



Investigatory Powers
Commissioner's Office

PO Box 29105, London
SW1V 1ZU

23rd May 2018

Dear Sirs/Madams,

IPC invitation for submissions on issues relevant to the proportionality of bulk powers

The Investigatory Powers Act 2016 sets out for the first time in UK law provisions for the “bulk” acquisition of data on individuals through the acquisition of communications data, equipment interference, bulk interception and the retention of bulk datasets. These powers were some of the most heavily scrutinised when the Bill was passing through Parliament, and, now that they have passed into law, continue to attract a great deal of well-informed comment and debate.

Following a review into the operational case for bulk powers, David Anderson QC published a comprehensive report (Report of Bulk Powers Review) in August 2016. The report sets out in significant detail how bulk powers operate, the sort of activity those powers authorise and why they are so important to our security and intelligence agencies. The report also went further than ever before in publishing sixty detailed case studies (at annexes 8 to 11) setting out how bulk powers are utilised and the operational outcomes they provide.

The regime for Judicial Commissioner consideration of the decision to issue a bulk warrant will commence later this year and, as our office continues its work preparing for this important change in UK law, we have decided that it would be valuable to understand the views of those outside of government and the agencies as to how the Judicial Commissioners should approach the issue of proportionality when considering these applications, by reference particularly to one specific question and two which are somewhat more general in nature.

As to the specific question, although the Judicial Commissioners will have regard to the general duties in relation to privacy which are provided for in s.2 of the Act when reviewing all warrants, we are especially interested in views regarding the requirement for a public authority to consider “any other aspects of the public interest in the protection of privacy”, as contained in s.2(2)(d) of the Act.

Turning to the two more general matters, and without wishing to limit any relevant observations, we would welcome assistance in identifying the broad range of factors that the Judicial

Commissioners should have in mind, and the approach they should take to the various competing considerations that are relevant to this exercise. Having regard to the case studies in Anderson's report, and the s.2(2)(d) general duty in relation to privacy, we would be grateful if you would consider the following two questions:

- What factors the Judicial Commissioners should take into account when considering whether the conduct proposed in a bulk warrant is proportionate?
- Is there any particular approach that the Commissioners should adopt when evaluating those factors, some of which may be competing?

Please send any responses to the IPCO mailbox info@ipco.gsi.gov.uk by the 13th June 2018.

Kind regards,

Legal Advisor