**United Kingdom response to the Office of the High Commissioner for Human Rights’ Request for Information on the Right to Privacy in the Digital Age**

The United Kingdom has one of the strongest legal and regulatory frameworks governing the use of intelligence in the world. Our responses to this questionnaire detail the precise nature of that framework and the elements which it contains.

Above all we believe that the use of secret intelligence and the gathering of information using state surveillance should be carried out in a proportionate and non-arbitrary manner, with legitimate purpose, in accordance with the rule of law and with effective oversight.

We carry out all such activity in accordance with our international human rights obligations. Although in some countries secret intelligence is used for political repression and state control, which we deplore, in the UK we have used it to protect our rights and freedoms and to promote human rights. We firmly support the right to freedom of expression and a free media. These beliefs underpin all our activities around surveillance and the gathering and use of intelligence.

We appreciate that there will be public debate around these issues but need to strike the right balance between public accountability and the protection of national security. Similarly whilst all our activities place the importance of privacy at the forefront of any decisions, we seek to balance the importance of protecting individual freedom with our duty to safeguard the public and ensure national security.

The responses below set out very clearly the system of oversight which exists in the United Kingdom, both for ensuring that intelligence is gathered and used in a proportionate way and that complaints are dealt with in a fair and transparent manner. This also sets out clearly the role of our democratically elected Parliament in providing oversight.

We are very happy to set out in clear detail the UK’s system of authorisation and oversight and to provide further information where necessary. We would encourage other Governments to take a similarly open and transparent approach to detailing their governance mechanisms and to support the general principles around transparency, the rule of law, and oversight.

What measures have been taken at **national level** to ensure respect for and protection of the right to privacy, including in the context of digital communication?

**LEGISLATION**

UK has a strong system of democratic accountability and oversight that governs the use of secret intelligence. UK intelligence agencies work under robust legal framework that ensures their work is necessary, proportionate and reasonable. The key domestic legislation governing this are

* **The Human Rights Act 1998**.
* **The Security Service Act 1989.**
* **The Intelligence Services Act 1994.**
* **The Regulation of Investigatory Powers Act 2000.**

**Human Rights Act (HRA) 1998**

The HRA gives fully effect in UK law to the European Convention on Human Rights (ECHR). Under the ECHR, the tests of legality, legitimate aim, necessity and proportionality apply to all of the Intelligence Agencies’ activities where they have the potential to interfere with an individual’s right to privacy (Article 8). Under the Human Rights Act 1998, it is unlawful for the Intelligence Agencies (as public authorities) to act in a way that is incompatible with the rights set out in the ECHR.

**Intelligence Services Act (ISA) 1994**

The ISA sets out the functions of the Secret Intelligence Service (SIS) and the Government Communications Headquarters (GCHQ). The Act is compliant with the ECHR and the HRA. It sets out the legal framework governing the issue and review of warrants, the procedure to investigate complaints about the SIS and GCHQ and established the Intelligence and Security Committee within Parliament to scrutinise UK intelligence work.

**Security Service Act (SSA) 1989**

The SSA sets out the functions of the Security Services. This Act is also compliant with the ECHR and the HRA. It sets out the legal framework for the issuing and review of warrants, establishes an independent Commissioner to have oversight of the Security Services work and sets out the procedure to investigate complaints.

**Regulation of Investigatory Powers Act 2000 (RIPA)**

RIPA ensures that investigatory techniques used by the Intelligence Agencies are compatible with the Human Rights Act. The regulatory framework governs the interception of communications and the acquisition and disclosure of communications data; surveillance and the use of covert human intelligence sources and the investigation of data protected by encryption or passwords.

**INDEPENDENT OVERSIGHT**

**Commissioners:** The work of the intelligence agencies is subject to review by two independent judicial Commissioners – the Intelligence Services Commissioner and the Interception of Communications Commissioner. Both Commissioners must have held high judicial office and they report directly to the Prime Minister. They review the work the of the intelligence agencies to ensure that they are fully compliant with the law.

**Parliament:** The Intelligence and Security Committee of Parliament (ISC) was established in 1994 by the Intelligence Services Act to examine the policy, administration and expenditure of the intelligence agencies. In 2013, their role was strengthened under the Justice and Security Act by providing the committee greater powers to request information and increasing its remit to including oversight of operational activity and the wider intelligence and security activities of Government. The ISC is independent of government. Its members are appointed by Parliament and the Committee reports directly to Parliament, not the government.

