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Deputy Director

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Gists are shown in italics and double underlined

Further disclosure of 18.10.17 is highlighted

[REDACTED]
IPCO
PO BOX 29105,
London,
SW1V 1ZU

GCHQ Reference: [REDACTED]

16 October 2017

Dear [REDACTED]

Following the audit visit conducted at GCHQ on 31 August you provided GCHQ with a draft report on 12 September, inviting responses to that draft by close on the 14 September. I appreciate that this very tight deadline derived from the need to meet the timetable laid down by the Investigatory Powers Tribunal ahead of the hearing scheduled for 17-19 October. I am sure you understood that it was therefore not possible to respond substantively within that timeframe, particularly as we too needed to prepare for that hearing, and for Sir John Goldring's Inspection visit that took place from 2-6 October. We therefore focused our attention on the open and closed letters that IPCO was writing to the Tribunal.

We have now had the chance to work through the draft report properly. We have a number of comments to make. We appreciate that the Inspectors needed to conduct the audit visit at much shorter notice than is normal for one of these visits, and that as a result there was less time for them to do any preparatory work, and less time for us to track down all the potentially relevant material. In particular we were unaware that the Inspectors had not had sight of the very extensive paperwork that GCHQ had produced for Sir Stanley Burnton, the then Interception of Communications Commissioner, in June 2016 [REDACTED]

Turning to the specifics of the draft report, we have the following comments, all of which we would be happy to discuss further:

[REDACTED]

The third bullet point states that, "when questioned, staff were not considering steps to minimise the level of intrusion from any sharing." Again, this doesn't really reflect the discussions. Inspectors asked about processes for managing what data might be shared and were told that any files would be formatted before sharing, and would only contain agreed fields. [REDACTED] The same point applies to paragraph 17 of the draft report.

The fourth bullet point states that, "*Identifying and classifying BPDs appeared to cause some difficulty because of the complexity of GCHQ's acquisition methods. There is some question of whether all BPDs held by GCHQ have been adequately identified, while some datasets identified as BPDs were not.*" We consider that we have taken a careful and, if anything, over-cautious approach to the identification of BPDs. As at SIS (see paragraph [REDACTED] of the draft report), GCHQ legal advisers work closely with us in this regard. As the draft report recognises, this cautious approach can lead to an over-recording of BPDs (as the inspectors found to be the case on this occasion). But there is not a similar risk that datasets that are BPDs will not be identified as such. The same point applies to the observations at paragraph 9 of the draft report. The inspectors were provided with details of any dataset where any relevant sharing may have taken place. Out of an abundance of caution, some datasets were included that were subsequently agreed not to constitute BPDs. There will always be borderline cases; adopting a cautious approach at an inspection of this nature does not equate to "uncertainty", and certainly does not indicate any risk going forward that datasets that are BPDs will not be classified as such.

The final bullet point states that GCHQ "have not provided clear and specific briefings to the Foreign Secretary, other than via the Choice Letter" and questions "whether the Foreign Secretary has provided ministerial oversight in this area." We consider that the information that it provides to the FCO is broadly consistent with SIS's practice in this regard. It is important to note that GCHQ has not needed to submit or to seek approval from the Foreign Secretary regarding any difficult cases in this area; it is not really surprising, therefore, that we have had less engagement with current or previous Secretaries of State.

I am aware of course that you needed to share the draft report with the IPT; I hope therefore you will understand that I will be exhibiting this response to a Witness Statement that I will be filing with the Tribunal this week.

Yours ever,

[REDACTED]