



Understanding in relation to Freedom of Speech under the Agreement
between the Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the United States of America
on Access to Electronic Data for the Purpose of Countering Serious
Crime

Washington, 3 October 2019

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 2019*



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**UNDERSTANDING IN RELATION TO FREEDOM OF SPEECH UNDER
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA ON ACCESS
TO ELECTRONIC DATA FOR THE PURPOSE OF COUNTERING
SERIOUS CRIME**

October 3, 2019

Dear Home Secretary Patel,

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Access to Electronic Data for the Purpose of Countering Serious Crime (“the Agreement”), signed today, and to propose that Article 8(4) of the Agreement be interpreted and applied as per the following understandings.

The United States declares that its essential interests under the Agreement may be implicated by the introduction of data received pursuant to Legal Process recognized by the Agreement as evidence in the prosecution’s case in the United Kingdom in a manner that raises freedom of speech concerns for the United States. Accordingly, in the event that authorities in the United Kingdom receive data pursuant to such Legal Process and intend to introduce such data as evidence in the prosecution’s case in a manner that may raise those freedom of speech concerns, as further described in this letter, the Designated Authority of the United Kingdom is required to obtain permission from the Designated Authority of the United States prior to any use of the data in a manner that is or could be contrary to those essential interests, as described in Article 8(4).

The United States declares that the introduction of data received pursuant to Legal Process recognized by the Agreement as evidence in a UK prosecution under the following statutes may raise freedom of speech concerns for the United States, depending on the facts, such that consultation with and obtaining permission from the Designated Authority of the United States is appropriate prior to any such use of the data:

- Terrorism Act 2006 c.11, s.1 and 2, including how those provisions are to be applied to internet activity as set out in s.3
- Terrorism Act 2000 c.11, s.12(1A) and 13
- Terrorism Act 2000 c.11, s.58(1) and 58A(1)
- Public Order Act 1986 c.64, s.18-23, s.29B-29G
- Official Secrets Act 1989 c.6, s.5, in the context of activities that are journalistic in nature
- Communications Act 2003 c.21, s.127

- Protection from Harassment Act 1997 c.40, s.2 and 2A, in the context of both the making or publishing of statements that may be viewed as harassing

In addition to offenses under the listed statutes, there could be prosecutions for other offenses that may raise freedom of speech concerns for the United States, depending on the facts, such as those involving news gathering and publication, or public protest. When UK officials intend to use such data in a UK prosecution of any other offense under a statute not listed above, but have reason to believe, based on the context of the case and their understanding of U.S. views, including the United Kingdom's experience under the Mutual Legal Assistance process, that the introduction of the data as evidence in the prosecution's case might raise freedom of speech concerns for the United States, the Designated Authority of the United Kingdom should consult with the Designated Authority of the United States. If the Designated Authority of the United States confirms that there are freedom of speech concerns, such data should not be introduced in the prosecution's case without permission as set forth in Article 8(4).

Finally, the United States may unilaterally supplement the list of statutes set forth above should other UK statutes, either applied currently or that may be enacted in future, merit inclusion. Any such supplement to this letter is effective on the date of a written notification from the Designated Authority of the United States to the Designated Authority of the United Kingdom notifying it thereof.

If the foregoing is acceptable to your Government, I have the honor to propose that this letter and your affirmative letter in reply would constitute an understanding between our two Governments as to the interpretation and application of the Agreement, which would be operative on the date of entry into force of the Agreement.

Sincerely,

William P. Barr, Attorney General of the United States of America.

3 October 2019

Dear Attorney General Barr,

I have the honour to refer to your letter dated 3 October 2019 regarding the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime (“the Agreement”), signed today, which reads as follows:

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Access to Electronic Data for the Purpose of Countering Serious Crime (“the Agreement”), signed today, and to propose that Article 8(4) of the Agreement be interpreted and applied as per the following understandings.

The United States declares that its essential interests under the Agreement may be implicated by the introduction of data received pursuant to Legal Process recognized by the Agreement as evidence in the prosecution’s case in the United Kingdom in a manner that raises freedom of speech concerns for the United States. Accordingly, in the event that authorities in the United Kingdom receive data pursuant to such Legal Process and intend to introduce such data as evidence in the prosecution’s case in a manner that may raise those freedom of speech concerns, as further described in this letter, the Designated Authority of the United Kingdom is required to obtain permission from the Designated Authority of the United States prior to any use of the data in a manner that is or could be contrary to those essential interests, as described in Article 8(4).

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- *Communications Act 2003 c.21, s.127*

- *Protection from Harassment Act 1997 c.40, s.2 and 2A, in the context of both the making or publishing of statements that may be viewed as harassing*

In addition to offenses under the listed statutes, there could be prosecutions for other offenses that may raise freedom of speech concerns for the United States, depending on the facts, such as those involving news gathering and publication, or public protest. When UK officials intend to use such data in a UK prosecution of any other offense under a statute not listed above, but have reason to believe, based on the context of the case and their understanding of U.S. views, including the United Kingdom's experience under the Mutual Legal Assistance process, that the introduction of the data as evidence in the prosecution's case might raise freedom of speech concerns for the United States, the Designated Authority of the United Kingdom should consult with the Designated Authority of the United States. If the Designated Authority of the United States confirms that there are freedom of speech concerns, such data should not be introduced in the prosecution's case without permission as set forth in Article 8(4).

Finally, the United States may unilaterally supplement the list of statutes set forth above should other UK statutes, either applied currently or that may be enacted in future, merit inclusion. Any such supplement to this letter is effective on the date of a written notification from the Designated Authority of the United States to the Designated Authority of the United Kingdom notifying it thereof.

If the foregoing is acceptable to your Government, I have the honor to propose that this letter and your affirmative letter in reply would constitute an understanding between our two Governments as to the interpretation and application of the Agreement, which would be operative on the date of entry into force of the Agreement.

On behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, I am pleased to convey that your proposal is acceptable. Your letter and this reply constitute an understanding of our two Governments as to the interpretation and application of the Agreement, which would be operative on the date of entry into force of the Agreement.

Sincerely,

The Rt. Hon. Priti Patel MP, Secretary of State for the Home Department.

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