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XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Department for Transport
Great Minster House
76 Marsham Street
London SW1P 4DR

XXXXXXXXXXXXXXXXXXXXXXXXXXXX@dft.gsi.go
v.uk

Web Site: www.dft.gov.uk

Our Ref: F0007767

12TH JULY 2011

Dear XXXXXXXX,

Freedom of Information request

I am writing in response to your request for information received on 16th June. In that request you asked for all internal reports and communications about successful hacking and other computer related attacks on government assets, including estimates of how much data has stolen in the past two years and the nature of this data.

The Department can neither confirm nor deny that it holds the information you requested as the duty in section 1.(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of sections 23 and 24 of that Act. Specifically the exemptions being claimed are under sections s.23(5), s.24(2), as the information requested would, if held, relate to issues of national security and could potentially have been supplied by a body specified in section 23(3), and also the exemption at s.31(3), as the information requested would, if held and released, be likely to prejudice the prevention and detection of crime.

In applying exemptions under section s.24(2) and s.31(3) we have had to balance the public interest for and against neither confirming nor denying that we hold the information requested. Exemptions under section 23 are absolute and do not need to be qualified.

It would not be in the interests of the UK's national security for DfT to confirm whether it holds information about successful attacks against its IT systems as a criminal could deduce if their attacks had been detected or not and so this would enable individuals to deduce how successful the UK is in detecting these attacks. Confirming when information is held or not held would assist someone in testing the effectiveness of the UK's defences against such attacks. For example, if a department responded 'no information held' a criminal could carry on hacking knowing they had not been detected. Alternatively, if a department responded that information is held, though exempt, a criminal may think they have been detected and stop, which may damage any attempt to identify them via law enforcement agencies. This is not in the public interest. Any attempt to hack into an IT system is a criminal offence, and thus s.31(3) is also engaged.

In considering the balance of the public interest in regard to exemptions under s.24 and s.31, it was acknowledged that to either confirm or deny the Department held this information would promote understanding, accountability and transparency of the effectiveness of measures and safeguards deployed by Government to protect information, money spent by it, and allow citizens to understand or challenge decisions

made by it. However it is the duty of Government to ensure that its sensitive information is protected and therefore the overriding public interest is in ensuring that measures to deter, detect and prevent attacks on Government information systems, and actions taken to identify and prosecute those who attempt to access them unlawfully are as effective as possible. This is in the public interest.

The attached annex A to this letter sets out the exemptions in full.

If you are unhappy with the way the Department has handled your request or with the decisions made in relation to your request you may complain within two calendar months of the date of this letter by writing to the Department's Information Rights Unit at:

XXXXXXXXXX
Ashdown House
Sedlescombe Road North
Hastings
East Sussex TN37 7GA
E-mail: XX

Please see attached details of DfT's complaints procedure and your right to complain to the Information Commissioner.

If you have any queries about this letter, please contact XXXXXXXXXXXXX on XXXXXXXXXXXXX. Please remember to quote the reference number above in any future communications.

Yours sincerely

XXXXXXXXXXXXXXXXXX

Your right to complain to DfT and the Information Commissioner

You have the right to complain within two calendar months of the date of this letter about the way in which your request for information was handled and/or about the decision not to disclose all or part of the information requested. In addition a complaint can be made that DfT has not complied with its FOI publication scheme.

Your complaint will be acknowledged and you will be advised of a target date by which to expect a response. Initially your complaint will be re-considered by the official who dealt with your request for information. If, after careful consideration, that official decides that his/her decision was correct, your complaint will automatically be referred to a senior independent official who will conduct a further review. You will be advised of the outcome of your complaint and if a decision is taken to disclose information originally withheld this will be done as soon as possible.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

Section 23

Information supplied by, or relating to, bodies dealing with security matters

(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.

(3) The bodies referred to in subsections (1) and (2) are—

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of [2000 c. 23.] Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the [1985 c. 56.] Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the [1989 c. 5.] Security Service Act 1989,
- (h) the Tribunal established under section 9 of the [1994 c. 13.] Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the Serious and Organised Crime Agency (SOCA) and CEOP.

(4) In subsection (3)(c) “the Government Communications Headquarters” includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

Section 24

National security

(1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

(3) A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.

(4) A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.

Section 31

Law enforcement

1. Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice:
 - (a) the prevention or detection of crime
 - (b) the apprehension or prosecution of offenders
 - (c) the administration of justice
 - (d) the assessment or collection of any tax or duty or of any imposition of a similar nature
 - (e) the operation of the immigration controls
 - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained
 - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)
 - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
 - (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.
2. The purposes referred to in subsection (1)(g) to (l) are:
 - (a) the purpose of ascertaining whether any person has failed to comply with the law
 - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper
 - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise
 - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on
 - (e) the purpose of ascertaining the cause of an accident,
 - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration
 - (g) the purpose of protecting the property of charities from loss or misapplication
 - (h) the purpose of recovering the property of charities
 - (i) the purpose of securing the health, safety and welfare of persons at work, and
 - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

3. The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).