

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Additional Estimates Hearing February 2017

Prime Minister and Cabinet Portfolio

Department/Agency:	Office of the Inspector-General of Intelligence and Security
Outcome/Program:	Outcome 1
Topic:	ASIS Operations
Senator:	Xenophon
Question reference number:	81
Type of question:	Written
Date set by the committee for the return of answer:	13 April 2017
Number of pages:	37
Question:	<p><i>Can you advise how Australia's system of oversight compares with those of our allies? Specifically, who in the USA would be your counterpart? Who would it be in Canada, New Zealand or the UK? Further, what powers do you not have that your counterparts may have? Conversely, if there are powers that you have that your counterparts do not have, that would be of interest. Do you meet formally or informally with your counterparts in other countries?</i></p> <p><i>Finally, going back to the question of the economic wellbeing issue under section 11(1) of the Intelligence Services Act: if a potential ASIS operation is considered to advance the economic wellbeing of an Australian owned, or majority Australian owned, firm, can that be a sufficient criterion to also deem it to be in the interests of the economic wellbeing of Australia in the context of section 11, subsection (1), of the Intelligence Services Act?</i></p>

Part A- international counterparts

The international intelligence oversight bodies which perform broadly comparable functions to the Australian Inspector-General of Intelligence and Security (IGIS), and with which the IGIS is in most regular contact are drawn primarily from Canada, New Zealand, the United Kingdom and the United States.

Prior to 1997, Australia's dealings with intelligence oversight bodies from these countries were conducted on a bi-lateral and *ad hoc* basis.

In late 1997, the then Australian IGIS, Mr Ron McLeod AM, organised and hosted the inaugural International Intelligence Review Agencies Conference (IIRAC), with a view to sharing information with comparable bodies about intelligence oversight activities, identifying current trends, sharing

best practice models, exploring possible collaboration through concurrent inspection activities, and developing international collegial bonds with like-minded colleagues.

Invitations were issued to intelligence oversight bodies and to Parliamentary/Congressional intelligence oversight committees from the five-eyes (FVEY) group of countries, as well as to South Africa, which at that time was looking to establish an intelligence oversight capability as it emerged from the apartheid era.

IIRAC's were held on a roughly bi-annual basis from 1997 until 2014, with hosting responsibilities being rotated amongst those countries which attended the inaugural IIRAC. The host country was also responsible for issuing invitations as it saw fit. This saw the number and range of countries which attended the bi-annual IIRAC significantly expand, to include participants and observers from western and central Europe, Scandinavia, Africa and Asia.

IIRAC was due to be held in the United States in 2016 but did not proceed due to concerns that IIRAC had deviated significantly from its founding principles, and due to the wide and diverse range of participant countries, lacked coherence and focus.

In lieu of IIRAC, IGIS attended a meeting of intelligence oversight bodies in Washington D.C. in September 2016, drawn from the FVEY countries, to discuss interest in establishing a smaller body, of agencies with shared values and interests, close in concept to the original IIRAC. Following that meeting a proposal has been developed to establish a Five-Eyes Intelligence Oversight Review Council (FIORC).

Work is continuing to develop a charter for the proposed FIORC, with frequent electronic contacts between council members proposed to occur on issues of common interest, supplemented by an annual face-to-face meeting. It is intended that the FIORC involve the heads of intelligence oversight agencies but not include members of parliamentary/congressional oversight committees.

A list of those agencies which have indicated an interest in participating in the proposed FIORC, a short description of their functions and powers, and details of how their powers compare to the Australian IGIS is provided in a series of FIORC agency summary sheets which have been provided separately as supporting material to this response (refer to [Attachment A](#)). The information contained in these summary sheets has been supplied by the FIORC agencies themselves rather than by the Australian IGIS and is briefly summarised below.

Powers and responsibilities of FIORC agencies

It appears that most FIORC agencies possess non-binding recommendatory powers, rather than determinative powers, while all FIORC agencies monitor their decisions/recommendations for acceptance and implementation.