**CONCLUSION**

UK domestic legislation ensures that consideration of privacy is at the forefront of any decision the intelligence services make. The UK takes great care to balance individual privacy with our duty to safeguard the public and national security.

To intercept the content of any individual’s communications, the UK intelligence services would need a warrant signed personally by Foreign Secretary, the Home Secretary, or by another Secretary of State. The issuing of a warrant would be decided on the basis of detailed legal advice and have robust oversight from two independent commissioners and a committee of Parliament.

What measures have been taken to establish and maintain independent, effective domestic **oversight mechanisms** capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and collection of personal data?

The UK has one of the world’s strongest legal and regulatory frameworks governing the use of secret intelligence. This includes:

* **Authorisation from a Secretary of State**
* **The Interception of Communications Commissioner**
* **The Intelligence Services Commissioner**
* **The Intelligence and Security Committee of Parliament (ISC)**
* **The Investigatory Powers Tribunal.**

The UK continually monitors these oversight mechanisms to see where we can make further improvements to an already robust system. The Prime Minister has stated that as technology develops and the threats we face evolve, we need to ensure that the scrutiny and frameworks over the use of intelligence remains strong and effective.

**The Interception of Communication Commissioner**

The role of the Interception of Communications Commissioner was established under the Regulation of Investigatory Powers Act (RIPA) in 2000. The current Commissioner is Sir Anthony May.

The Interception of Communications Commissioner provides independent judicial oversight of the intelligence agencies to ensure they act in accordance with their legal responsibilities when intercepting communications and when acquiring/disclosing communications data. The Commissioner also reviews the role of the Secretary of State in issuing interception warrants.

The Commissioner is required to make an annual report to the Prime Minister on the work of the intelligence agencies. In his most recent report in April 2014, Sir Anthony May looked in detail at the necessity and proportionality of intercept activities in the internet age and concluded that UK legislation remains fit for purpose. He stated ‘emphatically’ that the agencies do not engage in indiscriminate or random intrusion on a mass scale. His report – which breaks from tradition by being entirely public – underlined that the United Kingdom has one of the most robust systems of checks and balances for secret intelligence work anywhere in the world.

Sir Anthony May’s 2014 report can be found at: <http://www.iocco-Uk.info/docs/2013%20Annual%20Report%20of%20the%20IOCC%20Accessible%20Version.pdf>)

**The Intelligence Services Commissioner**

The role of the Intelligence Services Commissioner is also independent from government and for the Commissioner must previously have held a senior judicial appointment. The current Commissioner is Sir Mark Waller.

Sir Mark Waller oversees the use of intrusive powers by the intelligence services, such as interference with property or intrusive surveillance. Like the Interception Commissioner, Sir Mark Waller is also required to make an annual report to the Prime Minister on the work of the intelligence agencies. In his report last year, he concluded that “the intelligence services are fully aware of their obligations. My dealings with staff at all levels of the organisations have shown them to have integrity and honesty and they actively welcome oversight of the system.” The full report can be found at the below link. His next report is due to be published in May 2014.

<http://isc.intelligencecommissioners.com/docs/Intelligence%20Services%20Commissioner%202013%20V8%20WEB.pdf>.

**The Intelligence and Parliamentary Oversight**

The Intelligence and Security Committee of Parliament (ISC) was established in 1994 by the Intelligence Services Act to examine the policy, administration and expenditure of the intelligence agencies. In 2013, their role was strengthened under the Justice and Security Act by providing the committee greater powers to request information and increasing its remit to including oversight of operational activity and the wider intelligence and security activities of Government. The ISC is independent of government. Its members are appointed by Parliament and the Committee reports directly to Parliament, not the government.

The ISC is currently conducting a privacy and security inquiry into the laws which govern the intelligence agencies’ access to private information and the broader question of an appropriate balance between privacy and security in an internet age. The Committee has invited written submissions evidence on this enquiry, including from the public, and will follow these up later in the year with oral evidence.

**Investigatory Powers Tribunal**

The IPT is an independent body established in October 2000 under RIPA. The IPT looks at any complaint about the use of intrusive powers used by intelligence services in relation to individuals, property or communications. The IPT website can be found at the below link.

<http://www.ipt-uk.com/>

What measures have been taken to **prevent violations** of the right to privacy, including by ensuring that relevant national legislation complies with the obligations of Member States under international human rights law?

