



25th November 2014

Press Release in relation to Vodafone disclosing communications data in error under Part I Chapter 2 of the Regulation of Investigatory Powers Act (RIPA)

The Interception of Communications Commissioner's Office (IOCCO) is an independent oversight body charged with keeping under review the acquisition and disclosure of communications data under Part I Chapter 2 of the Regulation of Investigatory Powers Act ("the Act"). Communications data comprises the 'who', 'when' and 'where' of a communication (be it an email, phone call or letter), but not the content.

Background:

The Metropolitan Police Service (MPS) has been undertaking an investigation (Operation Elveden) into the unlawful payment of money to public officials by journalists in exchange for confidential information. The investigation has identified and charged a number of persons, including public officials and journalists, with criminal offences relating to Misconduct in a Public Office and conspiracy to do the same. During the course of the investigation the MPS used their powers under the Act to require Vodafone to disclose data that included the outgoing calls from a mobile telephone which was used by a journalist who was a subject of investigation.

Circumstances of the Disclosure Error by Vodafone:

When Vodafone responded to the legal requirement from the MPS it disclosed data in excess of that required. The data disclosed contained both excess data on the requested mobile telephone (i.e. a larger time span than that required by the MPS), and, in addition, wrongly disclosed data on a very significant number of other telephones which were part of the same corporate account relating to News UK.

If a Communication Service Provider (CSP), when responding to a requirement to disclose data under the Act, discloses the wrong communications data to the public authority the CSP must report the disclosure error to IOCCO¹. This error was reported to IOCCO when discovered by the MPS and by Vodafone and is of particular concern to IOCCO because of:

- The significant volume of data wrongly disclosed; and
- The fact that the data relates to a profession that handles privileged or otherwise confidential information.

Action taken by IOCCO:

- We required further information from Vodafone in relation to the cause of the error, a full description of the data disclosed and the measures put in place to prevent recurrence of the disclosure error.
- Due to our concerns we also referred the case to our colleagues at the Information Commissioner's Office (ICO) in relation to Vodafone and the Privacy and Electronic Communications Regulations (PECR) 2003 where it relates to the lawful retention of data

¹ The error reporting procedures are outlined in Chapter 6 of the Acquisition and Disclosure of Communications Data Code of Practice (Paragraphs 6.9 to 6.25).

for business purposes (as the data in question appears to be from 2005, 2006 and 2007), and, matters relevant to both Vodafone and the MPS under the Data Protection Act 1998 relating to the security of data and lawful processing.

- We reminded the MPS of their obligations under the Criminal Procedure and Investigations Act (CPIA) 1996 to record and retain any information that comes into their possession which is relevant to a criminal investigation, and of the importance of ensuring a fair trial which may involve disclosing material to a defendant and / or their legal representative if it undermines the prosecution case or assists the defence.
- We highlighted to the MPS the requirement for the procedure to be followed in Paragraph 6.25 of the Acquisition and Disclosure of Communications Data Code of Practice if determined, on review of the data as required by CPIA, that it may be of evidential value or other legal relevance to Operation Elveden. Should it be determined that the data disclosed in error is of relevance the MPS should seek advice from their in-house counsel and / or prosecuting counsel on matters of proportionality concerning the further processing of that data by Operation Elveden.
- We required further information from the MPS in relation to the review, use, retention and security of the data within the investigation. We required the MPS to put in place measures so that the data disclosed in error could not be accessed, reviewed or disseminated outside of Operation Elveden.
- During a meeting with Vodafone and the MPS we emphasised that News UK must be informed of the disclosure error. We agreed to afford Vodafone the opportunity to inform News UK first due to their contractual arrangement with News UK. However, we were obliged to contact News UK directly because of our responsibility under Paragraph 8.3 of the Acquisition and Disclosure of Communications Data Code of Practice to inform the affected party in cases where individuals may have had their ECHR rights interfered with. We informed News UK of their ability to seek redress through the Investigatory Powers Tribunal and provided them with sufficient details of the error should they wish to do so.