

IPCO

Investigatory Powers
Commissioner's Office

Disclosing information to IPCO

**Guidance for those who want to disclose information
about the use of investigatory powers**

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Introduction from the Investigatory Powers Commissioner

My office is committed to investigating concerns that are raised in relation to the unlawful use of investigatory powers.

These concerns can relate to an incident that has happened at any time in the past, that is happening now, or may happen in the future.

Persons making disclosures are a vital source of information when it comes to identifying and tackling wrongdoing of all kinds. They are a part of effective oversight. Any such disclosure will be handled with appropriate confidentiality by my office.

Disclosing information to IPCO can have significant benefits for the public interest: this is not only by identifying circumstances in which the use of investigatory powers might have gone beyond the confines of the legislation but also to help secure full compliance with the law.



Sir Brian Leveson
Investigatory Powers Commissioner

1: Raising a concern with IPCO under the Investigatory Powers Act 2016

- 1.1 In the context of this policy, a disclosure of information to the Investigatory Powers Commissioner's Office (IPCO) is when an individual provides IPCO with relevant information that they believe reveals wrongdoing. Anyone who feels they have relevant information can contact IPCO, whatever their background.
- 1.2 A disclosure of information can be made to IPCO about any matter within the scope of the Investigatory Powers Commissioner's (IPC) functions. These are set out in the Investigatory Powers Act 2016 ('the Act').
- 1.3 For example, a person may wish to raise concerns regarding:
- a Public Authority's acquisition of communications data;
 - the way in which a Public Authority has handled material acquired through interception or equipment interference;
 - how a Public Authority has been carrying out covert surveillance or using covert human intelligence sources;
 - a telecommunication operator's handling of communications data requests; or
 - a Public Authority's acquisition of bulk personal data.
- 1.4 Providing relevant information to IPCO helps us to counter wrongdoing and to promote the proper, effective, and efficient operation of the powers we oversee. If you believe that wrongdoing is occurring, please consider reporting it.

2: What is "relevant information"?

- 2.1 You can contact IPCO about any functions which are carried out by Public Authorities and which fall within the remit of the IPC's responsibilities.
- 2.2 The following are examples of what can be reported:
- the unlawful use of Investigatory Powers;
 - a failure to put in place or comply with the relevant safeguarding requirements;
 - a failure to comply with the law or codes of practice in relation to the use of Investigatory Powers;
 - the provision of information which could result in the mistreatment of a detainee; or,
 - unauthorised participation in criminal activity.

Example: you suspect your organisation has failed to comply with safeguarding requirements under the Investigatory Powers Act 2016 relating to information it has obtained through use of investigatory powers. When you raised this internally, no or insufficient action has been taken. This would be an appropriate time to provide information to IPCO.

2.3 The IPC's main oversight functions are set out in section 229 of the Act. However, the IPC also has other oversight functions including:

- a requirement to keep under review the carrying out of any function by an intelligence service, a head of an intelligence service or any part of the Armed Forces or Ministry of Defence engaging in intelligence activities included in a direction of the Prime Minister. Current directions include:
 - oversight of compliance with “The Principles relating to the detention and interviewing of detainees overseas and the passing and receipt of intelligence relating to detainees”; and
 - oversight of compliance with the Security Service Guidelines on the use of agents who participate in criminality and the authorisations issued in accordance with them;
- error reporting.

2.4 A full list of the IPC's functions can be found on the IPCO website.

2.5 A disclosure complaint may be made in relation to any matter that falls within the ambit of the IPC's functions referred to above or other oversight functions that may be delegated to the IPC.

3: Who can provide information to IPCO?

3.1 Anyone can provide relevant information to IPCO. It could be someone working for a Public Authority, a communications service provider or a member of the public.

4: Will I break the law if I provide information to IPCO?

4.1 You may be concerned that contacting IPCO would breach obligations of confidentiality (for example to your employer) or be contrary to the Official Secrets Act 1989. IPCO's information gateway (set out in section 237 of the Act) ensures **this is not the case**, provided that the information you share with us is for the purposes of the IPC's functions. This provides persons making disclosures with appropriate protection when contacting us.

5: What is not “relevant information”?

5.1 The protection afforded by IPCO's information gateway does not apply to concerns that are solely of a personal nature as such matters do not fall within the IPC's functions. These matters should be dealt with using the relevant internal procedures.

5.2 Examples of issues which should not be reported to IPCO can include,

- personal grievances or employment issues;
- ethical or moral concerns; or

- situations where an employee feels certain actions of their organisation are against their personal beliefs but are permitted by law.

6: How do I make a disclosure?

- 6.1 If you believe that you hold 'relevant information' and you decide to make a disclosure, you can contact us through one of the following channels:
- email info@ipco.org.uk including your contact details. You should make it clear in the subject line of your email that you wish to raise a concern;
 - call our main office number (0207 389 8900);
 - write to us at:
Investigatory Powers Commissioner's Office,
PO Box 29105,
London,
SW1V 1ZU
 - should you wish to do so, you may contact known IPCO personnel using a government accredited secure IT system if you have access to such a system.
- 6.2 If you believe that the information you wish to provide is classified or particularly sensitive, you must contact us before sending this so that we can advise you how to share such information securely.
- 6.3 Please confirm how you would like us to contact you. We will assign your case to a named individual within IPCO.
- 6.4 Your identity will be kept in strict confidence and only disclosed with your consent unless there are exceptional circumstances. Examples of these might include where action is required to safeguard national security, where you (or someone else) might be at risk of harm, or for the prevention and detection of crime. All information disclosed to us will be held and processed only in accordance with applicable data protection legislation.

