

Mr Simon Watkin  
Access to communications data consultation  
Home Office  
Room 732  
50 Queen Anne's Gate  
London SW1H 9AT

15 May 2003

*Dear Mr. Watkin*

**ACCESS TO COMMUNICATIONS DATA – RESPECTING PRIVACY AND PROTECTING THE PUBLIC**

I am responding on behalf of the Health and Safety Commission to your consultation paper on access to communications data. The Commission wishes to express its strong support for renewed powers for the Health and Safety Executive (HSE) to access communications data. Without the continuing ability to obtain such data there will be cases each year when workers or members of the public may be left at risk of serious harm, or inspectors will not be able to properly investigate possibly serious offences.

The Commission recognises that the kind of powers discussed in the consultation paper represent a degree of interference with people's privacy that should be countenanced only when it is absolutely necessary in the public interest, and proportionate to the harm inspectors are trying to prevent. Such powers should be subject to strong safeguards in the form of procedures for authorisation and recording of decisions to access communications data; and independent scrutiny of enforcing authority decisions will be essential to maintaining public confidence that such powers are properly used.

HSE currently uses powers under section 20 of the Health and Safety at Work etc Act 1974 in order to obtain communications data. It does so in accordance with the principles of necessity and proportionality outlined above. HSE estimate that they use their powers in this way in relatively few cases each year, perhaps on between 50 and 100 occasions.

For example, HSE inspectors need access to telephone data in order to trace unregistered gas fitters who have left dangerous work behind them putting people's lives at risk from carbon monoxide poisoning or explosion. Unfortunately some of these rogue gas fitters try to conceal their tracks, leaving only a first name and mobile phone number. HSE inspectors request the full name and address from the telephone service provider so they can investigate, and consider issuing a Prohibition Notice in order to prevent further risk. Similar concerns can arise in relation to other kinds of contractor, sometimes involving risks from asbestos, as the consultation paper indicates.

Inspectors may also need to establish by accessing communications data whether mobile telephone useage was a factor leading to a railway signal being passed at danger, which can lead and has led to serious railway accidents. Mobile telephone use may also be a factor in creating risks to trackside workers.

When HSE exercises its powers in order to access communications data it is carrying out its responsibilities in ways which are firmly within the remit given to it under the Health and Safety at Work Act. If HSE is excluded from an Order under RIPA giving renewed and more explicit powers, its continued ability to help protect people is likely to be seriously hampered in some cases. A major question would exist about whether HSE's current powers would be compatible with the Human Rights Act. Exclusion from the Order would be expected to diminish HSE's capacity to carry out its statutory role.

The proposed renewal of HSE's powers in this regard would parallel the recent renewal under RIPA of HSE powers to undertake 'directed surveillance', in the infrequent cases it is necessary. HSE welcomed independent scrutiny of decisions to authorise 'directed surveillance'. This kind of external scrutiny provides important assurances to society that a proper balance between the right to privacy and the right to life is being maintained. HSE would similarly welcome external scrutiny of the way in which it exercised renewed powers to obtain communications data.

The Commission notes the proposals for additional safeguards designed to give further assurance that powers will be properly exercised. Specifically, the consultation paper (chapter 3, paragraph 49) suggests certification of processes and prior approval of authorisations by an independent third party, perhaps the Office of the Interception of Communications Commissioner. It would be important that any such additional measures should work with a minimum of bureaucracy and without undue delay to properly justified investigations; as mentioned above HSE investigations may help prevent serious injury, ill-health or death.

In summary, the Health and Safety Commission would be very concerned if HSE's ability to access communications was ended with the result that some people each year would be at greatly increased risk of harm, and possibly serious offenders could go unpunished.

*Yours sincerely*



**Mark Dempsey**  
**Commission Secretary**