

Media Law Briefing from Professor Tim Crook UK Media Law Pocketbook 2nd Edition.

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The Appeal Court rules High Court can review bulk collection of journalists' data by UK law enforcement in 2016 Investigatory Powers Act. But at the same time the review will not include use of other secret powers of surveillance in respect of journalists' sources. 30th August 2023.

In a ruling released on 4th August, three appeal court judges said the High Court should decide whether the act provides “adequate safeguards for the protection of a journalist’s sources or confidential journalistic material in relation to communications obtained by means of a bulk equipment interference warrant”.

See Summary in National Council for Civil Liberties -v- Secretary of State for the Home Department at: <https://www.judiciary.uk/wp-content/uploads/2023/08/R-Liberty-v-Secretaries-of-State-Summary-040823.pdf>

Full detailed ruling (116 pages) at <https://www.judiciary.uk/wp-content/uploads/2023/08/R-Liberty-v-Secretaries-of-State-Judgment-040823.pdf>

Paragraph 4 and 5 of the summary of the ruling explain the defeat for Liberty and National Union of Journalists on reviewing the provisions for accessing data communications about journalist’s confidential data and dealings with their sources:

‘4. The appellant contended that the 2016 Act did not provide adequate safeguards against the risk of abuse or for the protection of journalistic material and sources. In particular, the appellant contended that the 2016 Act did not, in a number of respects, meet the requirements outlined by the Grand Chamber of the European Court of Human Rights in its judgment in Big Brother Watch v United Kingdom which concerned the compatibility of provisions of a predecessor statute with Articles 8 and 10 of the Convention.

5. The Court of Appeal considered in detail the legal regimes governing each type of warrant. The Court concluded that, save in one respect, the provisions contained in the 2016 Act do provide adequate safeguards against the risk of abuse and protect confidential journalistic material and journalistic sources. The Court held that there are adequate safeguards providing for the sharing of information with authorities overseas but, in respect of one category of material (that is data obtained from bulk personal datasets) those

safeguards are not in accordance with law, and so not compatible with Article 8 of the Convention, because the safeguards governing such transfers are not contained in any legislation, code or publicly available policy or other document. The Court of Appeal also remitted one issue to the Divisional Court for it to determine, namely whether the provisions contained in Part 6 Chapter 3 of the Act governing the grant of bulk equipment interference warrants authorising the interference with equipment for the purposes of obtaining communications and other data and information are sufficient to provide adequate safeguards for the protection of a journalist's sources or confidential journalistic material. The Court also held that the provisions of the Act were compatible with retained EU law.'

Press Gazette reports 8th August 2023 'High Court to review bulk collection of journalists' data by UK law enforcement. The High Court will re-examine journalistic safeguards in one part of the Investigatory Powers Act.' See: https://pressgazette.co.uk/media_law/snoopers-charter-journalistic-safeguards-court-of-appeal/

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Investigatory Powers Commissioner's Report for 2021 reveals information on intercepting journalists' communications with sources. 11th April 2023.

It also discloses the first example of a Judicial Commissioner refusing an application to access data relating to journalists and their sources.

It seems the scale/number of state interception of journalists' communications is substantially down on previous years.

74 authorisations in 2021 compared to 281 in 2020.

Figure 19.6: Communications data authorisations involving members of a sensitive profession, 2018 to 2021

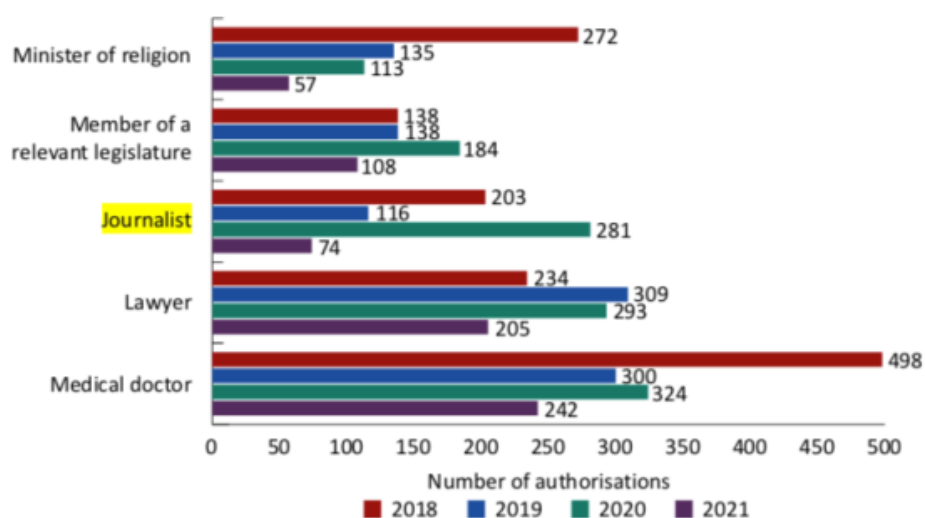


Table from page 118 of Investigatory Powers Commissioner's Annual Report 2021.

