



6<sup>th</sup> June 2015

## IOCCO Response to the Press Statement issued by Privacy International

We readily gave permission for a series of 12-year old correspondence between Home Office lawyers and a former Interception of Communications Commissioner (from 2004) to be disclosed in open as part of proceedings<sup>1</sup> currently before the Investigatory Powers Tribunal (IPT). We did not seek to redact or edit any part of the correspondence from 2004 as it is important that all of the facts are before the IPT.

It is important that measures to oversee and audit the activities of the intelligence agencies and other public authorities are fit for purpose. IOCCO conducts thorough and robust statutory inspections of public authorities which have powers to intercept communications and acquire communications data under the Regulation of Investigatory Powers Act (RIPA). These inspections ensure they are acting within the law. In 2015 IOCCO carried out approximately 150 inspections and made over 750 recommendations to ensure compliance with legal requirements (including the applicable provisions of the Human Rights Act 1998) or to improve systems and procedures.

In February 2015 the Prime Minister asked the then Interception of Communications Commissioner to oversee on a non-statutory basis directions issued under section 94 of the Telecommunications Act 1984 (hereafter "section 94 directions"). The Commissioner highlighted that a review would need to be conducted to scope the oversight and that there would be a requirement for extra resource to ensure the additional oversight was carried out effectively.

We have recently concluded our comprehensive review of section 94 directions which have been issued by Secretaries of State from various Government departments since the late 1990's. Our review identifies the extent to which public authorities have used section 94 directions, assesses whether the systems and procedures in place for section 94 directions are sufficient to comply with the current legislation and, sets out what a comprehensive oversight and audit function of section 94 directions should look like. Our review of section 94 directions did not seek to determine whether the section 94 regime satisfies the "in accordance with the law" requirement in article 8(2) of the ECHR as this is the exclusive role of the IPT.

Our review has been very challenging because all the section 94 directions are subject to statutory secrecy provisions which limit severely what we are able to say publicly about them. Nevertheless, our review report sets out an extensive series of recommendations which must be implemented in order to clarify and bring consistency to the procedures in place, remedy the lack of record-keeping requirements and codified processes and ensure that we are able to undertake this additional oversight of the giving and use of section 94 directions properly. Our report is due to be published at the end of June or early July.

We welcome and support Privacy International's proposal for oversight bodies to be supported by public interest advocates and their calls for further transparency in these matters. In our March 2015 report<sup>2</sup> we set out the significant work we have undertaken to improve transparency and accountability and highlighted that our office would benefit from additional legal and technical resource. We submitted substantial written evidence to David Anderson QC's Investigatory Powers Review<sup>3</sup> and more recently to the Joint Committee and Public Bill Scrutiny Committee for the Investigatory Powers Bill<sup>4</sup> which gave key suggestions to the various reviews as to how, amongst other things, the oversight arrangements might be strengthened.

<sup>1</sup> Privacy International v. Secretary of State for Foreign and Commonwealth Affairs et al. - IPT/15/110/CH

<sup>2</sup> See Paragraph 2.20 and Section 3 of our March 2015 report [http://www.iocco-uk.info/docs/IOCCO%20Report%20March%202015%20\(Web\).pdf](http://www.iocco-uk.info/docs/IOCCO%20Report%20March%202015%20(Web).pdf)

<sup>3</sup> See <http://www.iocco-uk.info/docs/IOCCO%20Evidence%20for%20the%20Investigatory%20Powers%20Review.pdf>

<sup>4</sup> See <http://www.iocco-uk.info/docs/IOCCO%20Evidence%20for%20the%20IP%20Bill%20Joint%20Committee.pdf> and update to that evidence here <http://www.iocco-uk.info/docs/Points%20to%20Consider%20on%20IP%20Bill%20and%20Recommendations%20-%20Updated%20post%201st%20March%20amended%20Bill.pdf>