

Rt Hon David Cameron MP
Prime Minister
10 Downing Street
Westminster
London
SW1A 2AA

16 January 2015

Dear Prime Minister,

Acquisition and Disclosure of Communications Data Code of Practice

We, the undersigned, believe that the Acquisition and Disclosure of Communications Data Code of Practice as drafted provides wholly inadequate protection for journalists' sources.

The revelation that the Metropolitan Police and other forces have used the Regulation of Investigatory Powers Act to view the phone records of The Sun and its political editor and other journalists in order to identify and punish lawful police sources has caused widespread alarm across the journalism industry.

The new code appears to do very little which would stop a repeat of such abuse of RIP. The Act was intended for tackling serious crime such as terrorism but it is clearly being used by police in relation to relatively minor crimes.

The new code states: "Communications data is not subject to any form of professional privilege – the fact a communication took place does not disclose what was discussed, considered or advised."

The mere fact a public official has contacted a newspaper is highly privileged information.

That an individual has contacted a lawyer or doctor tells us little. But the fact they have contacted a journalist identifies them as a source and exposes them to recrimination.

It is in everyone's interest that the state recognises the over-arching importance of protecting the confidentiality of journalists' sources.

Public sector whistleblowers will not come forward to journalists in future if law enforcement agencies have the power to view journalists' phone records at will.

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The new guidelines merely state that the degree of interference with privacy “may be higher where the communications data being sought relates to a person who is a member of a profession that handles privileged or otherwise confidential information (such as a medical doctor, lawyer, journalist, Member of Parliament, or minister of religion).

“Such situations do not preclude an application being made. However applicants, giving special consideration to necessity and proportionality, must draw attention to any such circumstances that might lead to an unusual degree of intrusion or infringement of privacy, and clearly note when an application is made for the communications data of a medical doctor, lawyer, journalist, Member of Parliament, or minister of religion.”

The new guidelines also state that RIPA requests involving journalists can continue to be signed off internally at the agency concerned.

RIPA requests for journalists’ phone records should carry the same safeguards as already exist under the Police and Criminal Evidence Act when it comes to police requests for journalistic material and should be extremely rare.

RIPA requests involving the telecoms records of journalists (and so, also their sources) must require the approval of a judge who is best placed to balance the public interest in disclosure of the information versus the over-arching public interest in respecting the confidentiality of journalists’ sources.

The new Acquisition and Disclosure of Communications Data Code of Practice must explicitly prevent law enforcement officials viewing the phone records of journalists who are not themselves under suspicion of committing any crime.

The draft code only makes reference to “the degree of interference with privacy” and says nothing about the issue of state interference with press freedom. This is why a judge must consider the case for overriding source protection.

The code needs to balance the seriousness of the alleged crime against the public interest in protecting the confidentiality of all journalistic sources and potential whistleblowers.

The guidance needs to make it clear that a public official communicating information to a journalist without official approval (ie. a leak) cannot be sufficient justification for a RIPA telecoms request.

Yours sincerely,

This letter has been co-ordinated jointly by the Society of Editors and Press Gazette and signed by the editors listed below

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