personal-data/>

⁸ See <https://medconfidential.org/2016/when-is-personal-data-not-personal-data/>