

Summary

Topic

Decision CTIVD complaint Bits of Freedom

Date

15 June 2022

On 7 July 2021, Bits of Freedom (BoF) submitted a complaint to the Complaints Handling Department of the Review Committee on the Intelligence and Security Services (CTIVD). BoF is an organization that is committed to the rights of civilians.

Civilians and civil society organizations can file a complaint to the Complaints Handling Department about the (suspected) conduct of the General Intelligence and Security Service (AIVD) and the Military Intelligence and Security Service (MIVD). The Minister of the Interior and Kingdom Relations (BZK) is responsible for the AIVD. The Minister of Defence is responsible for the MIVD.

What are bulk datasets?

Large amounts of data are called 'bulk'. Bulk datasets can contain millions of data from lots of persons.

The Oversight Department of the CTIVD published report number 70 in 2020. In that report, the Oversight Department advised the AIVD and the MIVD to destroy certain bulk datasets that were gathered using the hacking power. Useful data for the execution of the tasks of the AIVD and the MIVD can, however, be amongst those bulk datasets. Bulk datasets can help with their task of protecting the national security. The Oversight Department of the CTIVD only advises the Ministers. They are not bound by the advice of the Oversight Department. The Ministers decided not to follow the advice of the Oversight Department, and kept the five bulk datasets.

What is the complaint?

BoF's complaint is that the AIVD and the MIVD do not destroy the bulk datasets on time and keep it longer than is allowed according to Dutch law.

Bulk datasets make a(n) (large) infringement on the privacy of many civilians. That is why there are restrictions with regards to the (duration of the) saving and usage of the bulk datasets. According to Dutch law, this data – collected with a so-called special power – must be destroyed after a maximum term of one and a half years. The AIVD and the MIVD have kept these data longer than one and a half years. BoF wants the services to obey the law and, consequently, destroy these data.

BoF also complained about the way in which the AIVD and the MIVD presumably share these data with foreign intelligence agencies, because the AIVD and the MIVD do not get assurances about how these foreign partners treat these data.

Storage of data

Data from bulk datasets that is relevant for the AIVD and the MIVD can be kept for a long time. That is why it is important that the process of deciding what is relevant is done carefully. The services must first look into these data; only when data is relevant for their investigations, they can deem data 'relevant'. Data that is not relevant, must be destroyed immediately.

The Dutch intelligence law does not provide an explanation about how to assess the relevance of data. This assessment could be about a small part of the bulk dataset or by declaring an entire bulk dataset relevant.

The Ministers of BZK and of Defence have stated previously that they are of the opinion that the services should be able to assess an entire bulk dataset as relevant. According to them, there could be relevant information about civilians in this set that the AIVD or the MIVD are researching or are going to research. That is why the data in this bulk dataset are all relevant, according to both Ministers.

The Oversight Department of the CTIVD wrote in 2019 and 2020 that it is not possible to assess an entire bulk dataset as 'relevant'. That is because bulk datasets also contain information that is not important for the investigations of the services, but it does infringe on privacy. For example, information regarding people who the services do not, nor ever will investigate.

Extending storage of data

After the report of the Oversight Department of the CTIVD in 2020, the Ministers of BZK and of Defence drafted a temporary regulation. This regulation came into force on 6 November 2020. The Ministers of BZK and of Defence can draw up a temporary regulation by themselves. Parliament does not vote on such a temporary regulation. They only vote on laws.

The Ministers of BZK and of Defence find it important that data that has not yet been assessed for relevance, can be stored and used longer than one and a half years. This is because the data can help the services with their task of protecting the national security. However, they should also protect the privacy of civilians. That is why the Ministers drew up rules that the services have to abide by. The regulation from the Ministers applies to all bulk datasets, and therefore also to the five bulk datasets BoF complains about.

Decision

The decision of the Complaints Handling Department of the CTIVD consists of multiple aspects:

1) Decision about the assessment on relevance and extending the storage of data

The Complaints Handling Department decides that it is not possible to declare an entire bulk dataset as 'relevant'. This means that the assessment of the data in the five bulk datasets is not executed well. The maximum term of one and a half year in the law has exceeded. The AIVD and the MIVD may therefore not store these five bulk datasets any longer. The bulk datasets contain too many data from people that are not relevant (nor ever will be) to the investigations of the AIVD and the MIVD to declare an entire bulk dataset 'relevant'.

With the temporary regulation, the Ministers aimed to enable the AIVD and the MIVD to extend the maximum term in which the bulk datasets could be stored. The law says that is not possible, and the law supersedes the temporary regulation.

2) Decision about the execution of the temporary regulation

The Complaints Handling Department also investigated how the services executed the temporary regulation. The Department finds that the AIVD and the MIVD did not carefully execute the temporary regulation.

In their (re)assessments, the AIVD and the MIVD did not describe well why the bulk datasets are still important to their work. The AIVD and the MIVD wrote that they used data from each of the five bulk datasets for their investigations a number of times. This alone is not enough. The services could, for example, also motivate in which investigations the data have been relevant, and why the data are still relevant in the future. They also did not write whether parts of a bulk dataset could be destroyed. Next to this, the MIVD did not complete the (re)assessments on time.

The Complaints Handling Department understands that the five bulk datasets are important to keep the Netherlands safe and that one and a half years is sometimes too short for the AIVD and the MIVD to fulfil their duties. This is, nevertheless, the maximum term stated in the law.

While they had the opportunity to do so, the Ministers did not ask Parliament for an extension of the maximum term in which data from bulk datasets can be stored. Already in 2019, the Oversight Department of the CTIVD said that the way in which a bulk dataset is assessed as 'relevant' is unlawful. Next to this, that Department published a report in 2020 that these bulk datasets must be destroyed.

3) Consequence

The Complaints Handling Department decides that the five bulk datasets BoF complains about, must be destroyed. The bulk datasets have been kept (much) longer than one and a half years. That is the maximum term stated in the law.



The decisions of the Complaints Handling Department are binding. That means that the Ministers of BZK and of Defence must destroy the five bulk datasets, and inform the Department and BoF about how and when they destroy these bulk datasets.

4) Decision about sharing data with foreign intelligence agencies

BoF also disagrees about the way in which the AIVD and the MIVD share bulk datasets with foreign intelligence services. The AIVD and the MIVD have not shared the bulk datasets with foreign intelligence agencies since the publication of report nr. 70 of the Oversight Department. Therefore the Complaints Handling Department abstains from making a decision on these aspects of the complaint.