Most FIORC agencies have mandatory public reporting requirements, which entail some form of consultation with the agency being the subject of the report. The purpose is to ensure that the public disclosure of material in the report would not be contrary to the nation's security interests, or to protect individual privacy.

Most FIORC agencies also appear to have procedures for formal receipt of public interest disclosures (that is complaints of a 'whistle-blowing' nature), and to put in place special protections against the unnecessary or inappropriate disclosure of the identity of the whistle-blower.

Most FIORC agencies also have strong coercive investigative powers, including the power to:

- conduct their investigations and/or hearings in private
- issue formal notices
- compel individuals to attend hearings,
- compel the production of documents, and
- require witnesses to answer questions truthfully.

Powers of United Kingdom, Canada and New Zealand FIORC agencies

In summary, the powers and responsibilities of the Australian IGIS have more in common with the oversight arrangements of the FIORC agencies of the United Kingdom, Canada and New Zealand than with the arrangements in the United States. FIORC agencies in United Kingdom, Canada and New Zealand possess broadly similar powers, even allowing for their different mandates and areas of interest, and the different constitutional bases of the countries in which these intelligence oversight agencies operate.

The heads of the FIORC agencies in these jurisdictions are generally independent statutory office holders, who hold term-limited positions and who can only be removed from their positions in extreme circumstances, by processes akin to those employed for the removal of a senior judicial appointee.

The Australian IGIS, and the Canadian, New Zealand and UK FIORC agencies have the following powers with respect to the agencies they oversee:

- the right of access to relevant agency records
- the right of access to agency premises
- the right of access to agency ICT systems.

Intelligence oversight in the United States

The system of intelligence oversight in the United States is substantially different to the arrangements in Australia, Canada, New Zealand and the United Kingdom and involves both Congressional and Executive oversight. That oversight extends well beyond the intelligence area¹ relevantly however, the United States Congressional and Senate Intelligence Oversight Committees have substantial powers to investigate and review the operational activities of the intelligence and security agencies within their remit. The Senate Select Committee on Intelligence and the House Permanent Select

¹ The Inspector General Act of 1978 as amended (the IG Act) "establishes offices of inspectors general in many federal agencies as well as defines the IG as the head of each of these offices. The act assigns to the IG specific duties and authorities, including the authority 'to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office.' "; *Federal Inspectors General: History, Characteristics and Recent Congressional Actions*, Ginsberg and Greene, Congressional Research Service June 2 2016.

Committee on Intelligence each oversee the entire Intelligence Community comprising 17 government agencies

The United States entity which is most directly involved in the FIORC forum is the Inspector-General of the Intelligence Community (IC IG). The website for the Office of the Director of National Intelligence² states that:

The IC IG is responsible for conducting IC-wide audits, investigations, inspections, and reviews that identify and address systemic risks, vulnerabilities, and deficiencies that cut across IC agency missions, in order to positively impact IC-wide economies and efficiencies.

The IC IG sits at the apex of, and has a coordinating role for the Inspectors-General embedded in the oversight division of each of the United States intelligence and security agencies. The IC IG reports to the Director of National Intelligence. While IC IG and the Inspectors-General have very wide ranging powers, their focus is largely on promoting economy, efficiency, and effectiveness, and preventing and detecting fraud and misuse of public money, rather than on matters of legality and propriety. These Inspectors-General report (internally) to their respective agency heads, and may also have obligations to Congress. It appears that, at least in some, if not all, cases the staff is drawn from the relevant agency and the necessary independence must be managed internally. For example the CIA website refers to the CIA Inspector-General being³,

one of management's most important tools to identify and recommend corrections of inefficiencies and shortcomings in the CIA's operations, and yet the OIG must remain sufficiently independent of management to be in a position to provide objective, candid advice.

Comparison of powers of the FIORC agencies

Our analysis of the FIORC agency summary sheets, and research conducted in the preparation of this response, have not identified any additional or specific powers which the Australian IGIS does not currently have which the agencies most analogous to this office currently possess.

