

**Communications Data - Guidance on Justifications  
(UNDER CONSTRUCTION,  
PLEASE REFER TO WARRANTRY TEAM UNTIL  
COMPLETE)**

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## **Policy Aim**

To Provide applicants for Communications Data with the necessary information to draft justifications which effectively address both necessity and proportionality issues and for DP's to identify justifications that are incomplete.

## **Audience**

All users of communications data.

## **Principles**

- To provide simple and effective guidance to applicants for communications data on how to word justifications in requests for communications data

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- To ensure the production of legally compliant justifications through the provision of comprehensive guidance
- To provide guidance for DP's on what information a proper justification should include

## Summary

This page provides a resource for applicants and Designated Persons (DP's) for communications data, either using **the electronic system for processing CD** requests or through the use of S Forms. It outlines the issues of necessity and proportionality and how both should be addressed when justifying any applications for communications data. It should be noted however that **the warrantry team** can advise only on legal compliance issues relating to communications data requests. Enquiries on how to make applications or to track the progress of existing applications should be directed to **the relevant team**. [REDACTION] .

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## Overview

Core things to consider in any request for communications data are necessity, proportionality and intrusion (both collateral and intended intrusion). Currently in **the electronic system for processing CD requests** these points are addressed in a single justification box. However, in a future **electronic system for processing CD requests** upgrade Necessity, Proportionality and Collateral Intrusion will require justification in their own separate boxes.

## **Necessity**

Necessity can be divided into three main points that need to be considered in any communications data justification:

- Background to the investigation - what is it that we are investigating?
- What is the subject of the communications data request's relation to the investigation?
- How does the communications address that we are making the request for relate to the target and to the investigation?

The applicant must be able to link these three points together in order to demonstrate that any request for communications data is necessary for the statutory purpose specified.

## **Proportionality - General**

When considering proportionality, applicants need to outline how obtaining the data will benefit the investigation and what intrusion into privacy the request will result in. The main things that need to be considered are:

- What are you looking for in the data to be acquired?
- If the data contains what you are looking for, how will this assist you in taking the investigation forward?
- What will be the intrusion into the privacy of the target of the request? Will there be any other intended intrusion taking place?
- Is there another, less intrusive way of obtaining the information you need?
- If a time period of data has been specified, why is this particular time period required e.g. why would a shorter time period not be sufficient?

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Therefore, the applicant should explain how the communications data will be used once obtained and how this will benefit the investigation. It is also important that intrusion into the target of the request's privacy is considered.

These points form a large part of the proportionality argument, the other part being in relation to collateral intrusion.

## **Proportionality - Collateral Intrusion**

As mentioned above, collateral intrusion forms part of the proportionality argument.

The key question to be asked in relation to this is:

- Will the data set to be acquired result in collateral intrusion to persons outside the line of enquiry the data is being obtained for? How will this be mitigated?
- If a time period of data has been specified, how will this impact on the identified collateral intrusion?

When considering this question, the applicant should not detail potential or hypothetical errors. [REDACTION]

Therefore, collateral intrusion should always be considered and described if it is identified. However, it may be that none can be identified. When this is the case, then this should be stated. For example, telephone subscriber checks are unlikely to result in any collateral intrusion.

## **Guidance for Designated Persons**

Designated Persons (DPs) are responsible for granting authorisation for communications data requests. They must ensure that the request is both necessary and proportionate for the purpose for which the data is sought. DPs should take care to scrutinise application, particularly the justification page, before authorising any request for communications data. In particular, key points DPs should check are:

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- Taking into account the guidance for applicants above, that the justification provided by the applicant is sufficient to satisfy the DP that obtaining the requested data is both necessary and proportionate
- That the individual mentioned in the justification is identical with the one for which the data is being obtained, that is that the justification has not been "copied and pasted" from another application
- That the intrusion into privacy that will result from the request has been addressed where necessary and where identified, measures to mitigate collateral intrusion have been outlined
- That the time period of data requested is proportionate and that the reasoning for requesting the time period listed is explained in the justification

DPs are required to reject any application for communications data where they are not convinced of both the necessity and proportionality of the request. DPs are encourage to consider carefully whether necessity and proportionality have been appropriately considered. When rejecting applications, DPs should comment on their reasons for rejection in the appropriate box on *the electronic system for processing CD requests* or on the *relevant form* that is submitted. DPs are also encourage to familiarise themselves with both the Communications Data code of practice and the Data Communications Group (DCG) justifications guidance. Both of these documents are available via the links to the right of this page.

## ANNEX A

### Example *the Electronic System for Processing CD Requests* Justifications

Listed below are a few examples of justifications for some of the most common *electronic system for processing CD* requests:

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