

Quarterly Newsletter: Spring 2023

A Message from the Investigatory Powers Commissioner, Sir Brian Leveson:

This month, we published our [2021 Annual Report](#), which contains information on inspection findings, errors and policy matters. I am pleased to say that we have seen positive engagement from public authorities, with high levels of compliance, and 2021 marks the first year in which there were no serious errors since IPCO began reporting. Where we do pick up compliance shortcomings, I am confident that measures are being taken to address these concerns.

In December 2022, I wrote to all law enforcement agency Chief Officers with an update on progress towards achieving full compliance with the Safeguards chapters of the Surveillance and CHIS Codes of Practice. Continued efforts have been noted in all the public authorities we inspect but very few organisations have yet received a clean bill of health.

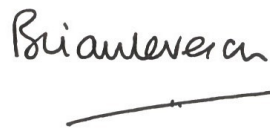
Some are now closer to this, including South Wales Police, South Yorkshire Police and the Metropolitan Police Service.

Good compliance with data handling safeguards has also been noted in some local authorities and other bodies, including Worcester City and Worcestershire County, Leicestershire County and Cheshire West & Chester, the NHS Scotland Counter Fraud Service and the DVSA. However,

some were still lacking meaningful progress and, as a result, have undergone additional inspections on this area of compliance.

I have also given clear direction on the review periods for CHIS material. I consider it good practice that regular, meaningful review is undertaken of all information that is held, even if decisions are then taken to retain. I have, therefore, made clear that I expect to see an initial review of individual CHIS records after five to ten years, repeated at similar intervals thereafter, and pragmatic decisions reached as to retention or destruction on a CHIS-by-CHIS basis.

Being almost five years on from the introduction of the Safeguards Chapters in the Codes, this should now be approaching a stage of being 'business as usual' and IPCO inspections will take a proactive approach, to identify that retention, review and destruction is indeed being practised.




Updates from IPCO:

- We have published an [Advisory Notice](#) explaining how our oversight of the UK-US Data Access Agreement is carried out.
- The Home Office has published its [Statutory Report](#) on the Investigatory Powers Act. Lord Anderson has now been appointed to carry out an independent review of the legislation. He published his Terms of Reference and areas of consultation in February via [Twitter](#). We will engage with Lord Anderson throughout his review.
- Sir Nigel Sweeney joined us as a Judicial Commissioner in February and will serve for the next three years. This follows on from his appointment as a temporary Commissioner at the start of the pandemic under the Coronavirus Act 2020.
- Please be reminded that although IPCO is not itself subject to the Freedom of Information Act ('FOIA'), Public Authorities who are subject to FOIA must respond to requests for disclosure of our inspection reports as if they were their own documents. Following receipt of any such request, in the first instance, the SRO should bring the matter to the attention of the IPCO Data Protection Officer (at: info@ipco.org.uk), before making any disclosure. Police forces should also bring the matter to the attention of the NPCC FOI Central Referral Unit. No disclosure should take place until both parties have fully been consulted.

Spotlight On: Unnecessary Geographical Limitations on Directed Surveillance

RIPA/RIP(S)A describes surveillance as including the monitoring, observing or listening to persons, their movements, conversations or other activities and communications and is concerned with ensuring that this activity does not disproportionately infringe upon the right to respect for privacy.

Authorising Officers (AOs) will rightly seek to limit the scope of authorised directed surveillance by citing limitations which may include listing locations where observations are to take place.

For static surveillance, this can enable a more accurate assessment of likely collateral intrusion.

Defining geographical locations for mobile surveillance may be more problematic, is often unnecessary and can lead to bureaucracy through the need for revision via interim reviews.

Nonetheless, AOs should still take into consideration geographical factors as part of collateral intrusion. For example, where surveillance regularly commences from the same location this may give rise to elevated collateral intrusion (for example, a subject of interest's home address where family members reside). Alternatively, surveillance may be likely to move from a low to high collateral intrusion location.

Process reminder: Warrants issued under the urgency procedure without judicial prior approval

- IPCO should be informed of a warrant issued under the urgency procedure as soon as reasonably practicable. A Judicial Commissioner (JC) should be able to consider the conduct authorised under the warrant at the earliest opportunity.
- If IPCO is informed of an urgent warrant on the same day that it is issued (as should be the norm), you should complete the IPCO summary sheet requesting a 'routine' decision in accordance with IPCO's Service Level Agreement, i.e. a decision within 48 hours. This will allow a JC to make their decision within the statutory timeframe – three working days after the day on which the urgent warrant was issued.
- A 'routine' decision may not be appropriate if there is a delay in notifying IPCO, or if there are good reasons for IPCO being notified closer to the third working day (on or before which the JC must consider the application). In such circumstances, please utilise IPCO's prioritisation indicators accordingly - priority (for a decision within 24 hours) or immediate (for a decision within 2 hours).
- Notification of an urgent warrant should not be delayed pending a decision to cancel or renew the warrant.



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