You’d think that we understood it all by now!

Richard Clayton

Scrambling for Safety Seven 22 Oct 2003
Lots of Statutory Instruments

- Voluntary scheme for ATCS Data Retention
- Extension of ATCS Part 11 “sunset clause”
- Additional Authorities for Part I Chapter II
  - the police forces they forgot
  - and all the other authorities
- & Intrusive & Directed Surveillance Orders
  - RIP Part II and traditionally overlooked!
Emergency legislation?

14 Dec 2001 +000  ATCS Royal Assent
22 Jan 2002 +039  CSPs meet Home Office
27 Feb 2002 +075  CSP “lawyers” meet HO
2 Mar 2002 +078  Draft 1 of Code of Practice
18 Apr 2002 +125  Draft 2 of Code of Practice
26 Jun 2002 +194  Change of personnel at HO
29 Jul 2002 +227  Draft 3 of Code of Practice
Emergency legislation?

9 Sep 2002 +269 CSPs meet with HO
4 Nov 2002 +325 “Technical Working Group”
7 Nov 2002 +328 Draft 4 of Code of Practice
30 Nov 2002 +351 Terms of Reference for TWG
9 Jan 2003 +391 Code of Practice finalised
27 Feb 2003 +440 Last meeting of TWG
11 Mar 2003 +452 Public consultation starts
Emergency legislation?

3 Jun 2003 +536 Public Consultation closes
11 Sep 2003 +636 Summary published
11 Sep 2003 +636 SIs laid before Parliament

BUT: 40 more days + 3? voluntary months comes to one month more than two years! OOPS!!
And in 100 days...

Q: what’s different from 11th March (or indeed from the Code of Practice of the 9th January) ?
A: they’ve fixed the labelling of Appendix D
• And is the whole scheme lawful?
• Do we know how the response to the voluntary code is to be assessed?
• Do we know what percentage take-up by CSPs is sufficient in different sectors?
• Do we know what it will cost?
• How much will the Government pay?

You’d think that we understood it all by now!
Turning on Part I Chapter II

• Telcos & ISPs entirely in favour
  – sweeps away “s29(3)” forms & gives certainty

• BUT there’s still no Code of Practice
  – the Home Office ran Part I Chapter I without a Code of Practice for 637 days: 00/10/02--02/07/01

• and the ACPO Manual of Standards remains private
  – to avoid “confusion” -- pending any revisions
Extra authorities

• Public outcry in June 2002
  – “parish councils to view emails”

• Revised proposals in September 2003
  – same list except remove Department of Work & Pensions (they have legacy legislation)
  – and three more added! (the Charity Commission, the Serious Fraud Office and the Gaming Board for Great Britain)
But aren’t there restrictions?

• Yes indeed
  – many are restricted to only category (b) or category (c) data

• Restriction of purpose and signers
  – but for councils it’s the Assistant Chief Officer (or Service Manager) or a boss who signs…
  – so can “Planning” make out a necessary & proportionate case, or maybe “Housing” ??
What about these categories?

• 21(4)(a) is “traffic data”
  – details of to and from
• 21(4)(b) is “usage data”
  – details of usage of a system
• 21(4)(c) is “subscriber data”
  – other info held by the telco/ISP
But...

- Is dialled number “traffic data” or “usage”
  - Home Office documents vary in answer
  - as do Press Releases from new authorities
  - spooks claim call direction is the differentiator
- What of category (c) [everyone gets this]
  - definition is anything that’s not traffic or usage
  - so is the PIN to your voicemail included?
Summary

• ATCS used up its time in 100 day chunks
• The extra authorities “rethink” is essentially the same again, but better presented
• All those pesky a/b/c definitions now matter
• …. but we still don’t have a Code of Practice for access to Communications Data
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