Commission de Contrôle des Fichiers de l'O.I.P.C. - INTERPOL
Commission for the Control of INTERPOL's Files
Comisión de Control de los Ficheros de la OIPC-INTERPOL
لجنة الرقابة على محفوظات المنظمة الدولية للشرطة الجنائية (الإنتربول)

INTERPOL's Independent Authority for the Control and Protection of Personal Data

DECISION OF THE COMMISSION

REQUESTS CHAMBER

Request concerning [the Applicant]

[xxx] th session
[date]

The Commission for the Control of INTERPOL's Files (the Commission), sitting as the Requests Chamber, composed of:

Members,

Having deliberated during its [xxx]th, on [date], delivered the following Decision.

I. PROCEDURE

1. On [date], Mr [the Applicant] presented a request […] to the information concerning him, registered in INTERPOL's files. On [date], the Commission found the request admissible as per Rule 30 of its Operating Rules and informed the Applicant thereof.

2. During the study of the Applicant's case, the Commission consulted the NCB of [Country 1] and IPSG in accordance with Article 34 of the Statute of the Commission, on the arguments set forth in the request.

3. On [date], the NCB of [Country 1] confirmed the validity of the proceedings and provided some answers to the questions raised by the Commission. Despite reminders, it did not answer to the pending and subsequent queries of the Commission.

4. Both the Applicant and the NCB source of the challenged data were informed of the fact that the Commission would study the case during its [xxx]th session.

5. Further to Article 40(3) of its Statute, the Commission decided that the processing of the file, in particular the delays caused by the NCB source in responding to the Commission's queries, warranted an extension of the standard time limit to decide on a request for deletion established in Article 40(2) of the said Statute.

II. DATA RECORDED IN INTERPOL'S FILES

6. The Applicant, a national of [Country 2], is the subject of a Red Notice requested on [date] at the request of the NCB of [Country 1] for "*money laundering*" on the basis of an arrest warrant issued on [date] by the [Court].

7. The facts of the case state the following: " *[the Applicant] is wanted for a case of Money laundering. Investigation revealed that the subject has engaged to promote the Pyramid Scheme namely "[Company A]" which had been banned by the Central Bank of [Country 1]. Furthermore, he cheated the large amount of monies from the investors by maintained a [Platform] account numbered [xxx] and flowed [Amount 1] through his [Platform] account. Facts have been reported to the [Court] under case no. [xxx] and this suspect marked as [xxx]th suspect of the case. Subsequently, he has fled the country by evading arrest*."

III. THE APPLICANT'S SUBMISSIONS

8. The Applicant requested the deletion of the data concerning him, contending, in essence that:

   a) the data lack quality and a clear description of criminal involvement; and
   b) the proceedings do not respect the principles of due process.

IV. APPLICABLE LEGAL FRAMEWORK

9. The Commission considers the following applicable legal framework.

9.1. Field of competence of the Commission:

- Article 36 of INTERPOL's Constitution,
- Articles 3(1)(a) and 33(4) of the Statute of the Commission.

9.2. Quality of data and availability of a clear description of criminal involvement:

- Articles 12 and 83(2)(b)(i) of INTERPOL's Rules on the Processing of Data (RPD),
- IPSG's standard for the application of this criterion.

9.3. Respect for the principles of due process:

- Article 2 of INTERPOL's Constitution,
- Article 11 of the RPD.

V. ANALYSIS OF THE CASE

10. The Commission assessed the Applicant's most relevant contentions described in Section III above.

Data quality and description of criminal involvement

a) Submissions of the Applicant

11. The Applicant claimed that he has no link to the underlying criminal activity save for having provided primarily legal services to a number of his co-defendants, who were his clients in his capacity as a practicing lawyer. He contended, however, that he does not personally know or have any connection to other co-defendants and the criminal conduct for which they are accused.

12. He explained that he is a practicing lawyer admitted to the bar in [Country 2]. In the course of his professional activities, he provided legal services to nationals of [Country 1] associated with blockchain laws, tokenization of assets and crypto regulations. He contended that his relations with these individuals fell purely within the scope of legal services, and the sole monies he received from them were his legal fees. He neither had knowledge of the facts underpinning the criminal proceedings and the possibility that his former clients were operating an illegal project in [Country 1], nor did he conspire with and advise them over such a project. In support of this submission, he provided a copy of a letter of confirmation from two of his clients from [Country 1], testifying that their only link to him is that he provided legal services to them and the monies transferred to him constituted his consultation fees.

13. He additionally clarified that he leased his property in [City] to the company of these clients from [Country 1] and received monies as rental payment for the property. Here, he provided a copy of a lease agreement confirming that he was the landlord for their company.

