

## **WRITTEN EVIDENCE FROM FREEDOM FROM MR ROCKIANO LAYBOURN**

**(IPA0002)**

This submission will focus on point eight in the call for evidence, ‘Does the bill give rise to any other significant human rights concerns?’ In the wake of escalating concerns among the public regarding perceived governmental authoritarianism and encroachments on privacy—a sentiment experienced in my personal interactions with friends, family, and associates—this submission aims to present evidence that will guide the committee's amendment process so the aims of the bill will be achieved whilst adhering to European law and avoiding causing further public fear and distress. The primary argument for this submission is that the bill should increase transparency over data collection/usage and improve communication concerning how rights are protected. In doing so, this submission will detail some key findings, concisely summarise three recommendations for the inquiry to consider and explain those recommendations including the practical solutions this committee can implement.

### **Key Findings**

All key findings are interrelated to the proceeding recommendations and are highly relevant to this inquiry. Firstly, there has been a widespread growth in distrust of any proposal to increase government power and/or surveillance. This can be seen through anti-lockdown protesters, the anti-ULEZ camera sentiment, growing concern over a cashless society and concerns over ‘15-minute cities’. Although criticism of these policies can sway factual or conspiratorial, many media outlets actively engage in sensationalising these issues. The Investigatory Powers Act could be caught in a similar line of feeding public outrage and causing discontent if the amendments are not communicated correctly. There is a clear need for legislation governing data collection powers to be continuously renewed to avoid outdated terminology and conceptions of what constitutes as ‘data.’ Evolving concepts of data and technological advancements were some of the key drivers behind this act due to the Regulation of Investigatory Powers Act needing significant updates. This committee should not only consider how they can effectively update the legislation at present but, also consider policies that would address technological advancements in the future. Previously, opponents to this act argued it was too state-centric and would violate individual privacy rights. People were fearful regarding what protections they have against violations of their individual privacy. Incorporating other trusted institutions such as the judiciary, alongside safeguards

against privacy violations would have increased public confidence in this legislation and the government. Finally, through the rulings of the ECHR and the European Court of Justice, this act does not comply with European law. Civil liberties groups will contest the act in court again if amendments are not undertaken to make the Investigatory Powers Act compliant with European law. In accordance with these findings, these are the recommendations this submission proposes:

- Make various amendments to improve the communication of the bill and increase transparency over how/when the data will be used.
- Establish a technical advisory board and sunset clauses to ensure legislation is regularly updated to reflect the current technological and security climate.
- Remove warrant powers given to the secretary of state instead, empowering independent judges to oversee warrant agreements and legally scrutinise safeguard violations.

## **Recommendations**

1. Enhancement of Communication and transparency. Government agencies have acknowledged bulk data collection (as stated in the act) has previously been practised. One purpose of the act was to reconstruct this unregulated practice into a practice which is regulated and transparent. Without effective communication of this purpose, the act will raise other significant human rights concerns. The Act risks exacerbating existing human rights concerns, already exemplified in other policy areas (such as '15-minute cities'), regarding state overreach and encroachment on individual freedoms. Amendments can address this issue by adhering to the theme of increasing data usage transparency as the purpose for the act, including a plain language summary detailing what individual rights are protected and regular public transparency reports including how/what data has been used and its effectivity in crime prevention. Additionally, the inquiry should consider changing the short title of the act to 'Transparency of Investigatory Powers Act.' Through these amendments, the act would better communicate its purpose and would decrease the chances of heightening public concern over state surveillance. Enhancing transparency and fostering clear communication would not only boost public confidence but serve as a preventive measure against the emergence of other significant human rights concerns.

2. Establishment of a technical advisory board and sunset clauses. Conceptions and utilities of digital data are constantly evolving. Previously, legislation on this subject has overlooked how legislation can evolve with technological change. The absence of provisions for legislative evolution in step with technological advancements risks leading government agencies to revert to unregulated practices until new legislation is enacted. To avoid legislation on this subject becoming obsolete due to technological change, two amendments can be made to continuously resolve this pattern. Firstly, establishing a technical advisory board (a board of experts to regularly review and advise on technical aspects of the act) would ensure the content of the act is effective and relevant in the context of the latest technological developments. Alongside this would be sunset clauses to mandate parliamentary review and renewal of the act allowing parliament to consider the relevance and effectivity of the legislation. The establishment of a technical advisory board, coupled with the implementation of sunset clauses, would enable the legislation to remain dynamic, responsive, and effective in the face of rapid technological change and evolving security challenges. It would also enhance the accountability and transparency of the surveillance powers granted by the Act, ensuring they are continually justified and necessary.
  
3. Empowering judges to oversee warrant agreements and safeguard privacy violations. In the context of diminished public trust in government, the act must seek legitimacy through trusted and impartial institutions. Previously, when the bill was undergoing scrutiny, the predominant concern was government agencies using individual's data to such an extent it would cause significant violations of privacy. This situation underscores the necessity to bolster the checks and balances framework within the act, through a non-state-centric institution. One recommendation to achieve this is by shifting warrant authorisations away from the secretary of state to independent judges. Judges can provide a more impartial review of warrant applications which aims to ensure decisions authorising surveillance are based solely on legal criteria and the principles of necessity and proportionality. Coinciding with this is the recommendation to increase the power of judges to scrutinise violations against privacy safeguards. This shift would further safeguard against potential misuse or overreach in the use of surveillance powers. By involving the judiciary, the process gains an additional layer of protection for individual rights and freedoms.

Collectively, these recommendations aim to improve the safeguarding of individual rights and freedoms by ensuring that decisions regarding state surveillance are made by impartial and legally trained judges, free from political influence. This would represent a significant move towards a more balanced and rights-respecting approach to national security and surveillance.

Thank you for considering my submission. I am willing to provide references on request. If there is anything else I can do to help, do not hesitate to contact me.

*(15 January 2024)*