Powers which other FIORC agencies have, which the Australian IGIS does not possess include the power of the Canadian Security Intelligence Review Committee (SIRC) to conduct investigations into denials of security clearances. In Australia the Security Division of the Administrative Appeals Tribunal, rather than the IGIS, performs this function in relation to ASIO's adverse security assessments made under Part IV of the *Australian Security Intelligence Organisation Act 1979*, in respect of employees or potential employees in positions of trust which require them to hold and/or maintain a current security clearance.

Part B – economic well being

This question asks: *if a potential ASIS operation is considered to advance the economic wellbeing of an Australian owned, or majority Australian owned, firm, can that be a sufficient criterion to also deem it to be in the interests of the economic wellbeing of Australia in the context of section 11, subsection (1), of the Intelligence Services Act.*

² <https://www.dni.gov/index.php/about/organization/office-of-the-intelligence-community-inspector-general-who-we-are>

³ <https://www.cia.gov/offices-of-cia/inspector-general/careers.html>

I refer to my answer to question 79. As explained there, the first issue to be addressed in relation to an ASIS operation is whether the operation is within ASIS's overall functions as set out in s 6(1) of the Act, relevantly, to collect intelligence *in accordance with the Government's requirements*. The 'government requirements' are articulated in the national intelligence priorities set by the National Security Committee of Cabinet. Once satisfied that the proposed intelligence collection operation is within ASIS's functions because it is to meet a national intelligence priority, the next step it to be satisfied that collection for that purpose is not constrained by s 11. In other words, the functions to be performed must be "in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being".

As noted in the response to question 79, the practical reality is that all of the matters articulated in the national intelligence priorities and in the collection requirements set out under them pertain to one or more of the three categories in s 11(1), namely, Australia's national security; Australia's foreign relations or Australia's national economic well-being. That being so, once I am satisfied that an operation is being conducted to meet one or more of the specified national intelligence priorities I can also be satisfied that the limits in s11 are not exceeded. The role of ASIS is to produce intelligence in accordance with the requirements of the Australian government. The use of that intelligence is then a matter for government.

FIORC AGENCY SUMMARY SHEET

Country: AUSTRALIA

Agency: Inspector-General of Intelligence and Security

Acronym: IGIS

Agency Head: The Hon. Margaret Stone

Size of agency: 1 statutory appointee, 15 full time equivalent on-going staff and
2 secondees

Term of office: 24 August 2015 – 23 August 2020

Website: <http://www.igis.gov.au>

Enabling law: *Inspector-General of Intelligence and Security Act 1986*
(IGIS Act)

Link to statute: <https://www.legislation.gov.au/Details/C2016C00991>

Scope/reach: The IGIS is an independent statutory office holder, who is appointed for a term of up to five years. The position is term limited in that no person can be appointed as IGIS more than twice (s.26 of the IGIS Act).

The Office of the IGIS (OIGIS) sits within the Prime Minister's portfolio for administrative purposes, but it is not a part of the Department of the Prime Minister and Cabinet.

OIGIS is funded through separate budget appropriations and recruits and employs its own staff, each of whom are required to hold and maintain the highest level security clearances.

Role/Functions:

The role of the IGIS is to assist Ministers who have executive responsibility for Australia's six designated intelligence and security agencies, through overseeing the activities of these agencies to ensure that they act with legality, propriety and in a manner which is consistent with human rights obligations (s.4 of the IGIS Act).

The IGIS seeks to do this by carrying out regular inspections of the activities of the designated agencies, by undertaking inquiries as necessary or appropriate, and through investigating complaints. The IGIS also has a special role in receiving, allocating and/or investigating disclosures of information made under the *Public Interest Disclosure Act 2013* (<https://www.legislation.gov.au/Details/C2016C01130>).