14. He emphasized that apart from the above-mentioned professional engagements, as both a lawyer and landlord, he has no link to the facts of the case. He emphasized these activities (legal and rental services) were lawful and the Red Notice request fails to describe his possible involvement in the act of money laundering. Rather, in order for him to have supposedly committed money laundering, the monies he received from his clients for these legal and rental services would have had to be returned to the suspects from [Country 1], which did not take place.

15. He further contended that the information presented in the facts of the case of the Red Notice request is of poor quality. For example, although he is accused of fleeing the country with other suspects, he in fact never "fled" [Country 1], having only visited the country once as a tourist, and he does not personally know these other suspects who are said to have fled the country.

b) Submissions of the NCB of [Country 1] (NCB source of the data)

16. The NCB confirmed the validity of the arrest warrant underlying the Red Notice request; however, it failed to provide a copy of this document as requested by the Commission.

17. The NCB stated the criminal case was initiated after investigations established that the Directors of [Company A] deposited a substantial number of virtual assets in the form of USDT cryptocurrency into their [Platform] wallets. These virtual assets were the result of a pyramid scheme carried out by [Company A], insofar as the funds received from the scheme were converted into these virtual assets. According to [Platform] reports, the Applicant received [Amount 1] on his [Platform] account from an account belonging to one of [Company A]'s Directors, a co-defendant, and thus he was one of the benefactors of the pyramid scheme carried out by the company.

18. The NCB was invited to clarify the pyramid scheme, the link of the Applicant to this scheme, and his possible role in laundering funds received from this scheme. No reply to this request for information was received despite repeated reminders. The NCB was also requested and yet refrained from providing a response and clarifications in relation to the claims made by the Applicant, in particular that he has no connection to the facts of the case, and that the monies he received constituted his fees for legal and rental services that he provided to clients from [Country 1] who are implicated in this criminal case.

c) Findings of the Commission

19. The Commission recalls that data in INTERPOL's files and in particular a Red Notice must be supported with accurate, clear, and relevant information on the facts of the case, concretely linking the subject to the conduct for which they are wanted, in accordance with Articles 12 and 83(2)(b)(i) of the RPD. As outlined in IPSG's standards for the implementation of this rule, it is insufficient to state that the wanted individual was involved in the underlying crime and rather information on his actual conduct is required to meet the criterion.

20. The Commission preliminarily observes that the NCB of [Country 1] refrained from submitting a copy of the arrest warrant which serves as the judicial basis of its Red Notice request. It is thus unable to verify that the judicial data recorded in the Notice request are accurate and coherent with the information available in the referenced warrant, which prevents it from ensuring compliance with Article 12 of the RPD.

21. The Commission proceeds to note that the facts provided in the Notice request (see para. 7) and the submission of the NCB of [Country 1] (see para. 17) refer to a pyramid scheme, and are absent of any general information that may describe this scheme in order to indicate to the Commission how funds acquired by the mentioned company, [Company A], were proceeds of a crime. In effect, the Commission received no information whatsoever on the illegal activities (i.e. the criminal scheme) that underpin the charges and facts.

22. Having no information on the scheme associated to [Company A], the Commission is hence unable to identify how the deposit of virtual assets in the [Platform] wallets belonging to the Applicant's co-defendants was a form of money laundering. It is equally unclear how the Applicant allegedly promoted a pyramid scheme or was in any capacity involved in a scheme carried out by [Company A].

23. The Commission further emphasizes that the sole information available in the Notice request, and referenced by the NCB, to link the Applicant to [Company A] is that a director of the latter made a [Platform] transfer to the Applicant in the amount of [Amount 1]. However, in the absence of any explanation from the NCB, this transfer alone does not describe the commission of money laundering by the Applicant. This lack of a clear description of his possible criminal activity is exacerbated by the fact that the NCB of [Country 1] failed to respond to the Commission's repeated requests for such information, and to dispel the doubts raised by the claims made by the Applicant that the fees he received from his clients from [Country 1] were in return for his legal and rental services.

24. Therefore, the Commission expresses concern that the available information on the facts of the case does not amount to a clear description of criminal involvement under Article 83(2)(b)(i) of the RPD, as expounded by IPSG's standards for the implementation of this rule. The absence of sufficient relevant data in the facts recorded in the Red Notice request raises additional concern over the compliance of the data with Article 12 of the RPD relating to the quality of data. Since the Commission could conclusively dispose of the matter in favor of the Applicant on the above basis, it decides not to examine the Applicant's remaining contention.

FOR THESE REASONS, THE COMMISSION

Decides that the data concerning the Applicant are not compliant with INTERPOL's rules applicable to the processing of personal data, and that they shall be deleted from INTERPOL's files.

Commission for the Control
of INTERPOL's Files

Secretariat to the Commission
for the Control of INTERPOL's Files