4 June 2021

Sir Brian Leveson, Investigatory Powers Commissioner
Investigatory Powers Commissioner's Office
Via email only: info@ipco.org.uk

Re: Use of IMSI catchers by law enforcement

Dear Sir Leveson,

We write to you regarding the use of international mobile subscriber identity-catchers (often referred to as IMSI catchers) by law enforcement and the lack of transparency surrounding their use.

We are concerned that IMSI catchers are often deployed in secret, without a clear legal basis, and without the safeguards and oversight mechanisms applied to other surveillance technologies under international human rights law. PI believes that more transparency is required surrounding the use of IMSI catchers, especially as it can be used for mass surveillance.[1]

We would like to ask you to reconsider the continued reliance of police forces on the exceptions contained in the Freedom of Information Act (FOIA) 2000 to maintain their neither confirm nor deny ('NCND') position in relation to IMSI catchers. We urge you to disclose further information on the use of IMSI catchers by law enforcement due to its intrusive impact on the public. Additionally, we would like you to provide us with the regulatory framework governing their use.

[1] https://privacyinternational.org/report/3965/imsi-catchers-pis-legal-analysis

In this letter we set out our ongoing concerns regarding the use of IMSI catchers and propose to schedule a meeting with you to discuss these issues further.

Key issues surrounding the use of IMSI catchers

PI believes that IMSI catchers are an enormous invasion of individuals' right to privacy – they trick *all* mobile phones within a certain area into giving up information about their owner – even during what the police might describe as 'targeted' operations. It is also difficult to see how their use could ever comply with international human rights standards, due to their indiscriminate nature. IMSI catchers can interfere with a right to free expression, free assembly and free association. For example, the government can use IMSI catchers at political gatherings and protests to identify and collect the personal data of those in attendance. By combining phone data with other information, the government can also start to track them and build up a profile about them. Furthermore, PI maintains that the use of IMSI catchers is very problematic, considering their intrusive nature and the negative impact this can have on protests and over-policing of ethnic minorities.[2] Despite these issues, the police refuse to disclose what they do with this data, how long they keep it or who they might share it with.

PI's action in relation to IMSI catchers

As you may be aware, PI has been trying to shed light on the use of IMSI catchers by law enforcement in the UK for a while now. Starting with two freedom of information requests PI submitted to the Police and Crime Commissioner for Warwickshire and the Commissioner of Police for the Metropolis (The Metropolitan Police) in October 2016, PI eventually brought two appeals before the Information Rights Tribunal against the UK Information Commissioner (IC) as it upheld the police forces' decision to withhold information in relation to the use of IMSI catchers.[3] In December 2019, the Information Rights Tribunal found in favour of the IC and

[2] https://privacyinternational.org/news-analysis/3926/ethnic-minorities-greater-risk-oversurveillance-after-protests, https://chicago.cbslocal.com/2014/12/06/activists-say-chicago-police-used-stingray-eavesdropping-technology-during-protests/

[3] In October 2016, PI submitted freedom of information requests to two police forces seeking for further information on the use of IMSI catchers by law enforcement. However, both bodies applied exemptions to withhold the case itself. PI challenged the bodies' reliance on NCND and their application of exemptions by requesting an internal review. Upon internal review, each of the bodies upheld their initial decisions. PI then challenged those decisions by appealing to the Information Commissioner (IC). In July 2018, the IC issued its decisions. The IC deemed the police forces freedom of information responses generally sufficient, and most troublingly, allowed a number of police forces to maintain a neither confirm nor deny (NCND) position in relation to whether they used IMSI catchers. Eventually, PI brought two appeals before the Information Rights Tribunal against the UK Information Commissioner. The appeals challenged the decisions by the Information Commissioner (IC), concerning responses

dismissed PI's claims. Whilst the decisions of the Tribunal have been disappointing, we decided not to appeal them further and have explained our reasons on our website.[4]

PI's ongoing concerns regarding police forces' NCND position

PI believes that the public interest in maintaining the NCND position with regard to IMSI catchers is outweighed by the public interest in confirming or denying that the requested information was held. This is particularly due to the potential for arbitrary and indiscriminate use of this intrusive technology and the need for informed public debate. Such reasoning has implicitly been acknowledged in the avowal of other surveillance methods in the past, including mobile phone extraction[5] and predictive policing[6].