The report, for the first time, provides some more detail on the circumstances of interception and identification of the nature of contact between journalist source and journalists.

However, the report does not identify the journalists concerned, the people they were talking to, or their publications.

Two clear examples of interception of data relates to police officers or police staff and journalists.

One case reveals the police were investigating information being leaked by a police officer to a freelance journalist for financial gain.

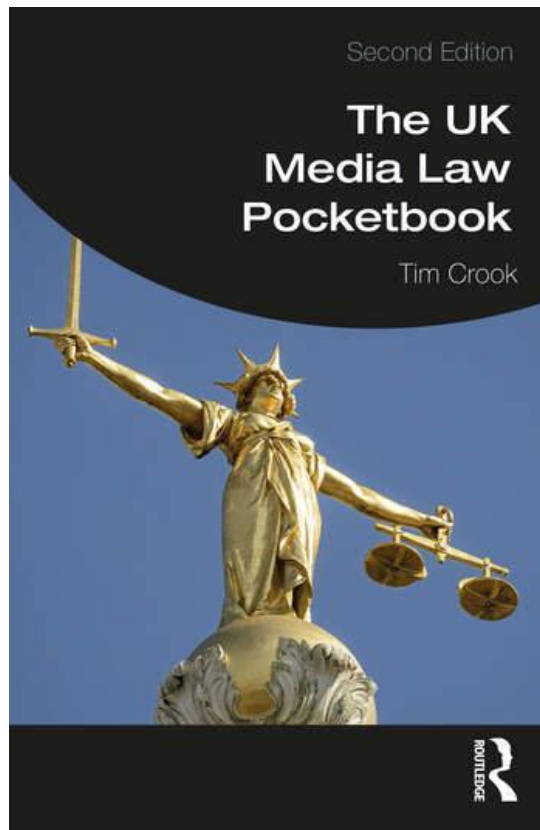
Another case reveals investigation of police staff for leaking information to journalists resulting in a victim being contacted. The misconduct in public office issue did not disclose this being done for financial gain.

The report reveals an instance where a Judicial Commissioner refused an application for interception of communications data between a source and journalist. The rejection of the application was due to the fact of 'there being no evidence the allegations had been leaked, nor had they appeared in the public domain several weeks following the suspected leak.' The information being sought was the 'name of an officer who was facing a misconduct hearing.' It is not clear whether the source was a police officer, police staff or somebody else.

The report says the News Media Association and Media Lawyers' Association met with the IPCO Chief Commissioner Sir Brian Leveson to talk about improving the reporting of this information.

Annual Report of the Investigatory Powers Commissioner 2021 and the activities of the Investigatory Powers Commissioner's Office (IPCO) and Office for Communications Data Authorisations (OCDA).

See: <https://ipco-wpmedia-prod-s3.s3.eu-west-2.amazonaws.com/Annual-Report-2021.pdf>



The second edition of *The UK Media Law Pocketbook* presents updated and extended practical guidance on everyday legal issues for working journalists and media professionals. This book covers traditional print and broadcast as well as digital multimedia, such as blogging and instant messaging, with clear explanations of new legal cases, legislation and regulation, and new chapters on freedom of information and social media law. Links to seven new online chapters allow readers to access all the most up-to-date laws and guidance around data protection, covering inquests, courts-martial, public inquiries, family courts, local government, and the media law of the Channel Islands and the Isle of Man. Tim Crook critically explores emerging global issues and proposals for reform with concise summaries of recent cases illustrating media law in action, as well as tips on pitfalls to avoid.

The UK Media Law Pocketbook is a key reference for journalists and media workers across England, Wales, Scotland, and Northern Ireland. The book's companion website provides downloadable sound files, video summaries, and updates all the developments in one of the most dynamic and rapidly changing fields of law. Visit <https://ukmedialawpocketbook.com>.

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