Powers:

The IGIS Act provides authority for the IGIS to exercise the following powers:

- Enter any place where a person is being detained pursuant to a questioning and detention warrant issued to the Australian Security Intelligence Organisation (s.9B, IGIS Act)
- When conducting an inquiry for the purposes of the IGIS Act, obtain such information from such persons, and make such inquiries, as the IGIS thinks fit (s.17(2), IGIS Act)
- Issue a notice, in writing, requiring a person to produce documents relevant to the matter being inquired into (s.18(1), IGIS Act)

- Copy and retain documents for such period as is necessary for the purposes of an inquiry (s.18(2), IGIS Act)
- Issue a notice, in writing, requiring a person to attend before the IGIS, to answer questions in relation to the matter being inquired into (s.18(2), IGIS Act)
- Administer an oath or affirmation to a person required to attend before the IGIS (s.18(4), IGIS Act)
- A person is not excused from producing a document, or answering a question when required to do so by the IGIS when doing so would contravene the provisions of another Act, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty (s.18(6), IGIS Act)

The powers of the IGIS are limited as follows:

- The IGIS may not inquire into a matter relating to an Australian government agency that occurred outside Australia, or before the commencement of the IGIS Act (i.e. 1 February 1987), without the approval of the Prime Minister, or the responsible Minister (s.9AA(a), IGIS Act)
- Except in limited circumstances, the IGIS must not inquire into actions taken by a Minister (s.9AA(b), IGIS Act)
- The IGIS must not inquire into decisions made by ASIO, which are, or could be, subject to review by the Security Division of the Administrative Appeals Tribunal (s.9AA(c), IGIS Act).

FIORC AGENCY SUMMARY SHEET

Country: CANADA

Agency: Office of the Communications Security Establishment
Commissioner

Acronym: OCSEC

Agency Head: The Honourable Jean-Pierre Plouffe

Size of Agency: 1 Governor in Council appointee, an Executive Director,
10 on-going staff and contractors when needed

Term of Office: 18 October 2013 to 17 October 2018

Website: <https://www.ocsec-bccst.gc.ca/en>

Enabling law: *National Defence Act*, RSC 1985, c N-5, Part V.1 (NDA)

Link to statute: <http://laws-lois.justice.gc.ca/eng/acts/n-5/page-53.html#h-223>

Scope/reach: The Commissioner is appointed by the Governor in Council for a term of not more than five years. The Commissioner must be a supernumerary or retired judge of a superior court (ss. 273.63(1) of the NDA).

OCSEC is an external, independent review body with its own budget appropriation from Parliament. The Commissioner provides reports to the Minister of National Defence (who is accountable to Parliament for the Communications Security Establishment) but the Commissioner's office is separate from, and not part of, the Department of National Defence. The Commissioner has the independent authority to hire staff, including experts and advisors, subject only to the approval of rates of pay by the Treasury Board of Canada.

Role/Functions: The Commissioner's mandate is to review the CSE's activities to determine whether they comply with the law. CSE is Canada's national cryptologic agency, responsible for foreign signals intelligence collection and information technology security for the Government of Canada (<https://www.cse-cst.gc.ca/en>). In response to a complaint, the Commissioner may undertake any investigation he considers necessary. He is also to inform the Minister of National Defence and the Attorney General of Canada of any CSE activities that the Commissioner believes may not be in compliance with the law (ss. 273.63(2) of the NDA).

The Commissioner must submit a public annual report on his activities and findings to the Minister of National Defence, who must then table it in Parliament, within a legislated timeframe. Classified reports on the Commissioner's reviews of CSE activities are also submitted to the Minister of National Defence. These reports contain findings and recommendations. The Commissioner's recommendations are non-binding, but are monitored for acceptance and implementation.

Under section 15 of the *Security of Information Act*, the Commissioner also has a mandate to receive information from persons who are permanently bound to secrecy if they believe it is in the public interest to release special operational information of CSE (<http://laws-lois.justice.gc.ca/eng/acts/O-5/index.html>).

Powers:

The powers of the Commissioner are described in Part II of the *Inquiries Act* (<http://laws-lois.justice.gc.ca/eng/acts/I-11/index.html>) (ss. 273.63(4) of the NDA). The Commissioner may:

- a) enter into and access any public office or institution;
- b) examine all papers, documents, vouchers, records and books of every kind belonging to the public office or institution;
- c) summon any person and require the person to give evidence, orally or in writing, and on oath or solemn affirmation; and
- d) administer an oath or affirmation to a person required to give evidence (s.7 of the *Inquiries Act*).