7: What will happen after I make a disclosure?

- 7.1 We will acknowledge receipt of your correspondence and will consider the information you have provided. This will normally involve us undertaking an initial assessment of the information. We may then need to speak to you directly to obtain additional information. This could include seeking details from you of any other resolution process you may have pursued. We may also suggest a meeting in person.
- 7.2 In instances where we decide that an investigation into the matters raised is required, an IPCO inspector will conduct a review and will prepare a report for consideration by the IPC or another Judicial Commissioner. We will continue to treat your disclosure in confidence.
- 7.3 As part of an investigation, the IPC or another Judicial Commissioner may decide that any of the following are required:
- making particular enquiries of the Public Authority concerned;

- making a referral to a separate body to enable it to conduct an investigation; and
 - carrying out an inspection as part of the IPCO oversight regime.
- 7.4 We will normally consult you before making any referral to an external organisation, unless there are exceptional time critical circumstances. These would include where there is a threat to national security or life, or of harm to an individual, or to avoid the commission of a criminal offence.
- 7.5 The fact that an issue might have been considered by another organisation will not normally prevent IPCO from investigating. However, we may postpone any investigation until an outcome has been reached by the other organisation.
- 7.6 We will seek to keep you informed of the progress and, if relevant and appropriate, we will notify you of the conclusion of any investigation undertaken into the information you have provided. A summary of how your disclosure will be handled is set out in Annex A.
- 7.7 IPCO does not perform the role of an ombudsman and is therefore unable to determine individual complaints. We will, however, use any information provided to inform the discharge of our oversight and ensure Public Authorities are compliant with relevant legislation. IPCO is unable to award compensation as a result of any disclosures made.

8: Frequently Asked Questions

Can I make an anonymous disclosure?

Yes. You may choose to raise concerns anonymously, i.e. without providing your name. Wherever possible we encourage individuals to provide personal details as it will enable a more focused and effective investigation.

However, it is better to raise a concern anonymously than to remain silent about wrongdoing. All concerns, whether anonymous or not, that are raised will be investigated so far as possible, unless these appear to IPCO to be frivolous or vexatious. IPCO will record for future reference concerns that cannot be validated.

Should I make a complaint to the Investigatory Powers Tribunal (IPT) or raise concerns with IPCO?

The IPT can consider complaints about any interference which you believe has taken place against you, your property or communications. This includes interception, surveillance and interference with property. If a complaint is within the jurisdiction of the Tribunal and is not deemed to be 'frivolous' or 'vexatious' or out of time (see Regulation of Investigatory Powers Act 2000 (RIPA) subsections 67(4) and (5)) or other express determination by the Tribunal, it has a duty to investigate that complaint and, following that investigation, to decide upon it by applying the same principles as a court on an application for judicial review. Further information on the role of the IPT can be found via their website - www.ipt-uk.com and they can be contacted at info@ipt-uk.com.

IPCO has responsibilities for ensuring Public Authorities' compliance with the relevant legislation. It does not have the same functions as the IPT.

I am a contractor/not employed directly by a public body or telecommunications company – can I make a disclosure to IPCO?

Yes. If you are aware of any misuse of investigatory powers then you can raise your concerns with IPCO.

I am a member of the public – can I provide information to IPCO?

Yes. If you are a member of the public you can provide 'relevant information' to IPCO. However, if you or a family member have been affected by the use of investigatory powers this is not the right process to use. Instead, complaints of this nature should be referred to the IPT – see www.ipt-uk.com. A referral to the IPT does not prevent you from also providing information to IPCO.

My employer has an internal policy for whistle-blowing – do I have to use that first?

You should consider your employer's internal policy as it might be that your employer can resolve your concerns locally. However, if for any reason you feel unable to use internal procedures then you can provide 'relevant information' direct to IPCO. Examples of where this might be appropriate are where:

- you reasonably believe that you will be subjected to detriment by your employer if you make a disclosure to them; and/or
- you reasonably believe that evidence might otherwise be destroyed or concealed.

Will I be told of the final outcome of my disclosure?

If it is appropriate, you will be notified of the outcome of our consideration of the information you have provided. In any event, we will inform you when we have concluded any investigation.

Will you inform my employer of my disclosure?

Your identity will be kept in strict confidence unless you provide your consent for us to disclose this or where there are exceptional circumstances. Examples of these are where action might be required to safeguard national security, where you (or someone else) might be at risk of harm, or for the prevention and detection of crime. All information disclosed to us will be held and processed only in accordance with applicable data protection legislation.

Annex A

The process for making a disclosure to IPCO is as follows:

1. Initial contact

Individual wanting to make a disclosure contacts IPCO. We will obtain further details and inform the individual whether this falls within our remit as soon as reasonably practicable.



2. Collection of further details

On the basis of the information provided to IPCO, a decision may be taken that the matters raised fall within the IPC's statutory functions. A face-to-face meeting may be conducted to enable a candid discussion regarding the concerns raised and to draw IPCO's attention to any relevant supporting paperwork.



3. Review of allegations

IPCO's Legal and Inspectorate teams will provide a view on the allegations and advise whether the matter merits further investigation.



4. Investigation

A formal investigation of the matters raised may then be carried out, which would normally be during the course of a routine inspection unless earlier action is required (e.g. due to the seriousness).



5. Recommendations to the Investigatory Powers Commissioner

The responsible Inspector will submit a report to the IPC, who will determine the response to the findings.



6. Notification of decision

The affected individual will be notified that the investigation has been concluded. If appropriate, they will be informed of the IPC's decision.