

## Protections for freedom of expression and journalist sources under the Investigatory Powers Bill

INFORMATION SOUGHT	CURRENT PRACTICE	UNDER THE IP BILL
<p style="text-align: center;"><b>Material held by a journalist themselves, such as laptops, notebooks, etc.</b></p>	<ul style="list-style-type: none"> <li>• Requests to obtain information or documents held by journalists are made under PACE or the Terrorism Act (TACT).</li> <li>• The person asked to disclose information is informed of the request and has the opportunity to challenge the application.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Unaffected by the Bill.</b></li> <li>• The Bill will not affect the operation of PACE or TACT powers to obtain information directly from journalists – journalists will still have the opportunity to challenge such applications.</li> </ul>
<p style="text-align: center;"><b>Communications data (CD) requests</b></p>	<ul style="list-style-type: none"> <li>• Investigator sets out application specifying why it is necessary and proportionate.</li> <li>• The relevant Single Point of Contact must be consulted and the Designated Senior Officer must authorise the request.</li> <li>• Interception of Communications Commissioner inspects public authorities and oversees requests on a regular basis.</li> <li>• Investigatory Powers Tribunal provides for right of appeal against any suspected wrongdoing.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The Bill will <u>strengthen</u> existing safeguards.</b></li> <li>• In addition to existing safeguards the Bill:               <ul style="list-style-type: none"> <li>- Replaces three existing commissioners with a powerful new Investigatory Powers Commissioner with significantly enhanced resource and funding.</li> <li>- Creates offence of a person in a public authority unlawfully obtaining communications data.</li> <li>- Makes mandatory the requirement to consult a Single Point of Contact on the face of the Bill</li> <li>- Public authorities must have regard to whether what is sought to be achieved may reasonably be achieved by other less intrusive means, as well as the public interest in the protection of privacy.</li> </ul> </li> </ul>
<p style="text-align: center;"><b>Communications data (CD) held by a communications service provider relating to a journalist</b></p>	<ul style="list-style-type: none"> <li>• All of the above CD safeguards apply.</li> <li>• Mandatory consideration of freedom of expression/source protection.</li> <li>• Requests relating to journalists must be reported to the Commissioner.</li> <li>• The respondent (the Communications Service Provider) is the only party entitled to notice.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The Bill will <u>maintain</u> existing safeguards.</b></li> <li>• Safeguards under the Bill will be placed on a clearer statutory footing.</li> </ul>

<p style="text-align: center;"><b>CD held by a communications service provider being sought to identify a journalist's source</b></p>	<ul style="list-style-type: none"> <li>• All of the above CD safeguards continue to apply.</li> <li>• In England, Wales and Northern Ireland, the code of practice requires that law enforcement seek approval for all such requests from a Crown Court judge under the Police and Criminal Evidence Act (PACE).</li> <li>• The respondent (the Communications Service Provider) is the only party entitled to notice.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The Bill will <u>strengthen</u> safeguards.</b></li> <li>• Current practice will be replaced by the following: <ul style="list-style-type: none"> <li>- The additional safeguard of judicial authorisation is placed on the face of the Bill (rather than a code of practice) and will apply to all public authorities – including the intelligence agencies - not just law enforcement.</li> <li>- Requests will need to be signed off by a more senior judge (an Investigatory Powers Commissioner who will be a current or former High Court Judge).</li> <li>- The respondent (the Communications Service Provider) is the only party entitled to notice.</li> <li>- A Judicial Commissioner must first consider the public interest in protecting a source of journalistic information and then be satisfied that there is another, overriding, public interest.</li> </ul> </li> </ul>
<p style="text-align: center;"><b>Interception of a journalist's communications</b></p>	<ul style="list-style-type: none"> <li>• Warrants can only be issued by the Secretary of State.</li> <li>• Provides for offence of unlawful interception</li> <li>• Particular consideration must be given to communications that involve confidential journalistic material.</li> <li>• Confidential information should be retained only where necessary and proportionate and destroyed when no longer needed.</li> <li>• Where confidential material is retained this must be notified to Interception of Communications Commissioner.</li> <li>• Investigatory Powers Tribunal provides right of appeal against suspected wrongdoing.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The Bill will <u>strengthen</u> safeguards.</b></li> <li>• All existing safeguards are maintained.</li> <li>• In addition: <ul style="list-style-type: none"> <li>- The Bill introduces 'double-lock' judicial approval of warrants.</li> <li>- Where confidential information is retained this must be notified to the Investigatory Powers Commissioner.</li> <li>- The Bill will replace the three existing commissioners with a powerful new Investigatory Powers Commissioner with significantly enhanced resources and funding.</li> </ul> </li> </ul>