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[REDACTED]
Legal Officer
Privacy International

BY EMAIL ONLY

[REDACTED]

23 November 2022

Dear [REDACTED]

RE: USE OF IMSI CATCHERS BY LAW ENFORCEMENT

I am conscious I owe you a response to your letter regarding the alleged use of IMSI catchers by law enforcement. I apologise for the delay.

I have read with interest:

- your report on IMSI catchers¹;
- the first witness statement of Ailidh Callander dated 18 April 2019²;
- the decision of the First Tier Tribunal in *Privacy International v The Information Commissioner and Police and Crime Commissioner For Warwickshire* (EA/2018/0170)³;
- the decision of the First Tier Tribunal in *Privacy International v The Information Commissioner and Commissioner of Police for the Metropolis* (EA/2018/0164)⁴; and
- your reasons for not pursuing an appeal in the above cases⁵.

I must start by thanking Privacy International for their contribution to public debate regarding the privacy implications of IMSI catchers. The existence of such equipment is not in dispute, however, UK law enforcement has adopted a 'neither confirm nor deny' ('NCND') stance in relation to their use. As you are aware, this position has been upheld by the Information Tribunal in the cases referred to above. It was open to Privacy International to appeal the decisions against it, but it chose not to do so.

You have asked me "to reconsider the continued reliance on the NCND position by the law enforcement" and ask me "to be more transparent surrounding the use of IMSI catchers". Whilst I have a degree of sympathy with Privacy International's position and the concerns you have raised, it seems to me that this request is seeking to revisit the decisions of the Tribunal. It is not appropriate for me to undermine the NCND position

¹ <https://privacyinternational.org/sites/default/files/2020-06/IMSI%20catchers%20legal%20analysis.pdf>

² <https://privacyinternational.org/sites/default/files/2019-09/Ailidh%20Callander%20Witness%20Statement%20-%20redacted.pdf>

³ [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2577/Privacy%20International%20EA.2018.0170%20\(18.02.20\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2577/Privacy%20International%20EA.2018.0170%20(18.02.20).pdf)

⁴ [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2576/Privacy%20International%20EA.2018.0164%20\(18.02.20\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2576/Privacy%20International%20EA.2018.0164%20(18.02.20).pdf)

⁵ <https://privacyinternational.org/long-read/3925/information-tribunal-decisions-re-imsi-catchers-loss-transparency-and-why-we-will>

of law enforcement and the decisions of the Tribunal upholding this. If Privacy International was not satisfied with the outcome of the cases, the appropriate avenue of challenge was to appeal those decisions to the Upper Tribunal.

Notwithstanding this, I am very happy to confirm the regulatory framework which would apply to the use of IMSI catchers, were they to be used by law enforcement in the UK. You will understand why I say I am unable to confirm nor deny such use due to the decisions of the Information Tribunal, combined with my statutory obligations in s.229(6) and (7) Investigatory Powers Act 2016 ('IPA').

Your report on IMSI catchers identifies that the term 'IMSI catchers' may apply to equipment that has a number of capabilities. For simplicity, I will also use the term 'IMSI catchers'. You suggest that 'IMSI catchers' may be used in two main ways – i) to acquire communications data such as an IMSI or IMEI; and ii) to intercept communications.

Let me first address the issue of interception. The interception of communications without lawful authority in the UK is a criminal offence under s.3 IPA. It therefore is clear that, were law enforcement to conduct such activity in the UK, it would require lawful authority as defined in s.6 IPA – specifically, it would require an interception warrant issued personally by the Secretary of State and approved by a Judicial Commissioner. Given that it is no secret that UK law enforcement have the capability to intercept communications through compelling a telecommunications operator to do this by serving them with an interception warrant, it is not clear to me why UK law enforcement would wish to use the resource intensive process of deployment of an IMSI catcher to effect the same outcome.

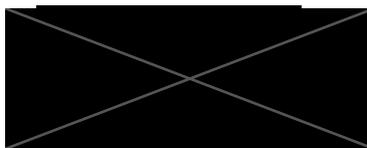
The regulatory framework that would apply to the use of an IMSI catcher to acquire communications data would require a targeted equipment interference warrant issued under Part 5 of the IPA by a law enforcement chief and approved by a Judicial Commissioner. Such a warrant could only be issued where it was necessary on one of the statutory grounds, such as the prevention and detection of serious crime, and where the deployment of any equipment was proportionate. Any proportionality assessment would need to take into account the location of the deployment and arrangements for mitigating any collateral intrusion and safeguarding any product obtained.

For completeness, I should mention that it would be possible to acquire communications data using an IMSI catcher under an interception warrant as an alternative, but it would not be proportionate to issue such a warrant in circumstances where the purpose was simply to acquire communications data rather than the content.

I hope my confirmation of the legal framework that would apply to the use of IMSI catchers in the UK, which would include the need for approval by a Judicial Commissioner (other than in urgent cases), allays Privacy International's concerns that such equipment could be used without proper oversight or for the purpose of monitoring those simply attending lawful protests.

We touched on this when we met last week, but if you require any further information then please do not hesitate to get in touch. However, for the reasons given above regarding my statutory obligations, I will maintain the NCND position of law enforcement on this matter and consider this issue *res judicata*.

Yours sincerely,

A black rectangular box with a white 'X' drawn across it from corner to corner, used to redact the signature of the Investigatory Powers Commissioner.

The Rt. Hon. Sir Brian Leveson
The Investigatory Powers Commissioner