The Commissioner may also issue a subpoena or other request or summons, requiring any person therein named to:

- a) appear at the time and place mentioned therein;
- b) testify to all matters within his knowledge relative to the subject-matter of an investigation; and
- c) bring and produce any document, book or paper that the person has in his possession or under his control relative to the subject-matter of the investigation (s. 8 of the *Inquiries Act*).

FIORC AGENCY SUMMARY SHEET

Country: CANADA

Agency: Security Intelligence Review Committee

Acronym: "SIRC" or "the Committee"

Agency Head: The Honourable Pierre Blais

Size of Agency: 5 Governor in Council appointees (part time Board Members), an Executive Director and approximately 25 other staff members, and contractors as needed.

Term of Office: Term of office for the Honourable Pierre Blais is May 1, 2015 – May 1, 2020.

Website: <http://www.sirc-csars.gc.ca/index-eng.html>

Enabling law: *Canadian Security Intelligence Service Act*, RSC 1985, c C-23, Part III (*CSIS Act*)

Link to statute: <http://laws-lois.justice.gc.ca/eng/acts/C-23/index.html>

Scope/reach: The Chairperson is appointed by the Governor in Council, on the recommendation of the Prime Minister, who has consulted with the Leader of the Opposition in the House of Commons and the Leader in the House of Commons of each party having at least twelve members in that House. The Honourable Pierre Blais was so appointed, pursuant to section 34 of the *CSIS Act*, as Chairperson of SIRC on May 1, 2015, for a term of five years.

SIRC is an external review body that reports to the Parliament of Canada, but functions independently as a department, with its own budget. Under the *CSIS Act*, SIRC must submit an annual report to the Minister of Public Service and Emergency Preparedness no later than September 30. The Minister must then table SIRC's report in Parliament within 15 days in which the House is sitting. However, SIRC is separate from, and not part of, the Department of Public Safety and Emergency Preparedness. Pursuant to section 35 of the *CSIS Act*, the Chairperson is the chief executive officer of the Committee. Management of the day to day operations is delegated to the Executive Director, who has the authority to hire staff, including experts and advisors, subject only to the approval of rates of pay by the Treasury Board of Canada.

Role/Functions: SIRC reports to the Parliament of Canada on the operations of CSIS. CSIS investigates and advises the Government of Canada on issues and activities that are, or may pose, a threat to national security. These include terrorism, the proliferation of weapons of mass destruction, espionage and foreign-influenced activity (<https://www.csis.gc.ca/index-en.php>).

SIRC exists since 1984, to provide assurance to Parliament and to all citizens of Canada that CSIS investigates and reports on threats to national security in a manner that respects the law and the rights of Canadians.

Powers:

SIRC has the absolute authority to examine all information under CSIS' control, no matter how classified or sensitive, with the exception of Cabinet confidences. This access gives SIRC a good understanding of CSIS' actions in a specific case, while allowing it to manage the inherent risk of being able to review only a fraction of the Service's activities. SIRC's functions are outlined in section 38 of the *CSIS Act* and can be summarized as follows:

