House of Commons
Home Affairs Committee


Eighth Special Report of Session 2014–15

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Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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The following were also members of the Committee during the Parliament.

Rt Hon Alun Michael (Labour & Co-operative, Cardiff South and Penarth)
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Steve McCabe MP (Labour, Birmingham Selly Oak)
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Powers
The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publication
The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom

Committee staff
The current staff of the Committee are Tom Healey (Clerk), John-Paul Flaherty (Second Clerk), Dr Ruth Martin (Committee Specialist), Duma Langton (Committee Specialist), Andy Boyd (Senior Committee Assistant), Iwona Hankin (Committee Assistant) and Alex Paterson (Select Committee Media Officer).

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Eighth Special Report


Appendix: Government response

Letter from James Brokenshire MP, Minister for Immigration and Security, 12 February 2015

I am grateful to the Home Affairs Select Committee for its report on the Regulation of Investigatory Powers Act 2000 (RIPA) which was published on 6 December. I apologise for the delay in responding, I hope you understand the Government wanted to wait for the Interception of Communications Commissioner to report on his inquiry into police accessing the communications data of journalists under RIPA. The following will address your report's specific conclusions and recommendations.

James Brokenshire MP
February 2015

Government response

Conclusion/Recommendation 1

Section 94 of the Telecommunications Act 1984 gives extensive powers to the Secretary of State to take actions 'in the interests of national security or relations with the government of a country or territory outside the United Kingdom'. There is no public disclosure of how this is used, and none of our witnesses has been aware of anyone who considers it their role to scrutinise it or have any oversight powers. We believe this should be reviewed, and one of the Commissioners specifically tasked with oversight of this power, and for them to be given the information and access needed to fulfil this role. We also recommend that the government publish on an annual basis the number of times this power is used. We further suggest that the Intelligence and Security Committee conduct an inquiry into the use of this power. (Paragraph 15)

Government response

It has been the policy of successive Governments not to comment on sensitive national security issues and to neither confirm nor deny the existence (or otherwise) of intelligence techniques or capabilities. The Telecommunications Act 1984 allows for Section 94 directions to be kept secret. It may be necessary to keep a direction secret because revealing its existence would damage national security.
The Government, however, has been very clear that the Security and Intelligence Agencies must, and do, act in accordance with the law. This point has been publically recognised by the Intelligence and Security Committee of Parliament (ISC).

The Government is satisfied that the Security and Intelligence Agencies are properly held to account by the ISC, the Investigatory Powers Tribunal and the Commissioners.

The Prime Minister may ask the Interception of Communications Commissioner and the Intelligence Services Commissioners to provide oversight of a range of Security and Intelligence Agencies' activity on a non-statutory basis. However, in some circumstances, this may be secret where it would damage national security were its existence to be made public.

As to whether the ISC should look into the use of Section 94, it is for the ISC to decide how it exercises its oversight functions. Since the Justice and Security Act 2013, the ISC has the powers, remit and resources to undertake the inquiries it deems necessary.

**Conclusion/Recommendation 2**

We urge forces to communicate openly and efficiently with the Commissioner regarding the information they give him about their work. IOCCO should be given further resources to carry out its job in an effective and timely manner, most notably their inquiry into the use of RIPA powers regarding journalistic sources.

(Paragraph 22)

**Government response**

The Government is committed to ensuring the Interception of Communications Commissioner has the resources he needs to fulfil his responsibilities. As he made clear in his Annual Report published last summer and in evidence to your Committee, their resources have been increased considerably and they do not currently consider that they need more. We will continue to consider carefully any request for resources that the Commissioner makes to the Government.

**Conclusion/Recommendation 3**

We note Sir Paul's recommendation to the Home Office concerning the need for improvements to the statistical requirements in the RIPA Code of Practice. It is vital that the statistical requirements are enhanced, so that the public can be better informed about the use which public authorities make of communications data.

(Paragraph 26)

**Government response**
The Government agree on the need to improve the statistics on public authorities’ acquisition of communications data and welcome the Commissioner’s consideration of his. We have worked with the Commissioner’s office to build on the current statistics that are collected so that a more reliable, consistent and transparent picture of the acquisition of communications data can be presented. These additional requirements have been included in the draft updated Acquisition and Disclosure of Communications Data Code of Practice.

