



1<sup>st</sup> June 2015

**Why policy makers should exercise caution with the communications data figures published in the Guardian's article<sup>1</sup> today claiming that requests are 'out of control' via Big Brother Watch<sup>2</sup>**

For a long time we have warned of the inadequacies and flaws relating to the *previous* statistical requirements under Part I Chapter 2 of RIPA (communications data).<sup>3</sup> The *previous* statistical requirements lacked clarity and the counting conventions applied by the police forces differed. This is why we have made clear in successive annual reports to the Prime Minister that the statistics were only indicative of the amount of communications data acquired by police forces and must be treated with caution. We also made clear that the statistics ought not to be used inappropriately to produce league table comparisons.

In 2012 we set out to the Home Office the revisions and enhancements of the statistical requirements that we believed were necessary both to assist us with our oversight role, and, to better inform the public about the use which police forces make of communications data powers. This is why we were very pleased to report, back in March 2015, that the Home Office enhanced significantly the statistical requirements in the Code of Practice ("the Code") for the Acquisition and Disclosure of Communications Data<sup>4</sup>. In fact a number of the policy recommendations called for in today's Big Brother Watch report are already in place within the revised Code (for example, the statistical requirements for the crime type, the number of refusals, the reasons for the refusals, the age of the data etc).

In our most recent annual report<sup>5</sup> we published a statistical breakdown, by police force, of the use of communications data powers. When publishing these statistics we applied a common standard and interpretation to the figures provided by the 50 police forces that had used their powers. Examination of these statistics against those published today by Big Brother Watch show that in responding to the Big Brother Watch Freedom of Information

<sup>1</sup> <http://www.theguardian.com/world/2015/jun/01/police-request-access-phone-calls-emails-granted-every-two-minutes>

<sup>2</sup> <http://www.bigbrotherwatch.org.uk/wp-content/uploads/2015/05/Big-Brother-Watch-Report-Police-Communications-Data1.pdf>

<sup>3</sup> See for example Paragraphs 4.18 to 4.26 of our 2013 Annual Report <http://www.iocco-uk.info/docs/2013%20Annual%20Report%20of%20the%20IOCC%20Accessible%20Version.pdf> or Paragraphs 7.20 to 7.31 of our 2014 Annual 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>4</sup> See Paragraphs 6.5 and 6.6 of the revised Code [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/426248/Acquisition\\_and\\_Disclosure\\_of\\_Communications\\_Data\\_Code\\_of\\_Practice\\_March\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426248/Acquisition_and_Disclosure_of_Communications_Data_Code_of_Practice_March_2015.pdf)

<sup>5</sup> See Page 91 [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)

---

Interception of Communications Commissioner's Office (IOCCO)

Visit our Website [www.iocco-uk.info](http://www.iocco-uk.info) Follow us on Twitter [@iocco\\_oversight](https://twitter.com/iocco_oversight)

Act (FOIA) request a number of disparities have developed which are likely, in part, to be related to the different interpretations applied by the police forces to the FOIA questions that were posed.

In 2014, 193,566 applications to acquire communications data were *authorised* by police forces. There are numerous elements to declining or rejecting applications for communications data. For example, 20% of all of the applications *submitted* in 2014 were returned for further development or improvement by the Single Points of Contact (SPoCs) (who are the guardian and gatekeepers of the acquisition process) prior to even reaching the Designated Persons (DPs). 5% of the applications that subsequently reached the DPs for consideration were then returned for further development or rejected by the DPs. The disparity of the rejection figures between police forces published in the Big Brother Watch report today are again, in part, likely to be related to the different interpretations applied by the police forces to the FOIA questions that were asked.

The relationship between applications, notices, authorisations, requests and items of communications data is a complex one. In November 2014, following interest on Twitter, we published a diagram<sup>6</sup> to aide understanding in this area. This is why in our view it is right that the statistical requirements are collated and published by one independent body (i.e. IOCCO), rather than by the individual police forces themselves. The Big Brother Watch report sets out that *"The publication of this information should not be left to the Interception of Communications Commissioner's Office (IOCCO). This would risk turning the IOCCO into a statistical bulletin, when their focus should be on commenting on the legality and robustness of the actions revealed."* With respect, we disagree with this comment.

We are committed to transparency where it contributes towards improved accountability. Irrespective of arguments relating to whether the publication of statistics might be prejudicial to national security or the ongoing prevention or detection of crime (which we are able to consider on a national basis), a central thought is whether publication of raw statistics does actually better inform the public and Parliament about the use of intrusive powers. It is crucial to ensure that a drive for transparency does not result in meaningless statistics being published which are not easy to interpret or which could seek to mislead. The collation of the statistics by one independent body will ensure that the same counting mechanisms and conventions are applied by police forces. It also ensures that the statistics are published consistently, at the same time and in one place, are interpreted correctly, and that meaningful analysis can be drawn.

---

<sup>6</sup> <http://www.iocco-uk.info/docs/Relationship%20between%20applications,%20authorisations,%20notices%20and%20items%20of%20data.pdf>

In relation to the claim that there is no standard process; our annual reports set out the structured regime that all police forces must follow to acquire communications data. This regime is clearly prescribed by Part I Chapter 2 of RIPA and its associated Code of Practice<sup>7</sup>.

It is good when interested parties seek to engage in the debate and highlight issues in this field but before doing so they need to take account of key policy changes and improvements to transparency that have already been reviewed and implemented. In our submission<sup>8</sup> to David Anderson QC's Investigatory Powers Review we commented on the effectiveness of the current statutory oversight arrangements and highlighted a number of inadequacies with regard to the current legislative framework and the safeguards to protect privacy.

The key challenge for the future is to ensure that the UK has legislation governing interception and communications data techniques that provides reasonable clarity and foreseeability, contains adequate human rights protections and provisions for the retention, access to, sharing of and destruction of material and data, and which provide effective oversight mechanisms and rights to effective remedy. This is a considerable task and therefore it is critical for all to ensure that any debates on the privacy implications of public authorities' use of intrusive RIPA powers, on how those powers are used, and on what capabilities might be required in future are informed and accurate.

---

<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/426248/Acquisition\\_and\\_Disclosure\\_of\\_Communications\\_Data\\_Code\\_of\\_Practice\\_March\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426248/Acquisition_and_Disclosure_of_Communications_Data_Code_of_Practice_March_2015.pdf)

<sup>8</sup> <http://www.iocco-uk.info/docs/IOCCO%20Evidence%20for%20the%20Investigatory%20Powers%20Review.pdf>