

Access to Communications Data : The New Law

Local authority officers investigating criminal offences, including benefit fraud, now have new powers to obtain communications data. The Regulation of Investigatory Powers (Communications Data) Order 2003 together with a related code of practice (see www.homeoffice.gov.uk) came into force on 5th January 2004. Like other powers under the Regulation of Investigatory Powers Act 2000 (“RIPA”), before these new powers can be used, there is a requirement to seek authorisation and complete various forms. It is therefore vital that all revenues and benefits staff, who may use these powers, have a good understanding of them.

The powers to access communications data are set out in section 21-25 of RIPA. These were previously the domain of a select group including the police, MI5 and the Inland Revenue. They will now be extended to a total of five hundred other public bodies, including councils. However the legislation restricts access to the types of communications data depending on the nature of the body requesting it and the reason for doing so.

The definition of “communications data” includes information relating to the use of a communications service but does not include the contents of the communication itself. It is broadly split into 3 categories: “traffic data” i.e. where a communication was made from, to whom and when; “service data” i.e. the use made of the service by any person e.g. itemised telephone records; “subscriber data” i.e. any other information that is held or obtained by an operator on a person they provide a service to.

Some public bodies will get access to all types of communications data e.g. police, ambulance service, customs and excise. Local authorities will be restricted to subscriber and service use data and even then only where it is required for the purpose of preventing or detecting crime or preventing disorder. For example, a benefit fraud investigator may be able to get access to an alleged fraudster’s mobile telephone bill. As with other RIPA powers, e.g. directed surveillance, there are forms to fill out and strict tests of necessity and proportionality to satisfy.

There are two ways in which communications data may be obtained. Firstly, by an authorisation signed by the authorising officer. In the case of a council this will be the assistant chief officer, assistant head of service, service manager or equivalent. An authorisation provides a legal basis upon which the public body may collect the communications data itself e.g. if a communications service provider was technically unable to collect certain communications data. The second way in which communications data may be obtained is where a notice is served upon the holder of the data, requiring them to comply with the terms of the notice and produce the data.

Agreements are in place between communications service providers and public bodies that provide for cost recovery where a service provider is called upon to provide communications data. RIPA itself allows for payment arrangements to be made in order to compensate holders of communications data for the costs involved in complying with the notices.

The new data access provisions are subject to a statutory code of practice. It provides guidance on the procedures that must be followed before access to communications

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data can take place. RIPA provides that the code is admissible in evidence in criminal and civil proceedings.

The code of practice sets out in more detail the application process. For example, it requires in writing:

- the reason why obtaining the requested data is considered to be necessary;
- an explanation of why obtaining the data constitutes conduct proportionate to what it seeks to achieve;
- specifying the individual to whom the data relates and the exact data that is required;

RIPA provides for an Interception of Communications Commissioner whose remit is to provide independent oversight of the use of the powers. It also establishes an independent Tribunal which has full powers to investigate and decide any case within its jurisdiction.

These new powers will increase the armoury of benefit and revenues fraud investigators. The Home Office has stressed the importance of staff training. Local authorities need to act now to ensure that their staff are ready to use these new powers responsibly and lawfully.

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