Conclusion/Recommendation 4

The Home Office should hold a full public consultation on an amended RIPA Code of Practice, and any updated advice should contain special provisions for dealing with privileged information, such as journalistic material and material subject to legal privilege. (Paragraph 28)

Government response

The draft updated Acquisition and Disclosure of Communications Data Code of Practice underwent public consultation between 9 December 2014 and 20 January 2015. It includes a section concerning giving additional consideration to the level of intrusion when considering whether to acquire communications data involving professionals who handle privileged or otherwise confidential material, such as journalists.

The Interception of Communications Commissioner conducted an inquiry into police accessing the communications data of journalists under RIPA. During the debate at Committee Stage in the House of Commons on the Counter Terrorism and Security Bill, the Government committed to reflecting, where appropriate, the Commissioner’s recommendations in the revised Acquisition and Disclosure Code of Practice, prior to laying it before Parliament. The Commissioner reported on 4 February and made two recommendations:

1. Judicial authorisation must be obtained in cases where communications data is sought to determine the source of journalistic information.

2. Where communications data is sought that does not relate to an investigation to determine the source of journalistic information (for example where the journalist is a victim of crime or is suspected of committing a crime unrelated to their occupation) Chapter 2 of Part 1 of the Act may be used so long as the designated person gives adequate consideration to the necessity, proportionality, collateral intrusion, including the possible unintended consequence of the conduct. The revised Code contains very little guidance concerning what these considerations should be and that absence needs to be addressed.

A free press is fundamental to a free society and the government is determined that nothing is done that puts that at risk. The Government therefore accept both of the Commissioner’s recommendations. We will consider how best to enact them in
conjunction with considering responses to the consultation on the code of practice. A revised code will then be laid in Parliament for approval.

Conclusion/Recommendation 5

RIPA is not fit for purpose, with law enforcement agencies failing to routinely record the professions of individuals who have had their communications data accessed under the RIPA. The recording of information under RIPA is totally insufficient, and the whole process appears secretive and disorganised with information being destroyed afterwards. Whereas we acknowledge the operational need for secrecy both during investigations and afterwards (so that investigative techniques more broadly are not disclosed), we are concerned that the level of secrecy surrounding the use of RIPA allows investigating authorities to engage in acts which would be unacceptable in a democracy, with inadequate oversight. We recommend that the Home Office use the current review of the RIPA Code to ensure that law enforcement agencies use their RIPA powers properly. (Paragraph 33)

Government response

The Government is committed to ensuring law enforcement agencies use their RIPA powers lawfully and responsibly. RIPA provides a robust legal framework for the use of investigatory powers and is fully compliant with the UK’s human rights obligations. Interception and communications data acquisition may only take place when considered necessary for a specified purpose set out in RIPA and proportionate to the objective of the investigation. As you know, David Anderson QC, the Independent Reviewer of Terrorism Legislation, is currently conducting a statutory review of these investigatory powers, which is due to report by 1 May this year.

Requests for communications data must be authorised on a case by case basis by a senior officer or official in the applying authority at a rank and for purposes stipulated by Parliament. We will now also ensure, as soon as practicable, that requests which are ought to determine the source of journalistic information, will require judicial approval. Interception warrants may only be issued by the Secretary of State when satisfied that the interception is necessary and proportionate and the information sought cannot be obtained by other means.

IPA also provides for independent oversight of the use of these powers by the interception of Communications Commissioner, who must have held high judicial office, and who reports on public authorities’ use of communications data and interception to the Prime Minister. The reports are laid before Parliament. Since the Data Retention and investigatory Powers Act 2014, the Commissioner is required to report on a bi-annual basis. The Commissioner is also able to report to the Prime Minister on any other matter related to the carrying out of his functions, as his important inquiry into police accessing the communications data of journalists demonstrates.

We agree that the recording of information can be improved. That is why the draft code specifies that, where an individual that handles privileged or otherwise confidential
material is concerned, the profession of the individual should be recorded in the application. Furthermore, the code specifies a number of additional record keeping requirements

James Brokenshire MP
February 2015