Information for individuals affected by Home Office Immigration Enforcement serious error

Following a serious error made by Home Office Immigration Enforcement, the Investigatory Powers Commissioner has written a letter to affected individuals regarding their right to apply to the Investigatory Powers Tribunal.

Oversight of investigatory powers

The Investigatory Powers Commissioner oversees the use of covert investigatory powers by public authorities in the UK. Where a public authority makes an error in the exercise of these powers it is the Investigatory Powers Commissioner’s duty to have that error investigated, determine whether the error is serious (causing significant harm or prejudice), and decide whether it is in the public interest for the person affected by the error to be informed.

Home Office Immigration Enforcement unlawful practice

In legal proceedings brought against the Secretary of State for the Home Department, it was accepted that there had been a blanket, unpublished seizure policy on migrants’ mobile phones which was unlawful, not in accordance with the law for the purposes of the European Convention on Human Rights and did not provide a lawful basis for processing the data. It was also accepted that the policies which said that phones were to be retained for a minimum period of three months and which allowed the complete download of every mobile phone seized were unlawful. As part of the seizure policy, Immigration Enforcement Officers asked for immediate disclosure of PIN numbers under the threat of prosecution. No consent was obtained to access the phones and download the content. The correct procedure was not followed and the action left migrants without a phone and unable to contact friends and family.

These actions resulted in errors in complying with investigatory powers, namely the Equipment Interference and Investigation of Protected Electronic Information Codes of Practice. Following an investigation, the Investigatory Powers Commissioner considers this to be a serious error where significant harm and prejudice was suffered because of the officers’ actions. It is in the public interest that affected persons are informed of the error.

The Investigatory Powers Tribunal

Where possible, the Investigatory Powers Commissioner has written to those who have been affected by this error. However, we do not have the contact details for everyone who was impacted. Those
individuals who have not been contacted directly, but who were affected, should therefore take note of the following information:

- Individuals affected by this error have the right to apply to the Investigatory Powers Tribunal (“the Tribunal”).
- The legal proceedings against the Secretary of State for the Home Department provide the full background to this matter.
- More information on the Tribunal and its functions can be found on its website at www.ipt-uk.com or by contacting the team at: The Investigatory Powers Tribunal, PO Box 33220, London, SW1H 9ZQ; or by telephone on 0207 035 3711.
- The legal provisions do not permit the office of the Investigatory Powers Commissioner to assist in the preparation of any claim or complaint to the Tribunal. However, under section 232(1) of the Investigatory Powers Act 2016, the Investigatory Powers Commissioner shall give the Tribunal all such assistance (including his opinion as to any issues falling to be determined by the Tribunal) as the Tribunal may require.
- It is important to note that the Tribunal investigates and determines applications on behalf of complainants. It is not bound by any finding reached by the Investigatory Powers Commissioner.
- Individuals may wish to seek independent legal advice in respect of this matter; however, the instruction of a solicitor is not needed to make a claim or complaint to the Tribunal.