

[REDACTION]

Warrantry Team Briefing Note

Updated guidance for DPs authorising CD requests.

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Distribution	<i>Investigative</i> DPs
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Key Points

- In order to provide clarification on the requirements for Designated Persons (DPs) when approving communications data requests on the electronic system for processing CD requests, this guidance confirms that:
 - There is no legal requirement for DPs to write bespoke comments in support of each communications data request prior to approval. However, the warrantry team advise DPs to consider adding comments to requests if these comments add value to the application (see paragraph 6);
 - however, where a DP authorises an application against a member of a sensitive profession, we remind DPs that they must be independent from the investigation and they must add bespoke comments (see paragraph 1).
 - Investigative and operational managers (and Grade 4s where appropriate) can, for non-sensitive profession requests, remain lead authorisers for requests made by officers in their own teams.

Background – the New Code of Practice, Sensitive Professions, and IDPs

1. Investigators will be aware that earlier this year the Home Office published the revised Code of Practice for the Acquisition and Disclosure of Communications Data [REDACTION], which all government departments are expected to adhere to. The initial impact of the revised code for MI5 was that applications for Communications Data (CD) relating to an individual who was a member of a sensitive profession now require authorisation by an Independent Designated Person (IDP) at Grade 2 or above. [REDACTION].

DPs and the National Security Exemption

2. Whilst the Code also states that *all* CD requests should be authorised by DPs who are independent of the investigation, MI5 uniquely and temporarily has an exemption granted by the Home Secretary from this requirement. This exemption is based on the National Security exemption provided for in the Code. This approach has also been agreed with the relevant oversight body, IOCCO, and the Interception of Communications Commissioner.

3. This exemption means investigative and operational managers (and Grade 4s where appropriate) can, for non-sensitive profession requests, remain lead authorisers for requests made by officers in their own teams.

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NOTE: REDACTIONS ARE INDICATED [REDACTION] AND GISTS ARE IN BOLD, UNDERLINED AND ITALICS

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4. The quality and consistency of the CD applications made across the Service under these arrangements is good, and – given the sensitivity of our exemption and ongoing legal challenges to Data Retention and Investigatory Powers Act (DRIPA) – and needs to remain so. This high standard is reflected in the positive comments of the IOCCO inspectors, who conduct twice yearly inspections of random samples of our CD requests and produce an annual report for the PM. Dip sampling of requests shows that requesting officers are clearly following the guidance [REDACTION] producing good necessity and proportionality cases for CD requests.

Responsibilities of DPs, and Guidance on When to Consider Recording Additional Comments.

5. DPs will be aware (as per the above referenced guidance) that in approving high quality CD requests they are displaying in practice their working knowledge of relevant human right principles and investigative legislation, and particularly their understanding of the twin tests of necessity and proportionality. So long as the applications clearly set out in writing how they meet these tests, **there is no formal legal requirement, or indeed any requirement in the revised Code or guidance, for DPs to write bespoke comments in support of each request prior to approval.** The act of approving a CD request certifies that the DP has confirmed their belief that the application is both necessary and proportionate.

6. However, to strengthen further the Service's position on CD applications against any potential future legal challenge, and to continue to improve the quality of the requests we are making, **the warrantry team would now advise DPs to consider adding comments to specific requests if these comments might add anything of value to the investigative record, over and above the case made in the application.** In such cases, comments should be as brief and to-the-point as possible, and made simply to illustrate the DP's thinking in either supporting or rejecting an application. **the warrantry team** would recommend that DPs consider adding brief comments in the following scenarios, e.g.:

- when rejecting an application, to confirm why the request has been rejected;
- when approving large applications with potential for larger collateral intrusion, [REDACTION]
- to add comments in support of the urgency of a particular application;
- to clarify or add any relevant and supportive factors not reflected in the applicant's case;
- where there is unusual interference with privacy or unusual collateral intrusion;
- where data has been requested and collected over a longer period than normal;
- when the request relates to a member of a sensitive profession (as above).

7. **The warrantry team** will seek to update the above-referenced official guidance on CD applications to reflect this advice for DPs, and to provide examples of where/when/why to add comments, in the coming weeks.

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