PI also believes that the decision to continue to maintain the NCND position is contradictory, considering the reporting and publication of documents in relation to PI's appeals to the Information Rights Tribunal.[7] Our witness statement[8] set out in detail information in the public domain about IMSI catchers, including public reporting about police force purchase and/or use of IMSI catchers, and public reporting about IMSI catchers more generally. Numerous reputable and varied sources have previously reported on the use of IMSI catchers, including the Guardian, the Times, Sky News, BBC, the Telegraph, the Intercept, the Bristol Cable, Vice News and Motherboard. Our witness statement, which was published on our website, also set out information about public authorities that have confirmed their purchase and/or use of IMSI catchers, and confirmation by police forces in the UK of purchase and/or use of other surveillance technology and disclosure of relevant records. In light of such wide-ranging public disclosure of information, maintaining the NCND position is unrealistic.

by the Police and Crime Commissioner for Warwickshire and the Commissioner of Police for the Metropolis (The Metropolitan Police) to PI's freedom of information requests about police use of IMSI catchers

[4] https://privacyinternational.org/report/3965/imsi-catchers-pis-legal-analysis

[5] https://privacyinternational.org/report/1699/digital-stop-and-search-how-uk-police-can-secretly-download-everything-your-mobile

[6] https://www.libertyhumanrights.org.uk/issue/policing-by-machine/

[7] Privacy International v The Information Commissioner's Office, First Witness Statement of Ailidh Callander available at: https://privacyinternational.org/sites/default/files/2019-09/Ailidh%20Callander%20Witness%20Statement%20-%20redacted.pdf

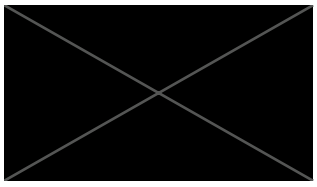
[8] Ibid.

During the tribunal hearing, we were supported in our arguments by evidence from experts at the American Civil Liberties Union (ACLU)[9] in the US and the Society for Civil Rights (Gesellschaft für Freiheitsrechte – GFF) in Germany[10], where much more stringent transparency requirements relating to IMSI catchers are in place. PI used this evidence to support our argument that more transparency is both possible and compatible with the protection of national security. We are particularly disappointed with the Tribunal's assessment of the evidence provided by PI, both in terms of the information in the public domain and comparative frameworks, as well as the heavy reliance on closed evidence, to which PI is not party.

PI believes that the intrusive and unregulated use of IMSI catchers, creates a chilling effect on civic society and infringes on our right to privacy, freedom of expression, and freedom of assembly and association, as guaranteed under international human rights law. As a result, we urge you to reconsider the continued reliance on the NCND position by the law enforcement and ask you to be more transparent surrounding the use of IMSI catchers.

Considering the above, we would like to schedule a meeting with you, at your earliest convenience, to discuss this issue further.

We look forward to hearing from you.



Legal Officer, Privacy International



Cc  Programme Director, Privacy International, 

[9] Privacy International v The Information Commissioner's Office, First Witness Statement of Nathan Freed Wessler available at: https://privacyinternational.org/sites/default/files/2019-09/Nathan%20Wessler%20Witness%20Statement%20-%20redacted.pdf

[10] Privacy International v The Information Commissioner's Office, First Witness Statement of Ulf Buyermeyer available at: https://privacyinternational.org/sites/default/files/2019-09/Ulf%20Buermeyer%20Witness%20Statement%20-%20redacted.pdf