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## RIP RIPA?

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***Calls for reform of the legislation governing the surveillance of private communications in the UK after it is revealed that the process for granting warrants is little more than a rubber stamping exercise.***

Following the recent publication of independent reports by David Anderson QC<sup>1</sup> (on which see this [WilmerHale W.I.R.E. UK post](#)) and the Royal United Services Institute<sup>2</sup> into the interception of, and collection of information about, communications by public authorities in the UK, the absence of sufficient judicial safeguards in the exercise of state surveillance has once again been thrust into the public spotlight.

In a case ongoing before the Investigatory Powers Tribunal (the "IPT"), *News UK* and *News UK* reporters Tom Dunn, Anthony France and Craig Woodhouse are challenging the Metropolitan Police's use of the Regulation of Investigatory Powers Act 2000 ("RIPA") to seize data in respect of their private telephone calls and text messages. Under RIPA, warrants permitting the carrying out of surveillance or the collection of communications data do not currently need to be approved by the judiciary. They are approved instead by members of the executive—senior police officers or civil servants. In the case at hand, the communications data was collected as the Metropolitan Police sought to quickly identify the officer responsible for leaking news of the "Plebgate" incident to the press.

On 21 July 2015, *The Times* reported<sup>3</sup> that Detective Superintendent Paul Hudson spent, "about 40 minutes" considering whether to approve the application to seize the data from the journalists' telephones. Detective Chief Inspector Tim Neligan (the officer who made the application) is reported as saying that the police, "were under some considerable pressure to find answers." The speed and ease with which such intrusive surveillance powers were granted has led to further calls for an overhaul in the way in which such warrants are granted in the UK, specifically that such applications ought to be subject to robust and independent judicial scrutiny.

The seizure of the three journalists' telephone data also represents an infringement of the legal protection afforded to journalists to be able to withhold the source of their material—a protection recognised by the European Court of Human Rights as one of the basic conditions for press freedom in a democratic society.<sup>4</sup> Whilst not as secure as the protection granted to communications

benefiting from legal professional privilege ("LPP," for a detailed consideration of the qualified nature of LPP see this [WilmerHale W.I.R.E. UK post](#)), a journalist is protected from contempt of court proceedings in the UK should he refuse to disclose his source, unless that disclosure is necessary in the interests of justice or national security, or for the prevention of disorder or crime.<sup>5</sup> Remarkably, it has been reported that Detective Superintendent Hudson was unaware of this long standing protection when he granted the warrant authorising surveillance. This revelation will likely prompt further calls for the repeal and replacement of RIPA with a statutory framework that places the judiciary front and centre in the process of granting such warrants. It remains to be seen of course whether the Government heeds such calls.

\*The author would like to thank Sahil Sinha, paralegal in the WilmerHale London ICL team, for his help in drafting this article.

*This also appears on [Criminal Law & Justice Weekly](#).*

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<sup>1</sup> "A Question of Trust: Report of the Investigatory Powers Review" by David Anderson QC *available at* <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2015/06/IPR-Report-Print-Version.pdf>.

<sup>2</sup> "A Democratic Licence to Operate: Report of the Independent Surveillance Review" *available at* <https://www.rusi.org/downloads/assets/ISR-Report-press.pdf>.

<sup>3</sup> <http://www.thetimes.co.uk/tto/news/medianews/article4503608.ece>. See also: <http://www.telegraph.co.uk/news/uknews/law-and-order/11752529/Anti-terror-laws-used-to-spy-on-Plebgate-journalists.html> and <http://www.dailymail.co.uk/news/article-3170190/Met-used-terror-law-spy-reporters-phones-Plebgate-scandal-Three-journalists-launch-legal-action-claims-human-rights-violated.html>.

<sup>4</sup> *Financial Times Ltd and others v United Kingdom* [2009] ECHR 821/03.

<sup>5</sup> Section 10 of the Contempt of Court Act 1981.

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