Local Government Association

Safer and Stronger Communities Board

15 September 2014

Local authority use of communications data

Purpose

For information.

Summary

This paper updates the Board on recent developments relating to the use of communications data.

Recommendation

The Board note the developments outlined in this report.

Action

Officers to progress the development of evidence to the review of communications data and interception powers.

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Background

1. The Board will recall that councils were given access to communications data (that is, telephone and internet subscriber and billing information) under the Regulatory Investigations Powers Act (RIPA). This data is used to track down counterfeiters, organised gangs exploiting vulnerable people and some types of environmental crime. Subsequent amendments to these powers mean that councils have been the only body that must also gain approval from a magistrate before accessing this data.

2. In 2012, Government introduced the draft Communications Data Bill; following publication of the Bill, it became clear that government expected councils to make a business case as to why they should continue to access communications data. As drafted, the Bill would have removed this power, although there was also provision for a specific Order to be made that enabled councils to retain access to this data.

3. Despite extensive lobbying by the LGA in 2012 and early 2013, the Government appeared at the time to reject the case for councils and fire and rescue authorities to retain access to data. However, as the draft Bill was subsequently dropped the immediate risk of losing access to the data passed. The LGA has subsequently been monitoring the situation in order to make the case for councils and FRAs to retain access to this data should the issue arise again.

Issues

4. In July, Parliament passed an emergency piece of legislation, the Data Retention and Investigatory Powers Act 2014 (DRIP), governing the retention of communications data. This follows a decision in the European court that invalidated the legislation requiring data providers to retain this information. The Act also amended the process of accessing the data. This data will now only be accessible for all organisations under RIPA, through an order of the court or other judicial warrant or authorisation.

5. DRIP will be followed by an Order in Autumn restricting the list of organisations that can access communications data. While a number of public bodies will lose the right to access communications data, including the Food Standards Agency, Environment Agency, BIS and DEFRA, the LGA's lobbying during the passage of the Communications Data Bill has successfully ensured that councils will retain the right to access communications data.

6. However, in order to do so, councils will be required to use the National Anti-Fraud Network (NAFN) for their SPOC (quality control) functions, to ensure consistency and quality in requests to access the data. Since NAFN is a council venture to which some 80% of councils are already signed up, we consider this to be an acceptable approach.

7. Officers are currently working with officials from the Home Office to consider an acceptable transition period to the new requirements, in order to enable those councils not currently signed up to NAFN to do so.

8. DRIP also created a statutory obligation for the government to commission a review into communications data and interception powers, in advance of the general election. David Anderson QC, the Independent Reviewer of Terrorism Legislation had been asked to lead a reviewing considering:

    8.1 the capabilities and powers required by law enforcement and the security and intelligence agencies, and
    8.2 the regulatory framework within which those capabilities and powers should be exercised.

9. As part of the review, the LGA has been asked to provide evidence on: the threats and risks councils are dealing with and how they use communications data to address them; our assessment of these issues projected into the future; the alternatives to using communications data and interception; and the balance between councils' need for communications data and interception with minimising intrusions into personal privacy.

10. We are currently reviewing the evidence collated during the initial passage of the Communications Data Bill to ensure it is up to date and will submit this to the review in due course. Additionally, at the suggestion of the review team, we also intend working with the Association of Chief Trading Standards Officers to host a roundtable to discuss our evidence to the review.

Next steps

11. Members are asked to note these developments.

Financial Implications

12. None.