



Home Office

# **Regulation of Investigatory Powers Act**

## **Consultation: Acquisition and Disclosure of Communications Data and Retention of Communications Data Codes of Practice**

9 December 2014

# Ministerial Foreword

Communications data – the ‘who, where, when and how’ of a communication but not its content – is a crucial for fighting crime, protecting children and combating terrorism.

Communications data has played a significant role in every Security Service counter-terrorism operation over the last decade and has been used as evidence in 95 per cent of all serious organised crime cases handled by the Crown Prosecution Service. It has played a significant role in the investigation of many of the most serious crimes in recent times, including the Oxford and Rochdale child grooming cases, the murder of Holly Wells and Jessica Chapman and the murder of Rhys Jones. It can prove or disprove alibis, it can identify associations between potential criminals and it can tie suspects and victims to a crime scene.

The draft Codes of Practice published for public consultation set out the processes and safeguards governing the retention of communications data by communications service providers and its acquisition by public authorities, including law enforcement agencies. They are intended to provide clarity, and incorporate best practice, on the use of the relevant powers, ensuring the highest standards of professionalism and compliance in this important aspect of law enforcement.

All responses will be welcomed and carefully considered.

James Brokenshire MP

Minister of State for Immigration and Security

## Scope of the consultation

Topic of this consultation:	This consultation is on the draft Acquisition and Disclosure of Communications Data Code of Practice and the draft Retention of Communications Data Code of Practice.
Scope of this consultation:	This consultation seeks representations on the draft Codes of Practice.
Geographical scope:	UK wide.

## Basic Information

To:	Representations are welcomed from communications service providers involved in the retention and disclosure of communications data and public bodies who acquire communications data under RIPA as well as professional bodies, interest groups and the wider public.
Duration:	6 weeks, closing on 20 January 2015
Enquiries and responses:	<i>commsdata@homeoffice.x.gsi.gov.uk</i>  Please indicate in your response whether you are content for it to be published, with or without attributing it to you/your organisation.
After the consultation:	Following the consultation period, responses will be analysed and the draft codes revised as necessary. They will then be laid before Parliament for approval.

## Background

Getting to this stage:	We have engaged with communication service providers subject to a data retention notice, the law enforcement and intelligence community and the Offices of the Interception of Communications and Information Commissioners which oversee and monitor aspects of the legislation.
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## Introduction

Communications data – the ‘who, where, when and how’ of a communication but not its content – is a crucial for fighting crime, protecting children and combating terrorism.

Communications data is collected by the communications industry for their own business purposes. This data can be retained by communication service providers under the Data Retention and Investigatory Powers Act 2014 (DRIPA) which provides a clear basis on which domestic companies can be required to retain certain types of communications data. Communications service providers may also retain data in accordance with the voluntary Code of Practice under the Anti-Terrorism Crime and Security Act 2001.

Law enforcement, the intelligence agencies and some other public authorities can seek access to the communications data held by communications service providers if they can demonstrate that access is necessary, proportionate, and is connected to a specific investigation or operation.

## Why are we consulting?

This consultation contains proposals to update the Acquisition and Disclosure of Communications Data Code of Practice and publish a new Retention of Communications Data Code of Practice following the passage of DRIPA and the Data Retention Regulations in July 2014. The Regulation of Investigatory Powers Act 2000 (RIPA) requires the Secretary of State to prepare and publish a draft of the Codes and to consider any representations made about the draft. This consultation fulfils that requirement.

## Retention of communications data

DRIPA and the Data Retention Regulations made under it replaced the UK’s previous data retention regime following the European Court of Justice ruling in April 2014 that the EU Data Retention Directive was invalid. DRIPA and the Data Retention Regulations made a number of changes to the communications data regime in response to the ECJ judgment.

The new Data Retention Code of Practice sets out how the Government implements the requirements in DRIPA and the Data Retention Regulations and covers the issue, review, variation and revocation of data retention notices, the CSPs’ ability to recover their costs, data security, oversight by the Information Commissioner and safeguards on the disclosure and use of retained data by CSPs.

The Counter Terrorism and Security Bill, introduced on 26 November 2014, proposes the expansion of the categories of data which domestic companies can be required to retain under DRIPA. An additional document setting out the changes that would be made to the draft Retention of Communications Data Code of Practice should Parliament agree to these provisions is included in this consultation. Further changes to this document may be required if the provisions are amended significantly during their passage through Parliament.

## Acquisition and Disclosure of Communications Data

Comprehensive safeguards exist for access to communications data which is primarily regulated by the Regulation of Investigatory Powers Act (RIPA). This places strict rules on when, and by whom, this data can be obtained. Further safeguards and procedures regarding the acquisition and disclosure of communications data under RIPA are set out in the existing code of practice code. These include the process for public authorities to acquire communications data (including in urgent cases), the CSPs' ability to recover their costs, the keeping of records (in connection with oversight by the Interception of Communications Commissioner) and data protection safeguards, including in relation to the acquisition of communications data on behalf of overseas authorities.

The acquisition code was last published in 2007 and we have made a number of clarifications and updates to bring the code in line with current approaches and processes, reflecting the experience of public authorities in using the code. We are also making a number of changes to the acquisition code in response to the European Court of Justice judgment and recommendations by the Interception of Communication Commissioner.

The key changes are:

- enhancing the operational independence of the authorising officer from the specific investigation for which communications data is required (paragraphs 3.11-3.15 and 3.25-3.27);
- ensuring that where there may be concerns relating to professions that handle confidential or privileged information (e.g. lawyers or journalists), law enforcement should give additional consideration to the level of intrusion and must record such applications (paragraphs 3.72-3.74);
- reflecting the additional requirements on local authorities to request communications data through a magistrate, and the National Anti-Fraud Network (paragraphs 3.75-3.77);
- setting out new record keeping requirements for public authorities (in response to recommendations by the Interception of Communications Commissioner to improve transparency) (paragraphs 6.1-6.8); and
- aligning the code with best practice regarding responses to public emergency calls (999/112 calls) (paragraphs 5.5-5.30) and judicial co-operation with overseas authorities (paragraphs 7.13-7.15).

There is an on-going inquiry by the Interception of Communications Commissioner into police acquisition of the communications data of journalists, the results of which we will consider in the context of this consultation. We would be particularly interested in views on additional safeguards, such as a requirement to flag all applications for the communications data of those in professions that handle confidential information (e.g. lawyers and journalists) to the Interception of Communications Commissioner at his next inspection, which could provide an additional safeguard to protect the freedom of the press and those in the legal profession. We

would particularly welcome views on whether this draft code sufficiently protects freedom of expression.

Responses to this consultation, or a summary of such responses, may be published (with the permission of the respondent) in the interests of ensuring an informed and transparent debate.