



17th June 2016

Further statement by IOCCO relating to Police Scotland investigation

In November 2015, after a review of conduct of the Police Service of Scotland (hereafter "Police Scotland"), the Interception of Communications Commissioner (hereafter "the Commissioner") made a determination in accordance with his oversight function under Paragraph 8.3 of the Code of Practice for the Acquisition and Disclosure of Communications Data (hereafter "the Code").

The Commissioner concluded that there had been contraventions of the Code in respect of 5 applications for communications data which sought 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. In contravention of Paragraph 3.78 of the Code, judicial approval was not obtained to acquire this communications data.

The Commissioner was satisfied that four individuals were adversely affected by these contraventions and that the failures identified could properly be viewed as reckless. The Commissioner wrote to those individuals and provided them with sufficient information to enable them to engage the Investigatory Powers Tribunal ("the Tribunal") if they wished to do so.

On 25th November 2015 we issued a Press Statement which provided an overview of our findings <http://www.iocco-uk.info/docs/Press%20statement%2025-11-2015.pdf>.

Update: We were informed by the Tribunal that the four individuals (and some of their associated family) made valid complaints and human rights claims to the Tribunal. At the Tribunal's request we provided the Tribunal with a copy of the Commissioner's letter to the Chief Constable of Police Scotland, our full inquiry report and its accompanying "memorandum" which sets out the Commissioner's reasons for reaching his determination. The letter and memorandum have been disclosed to the complainants after appropriate redactions were agreed between the parties to the case and the Tribunal. In these circumstances we have now decided to publish the letter and memorandum which have been disclosed as part of those legal proceedings as they are now effectively in the public domain.

The Tribunal have confirmed to us that Police Scotland has conceded, in a letter to the Tribunal that is effectively in the public domain, that the communications data authorisations were unlawfully obtained. There is a public hearing to be held on 22nd July 2016 to decide the outstanding points of law in the case and to consider remedy. The Tribunal will be publishing the location of the hearing on its website¹ in due course.

¹ <http://www.ipt-uk.com/>