



6th October 2014

**IOCCO Launches Inquiry into the use of RIPA powers
to acquire communications data relating to the confidential sources of journalists**

Today the Rt Hon. Sir Paul Kennedy, Interception of Communications Commissioner has launched an inquiry into the use of RIPA powers to determine whether the acquisition of communications data has been undertaken to identify journalistic sources. The Rt Hon. Sir Paul Kennedy says:

"I fully understand and share the concerns raised about the protection of journalistic sources so as to enable a free press. My office published some initial advice on this matter via our website on 4th September 2014. This publication sought to highlight and explain the law in relation to Part I Chapter 2 of RIPA and to importantly explain how complaints are dealt with when non-compliance is suspected. We highlighted that, as the law stands at the moment, communications data generated by communications companies are business records, but recognised that, when in the possession of the police and analysed such data can be used to quickly identify who has communicated with whom and inference can be drawn as to why those communications have taken place.

The communications data code of practice was drafted some eight years ago and, unlike the interception or the surveillance code which were recently updated, contains no advice on dealing with professions that handle privileged information, or the use of confidential help-lines which is problematical in itself as our role is primarily to inspect public authorities on their compliance with the Act and its code. The Government's Note on the European Court of Justice Judgment¹ outlines the Government's intention to amend the communications data code of practice, ensuring that where there may be concerns relating to professions that handle privileged information (for example, lawyers or journalists), public authorities give additional consideration to the level of intrusion. During the passage of the Data Retention and Investigatory Powers Act (DRIPA) there were several interventions during the debates about legal privilege and matters relating to journalists. The Minister James Brokenshire stated the Government will be amending the code of practice on the acquisition and disclosure of communications data later this year (see Hansard 15 July 2014: Column 816)² and I urge the Home Office to expedite matters to bring about early public consultation. There needs to be an informed discussion to bring about an agreement as what that advice will be. Any advice should take into consideration the case law relating to various rulings regarding freedom of expression when intertwined and balanced against, for example, the prevention or detection of crime or matters relating to national security.

Today I have written to all Chief Constables and directed them under Section 58(1) of RIPA to provide me with full details of all investigations that have used Part I Chapter 2 RIPA powers to acquire communications data to identify journalistic sources. My office will undertake a full inquiry into these matters and report our findings to the Prime Minister and publically so as to develop clarity in relation to the scope and compliance of this activity. My office will also be contributing to the public consultation of the communications data code of practice which should, according to what was indicated in Parliament, start later this year. I would urge all those who feel strongly about this topic to also contribute to the consultation."

The Rt Hon. Sir Paul Kennedy

¹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/331106/DRIPgovernmentNoteECJudgment.pdf

² <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm140715/debtext/140715-0004.htm>