

# **PUBLIC CONSULTATIONS**

## **Acquisition and Disclosure of Communications Data**

### **Investigation of Protected Electronic Information**

**Scrambling For Safety 8 - 14 August 2006**

**No. 1**

# Acquisition and Disclosure of Communications Data

- Consultation on a draft statutory Code of Practice for Part I Chapter II of RIPA
- Legislation in operation since January 2004
- Pre-consultation with industry and interest groups
- Addresses concerns of Parliament
- Takes account of actual practice
- Has provided standard for IOCCO inspection

# Investigation of Protected Electronic Information

- Consultation on a draft statutory Code of Practice for Part III of RIPA (and additional sentencing power)
- Legislation on statute book since 28 July 2000
- Never any intention to implement provisions without a Code approved by Parliament
- Draft seeks to address Parliament's concerns
- Cannot take account of actual practice

# Investigation of Protected Electronic Information

- Why now?
- Protected data in higher profile investigations
- Readily available and easier-to-use products
- Integrated features in more mass-market products

# Investigation of Protected Electronic Information

- Part III will not ....
- .... introduce key escrow
- .... create any new powers to obtain information
- .... replace need for law enforcement to have an effective accredited computer forensic capability
- .... detract from existing law enforcement tactics, techniques and tradecraft

# Investigation of Protected Electronic Information

- “... it is not reasonably practicable ... to obtain possession of the protected information in an intelligible form without the giving of a notice”
- Investigatory objective is intelligible information.
- .... It's NOT access to keys!

# Investigation of Protected Electronic Information

- Protected information is electronic data which:
  - .... without a key cannot be accessed. Once accessed that data could be random data.
  - .... without a key cannot be put into an intelligible form. That's not random data. It is for the prosecutor to prove beyond reasonable doubt that the data could be put into an intelligible form.

# Investigation of Protected Electronic Information

- Whose keys might be “under threat”?
- Suspects of crime (invariably individuals and not firms) from whom protected information is seized.....

....and decline to make it intelligible



# Investigation of Protected Electronic Information

- Which public officials can permit a requirement for the disclosure of a key?
- Only Chief Police Officers, Director General of SOCA, the Commissioners of HMRC or a Brigadier (or equiv.) in HM Forces – requirement must be notified to Chief Surveillance Commissioner. No other public officials.

# Investigation of Protected Electronic Information

- Any failure to knowingly comply with a notice will ....
- require prosecutor to show beyond reasonable doubt that defendant was in possession of a key to the protected information before being given the notice
- defendant can simply raise an issue to show he/she was not in possession of a key – and prosecutor has to prove the contrary beyond reasonable doubt

# Investigation of Protected Electronic Information

- Additional consultation question.....
- Terrorism Act 2006 amended section 53 to provide distinct sentencing power where unmet disclosure was necessary in the interests of national security
- Government gave a commitment to Parliament in debate on the Sexual Offences Act 2003 to consult on amending section 53 to provide for additional sentencing power where offender has previous or concurrent conviction for possession of indecent images of children

# Investigation of Protected Electronic Information

Imposing requirements on individuals to disclose protected information in an intelligible form or to disclose a key to access or make sense of that data – which must be necessary and proportionate in the specific circumstances – is a part of the difficult balance that Government has to strike between protecting the public and respecting the human rights of individuals.

# Public Consultations – What next?

- Twelve-week consultation period ends 30 August
- Not an absolute deadline
- Will consider responses and, so far as possible, take into account stakeholders views
- Will publish summary of responses and revised Codes
- Codes of practice will only be brought into force upon affirmative resolution of both Houses of Parliament
- Debates? Later this year. In force? Early next year.

# **Simon Watkin**

## **Covert Investigation Policy Team**

### **Home Office**

 [simon.watkin@homeoffice.gsi.gov.uk](mailto:simon.watkin@homeoffice.gsi.gov.uk)