

23 February 2015

Dear colleague,

**Report Stage of the Serious Crime Bill – Government New Clause 24 relating to the communications data of journalists**

Ahead of Report Stage of the Serious Crime Bill today, I am writing to provide you with the background to Government New Clause 24.

On 4 February 2015, the Interception of Communications Commissioner (IOCC) published the report of his inquiry into the police access to communications data of journalists. His recommendations were:

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

The Government accepts the Commissioner's recommendations in full.

Unfortunately, it is not possible to give full effect to the IOCC recommendations in this Bill. The Public Bill Office has indicated that because of scope rules, any amendment in the Serious Crime Bill would have to be limited to serious crime.

However, under the Regulation of Investigatory Powers Act (RIPA), the police can acquire communications data in relation to the prevention and detection of all crime (as well as for other purposes, e.g. in the interests of public safety). We want to avoid an unsatisfactory situation where if the police were trying to identify a journalist's source in a serious crime case, judicial approval would be required and in a non-serious crime case, the police would continue to be able to use the existing, internal authorisation regime. Moreover, we believe that it is important that the police and other law enforcement agencies should continue to be able, when investigating offences under, for example, the Official Secrets Act or Computer Misuse Act (which would not constitute serious crimes under RIPA), to acquire communications data for the purpose of identifying a journalist's sources.

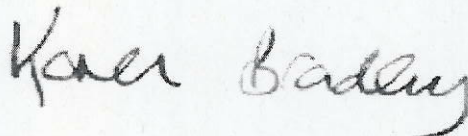
Accordingly, we have tabled New Clause 24 to provide that any Code of Practice issued under RIPA that deals with the use of RIPA powers in relation to the prevention or detection of serious crime should include provisions which protect the public interest in the confidentiality of journalists' sources. This mirrors closely the cross-party backbench New Clause 5. The amendment to RIPA extends to the whole of the United Kingdom.

In addition to that, as a stop-gap until legislation can be enacted early in the next Parliament, the Acquisition and Disclosure of Communications Data Code of Practice will require judicial authorisation under the Police and Criminal Evidence Act 1984 (PACE), and equivalent legislation in Northern Ireland and Scotland, for law enforcement acquisition of communications data to determine journalistic sources. This code will be subject to debate and approval in both Houses before the end of the Parliamentary session. Given the limitations in PACE, this is not a long term solution but it will provide for a judicial authorisation regime in the interim.

Finally, I attach a draft clause showing how we will give full effect to the Commissioner's recommendation, when a legislative opportunity arises in the next Parliament. It provides for circuit judge (or equivalent) authorisation in all cases where communications data is sought for the purpose of determining a journalistic source. The only exception is in very urgent cases where there is an imminent threat to life. This is to cover a situation in which communications data to identify a journalistic source is required extremely urgently – for example, if a bomb warning was telephoned to a journalist or newspaper office, the police would want urgently to establish from where the call was made and this would technically count as trying to identify a journalist's source.

Colleagues may question why journalists are receiving different treatment to others in sensitive professions. In his report, the Interception of Communications Commissioner made the point (as he had done in an earlier report) that communications data by itself does not contain any material that is legally or professionally privileged. We accept that journalists are a special case because, for example, in investigating a leak, determining who spoke to whom may be more important than what was said, but the same argument does not apply to other sensitive professions.

I hope you will support New Clause 24 when it is debated later today.



**KAREN BRADLEY**