The UK is fully committed to meeting its obligations under international human rights law. Promoting these values is a key priority of the British Government both at home and abroad.

The UK’s domestic legislation covering the work of the intelligence agencies is fully compliant with international human rights law. The Human Rights Act gives effect in UK law to the European Convention on Human Rights (ECHR). Under the ECHR, the tests of legality, legitimate aim, necessity and proportionality apply to all of the Intelligence Agencies’ activities where they have the potential to interfere with individuals’ right to privacy (Article 8).

Article 8 is a qualified right under the ECHR and may be interfered with in certain circumstances, including to prevent disorder or crime; for the protection of health or morals; and for the protection of the rights and freedoms of others. Under the Human Rights Act 1998, it is unlawful for the Intelligence Agencies (as public authorities) to act in a way that is incompatible with the rights set out in the ECHR.

In addition, the Regulation of Investigatory Powers Act (RIPA) ensures that techniques used by the Intelligence Agencies are compatible with the Human Rights Act. RIPA governs the interception of communications and the acquisition and disclosure of communications data; surveillance and the use of covert human intelligence sources and the investigation of data protected by encryption or passwords.

The work of the intelligence agencies, and its compatibility under domestic and international law, is subject to overview from the Intelligence Services Commissioner, the Interception of Communications Commissioner and the Intelligence and Security Committee of Parliament. Any complaint from a member of the public can be put directly to the Investigatory Powers Tribunal.

In his most recent report to Parliament, Sir Anthony May, the Interception of Communications Commissioner, looked directly at the issue of deliberate violations of the right to privacy by the intelligence agencies. After a thorough investigation, he concluded “Unlawful and unwarranted intercept intrusion of any kind, let alone “massive unwarranted surveillance”, is not and, in my judgment, could not be carried out institutionally within the interception agencies themselves. The interception agencies and all their staff are quite well aware of the lawful limits of their powers. Any form of massive, unwarranted intercept intrusion would, as a minimum, require a significant unlawful internal conspiracy which would never go undetected, let alone be concealed from external observation or inspection.”

What specific measures have been taken to ensure that procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, **are coherent with the obligations** of Member States under international human rights law?

The UK is fully committed to meeting its obligations under international human rights law. Promoting these values is a key priority of the British Government both at home and abroad.

The UK’s domestic legislation covering the work of the intelligence agencies is fully compliant with international human rights law. The Human Rights Act gives effect in UK law to the European Convention on Human Rights (ECHR). Under the ECHR, the tests of legality, legitimate aim, necessity and proportionality apply to all of the Intelligence Agencies’ activities where they have the potential to interfere with individuals’ right to privacy (Article 8).

Article 8 is a qualified right under the ECHR and may be interfered with in certain circumstances, including to prevent disorder or crime; for the protection of health or morals; and for the protection of the rights and freedoms of others. Under the Human Rights Act 1998, it is unlawful for the Intelligence Agencies (as public authorities) to act in a way that is incompatible with the rights set out in the ECHR.

In addition, the Regulation of Investigatory Powers Act (RIPA) ensures that techniques used by the Intelligence Agencies are compatible with the Human Rights Act. RIPA governs the interception of communications and the acquisition and disclosure of communications data; surveillance and the use of covert human intelligence sources and the investigation of data protected by encryption or passwords.

The work of the intelligence agencies, and its compatibility under domestic and international law, is subject to overview from the Intelligence Services Commissioner, the Interception of Communications Commissioner and the Intelligence and Security Committee of Parliament. Any complaint from a member of the public can be put directly to the Investigatory Powers Tribunal.

Any other information on the protection and promotion of the right to privacy in the context of domestic and extraterritorial surveillance and/or interception of digital communications and collection of personal data.

The UK has one of the most robust legal frameworks and democratic accountability of any secret intelligence anywhere in the world. To interfere with an individual’s right to privacy would require a warrant from one of the most senior members of the Government; would be decided on the basis of detailed legal advice and have robust oversight from two independent commissioners and a committee of Parliament.

Our agencies practise and uphold UK law at all times, including when dealing with information from outside the United Kingdom. Any data obtained by us from other countries are subject to the same UK statutory controls and safeguards, including the relevant sections of the Intelligence Services Act, the Security Services Act, the Human Rights Act 1998, and the Regulation of Investigatory Powers Act.