



Sir Stephen House, QPM  
Chief Constable  
Police Service of Scotland

17<sup>th</sup> November 2015

Dear Chief Constable,

**Notification of intention to inform individuals adversely affected by contraventions of the Code of Practice accompanying Chapter 2 of Part I of RIPA**

As you know, for the last few months my office has been undertaking a review of conduct undertaken by your officers in order to determine whether there has been any breach of the Acquisition and Disclosure of Communications Data Code of Practice 2015 (“the Code”) by the Police Service of Scotland (hereafter “Police Scotland”) and if so whether I am required to take action under Paragraph 8.3 of the Code.

That review is now complete.

Having considered the review’s findings, along with Police Scotland’s review supplied by Deputy Chief Constable Iain Livingstone QPM, I am now in a position to make a determination in accordance with my oversight function under Paragraph 8.3 of the Code.

I have concluded that there were contraventions of Paragraphs 3.78, 3.79, 3.5, 3.12 and 3.15 of the Code in respect of 5 applications for communications data made in April 2015, namely applications 122054, 122279, 122281, 122054, 122281. It is evident from these applications that Police Scotland sought data in order to determine either a journalist’s source or the communications of those suspected to have been acting as intermediaries between a journalist and a suspected source. Judicial approval was not obtained to acquire this communications data in contravention of Paragraph 3.78 of the Code.

I have considered the content of the five applications focusing primarily on whether the statutory tests of necessity and proportionality have been addressed and satisfied. I have concluded that in almost every regard the applications were deficient. They failed to adequately satisfy the requirements of necessity and proportionality or give due consideration to Article 8 or 10 of the European Convention on Human Rights (ECHR).

I also considered the conduct of the Designated Persons (DPs) when approving the applications. The DPs approved applications which were obviously deficient and which

should have received judicial authorisation. In addition one of the DPs was not independent of the investigation. Noting the deficiencies in the applications made by Police Scotland I believe that it is unlikely that judicial approval would have been granted for acquisition of the data obtained in this case.

I am satisfied that a number of individuals have been adversely affected by these breaches and that the failures identified can properly be viewed as reckless. Having reached this conclusion, subject to any requirement to safeguard national security, I intend to inform the affected individuals of the existence of the Investigatory Powers Tribunal ("the Tribunal") and its role. I am also required to disclose to them sufficient information to enable them to engage the Tribunal effectively.

In these circumstances I should be grateful if you would let me know of any matter relevant to safeguarding national security that might cause me not to inform the affected individuals as required by Para 8.3 of the Code. If there are no such matters, I would be grateful if you would supply me with the names and contact details that you hold relating to the individuals whose data was acquired in the 5 applications referred to above.

I am grateful for your assistance in this matter and would request your response by close of play Monday 23<sup>rd</sup> November 2015.

I have prepared a memorandum setting out more fully my reasons for reaching my conclusions. Please let my office know if you would like a copy.

I should like to add that I am appreciative of the efforts made by Police Scotland since these events to develop and implement a rigorous and robust action plan to ensure that the maximum scrutiny is placed on all future applications.

Yours Sincerely



The Rt Hon. Sir Stanley Burnton  
Interception of Communications Commissioner