- SIRC is required to submit to the Minister of Public Safety and Emergency Preparedness a certificate stating the extent to which it is satisfied with the CSIS Director's report, whether the operational activities described in the Director's report contravened the *CSIS Act* or Ministerial Direction, and whether the activities described in the report involved an unreasonable or unnecessary use of CSIS' powers. SIRC's certificate provides a high-level assessment of the compliance of CSIS' operational activities.
- SIRC conducts reviews, which are designed to provide Parliament and Canadians with the assurance that CSIS has acted appropriately, effectively and in accordance with the rule of law in the performance of its duties and functions. A Research plan is presented to the Committee for approval at the beginning of each fiscal year, with the list of reviews, which aim to provide the broadest coverage of CSIS' activities, while covering timely and topical matters.
- SIRC's reviews cover all of CSIS' key activities – targeting, warrants, human sources, etc. and program areas, including counter-terrorism, counter-intelligence, counter-proliferation and security screening. SIRC also examines CSIS' arrangements to cooperate and exchange information with foreign agencies and with domestic organizations, as well as the advice that CSIS provides to the Canadian government. In reviewing the performance by CSIS of its duties and functions, SIRC must annually review at least one aspect of CSIS' performance in taking measures to reduce threats to the security of Canada.
- SIRC conducts investigations into complaints made against CSIS and denials of security clearances. Far less frequently, SIRC conducts investigations in relation to reports made regarding the *Citizenship Act* and matters referred to it pursuant to the *Canadian Human Rights Act*. If the complaint falls within SIRC's jurisdiction, it will be investigated through a quasi-judicial hearing presided over by a Committee Member and assisted by SIRC legal counsel. All investigations are conducted in private. In relation to the investigation of any complaint, SIRC's powers, as set out in section 50 of the *CSIS Act*, include the summoning and enforcing the appearance of witnesses, to the same extent as a superior court of record; administering oaths; and

receiving evidence as the Committee sees fit, whether or not it would be admissible in a court of law.

- SIRC's reviews and investigations include findings, and where appropriate, non-binding recommendations. SIRC actively solicits CSIS' responses to its recommendations, a summary of which, edited to protect national security and privacy, is presented in an annual report to Parliament.

FIORC AGENCY SUMMARY SHEET

Country: NEW ZEALAND

Agency: Inspector-General of Intelligence and Security

Acronym: IGIS

Agency Head: Ms Cheryl Gwyn

Size of agency: 2 statutory appointees, 6 fulltime equivalent on-going staff

Term of office: 4 May 2015 – 3 May 2017

Website: <http://www.igis.govt.nz>

Enabling law: *Inspector-General of Intelligence and Security Act 1996* (IGIS Act). The IGIS Act will be superseded by the *Intelligence and Security Act 2017* on 27 September 2017.

Link to statute: <http://www.legislation.govt.nz/act/public/1996/0047/latest>
<http://www.legislation.govt.nz/act/public/2017/0010/latest>

Scope/reach: The IGIS provides oversight and review of the two New Zealand security and intelligence agencies, the New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB).

The other specialised oversight body is the Intelligence and Security Committee (ISC). The ISC is a statutory body and its members serve on the ISC in their capacity as Members of Parliament. The IGIS does not have a direct reporting relationship to the ISC, but may at any time, with the

concurrence of the Prime Minister, report either generally or in respect of any particular matter to it. The ISC may consider and discuss with the IGIS, his/her annual report as presented to the House of Representatives. The ISC is not mandated to inquire into any matter that falls under the jurisdiction of the IGIS, or any matter that is operationally sensitive, including any matter that relates to intelligence collection and production methods or sources of information, or complaints regarding the intelligence and security agencies that is capable of being investigated by another body. (*Intelligence and Security Committee Act 1996, s 6(2)*).

The IGIS and Deputy IGIS are independent statutory office holders, who are appointed for a term of up to three years. The IGIS may be reappointed only once. The protections as to grounds and process of removal are similar to those for Judges of the High Court. The Office of the IGIS receives funding, from the budget appropriation of the Ministry of Justice.

The IGIS may recruit and appoint OIGIS staff, including investigative officers, to assist in the execution of the IGIS's functions. The IGIS and Deputy IGIS and all staff of the OIGIS must hold and maintain the highest level security clearances.

The IGIS is supported by an advisory panel (established under legislation), consisting of the IGIS and two other members. The advisory panel is mandated to provide advice to the IGIS solicited and unsolicited. It can make a report to the Prime Minister if it considers a matter should be drawn to the Prime Minister's attention.

Role/Functions:

The role of the IGIS is to "assist" the responsible Minister to ensure that each intelligence and security agency for which the Minister is responsible complies with the law and acts with propriety.

The IGIS does so through a range of statutory activities:

- investigating complaints that a New Zealand person (including current and former employees of the agencies) has or may have

been adversely affected by actions or policies or practices of NZSIS or GCSB;

- conducting inquiries into the legality and/or propriety of any activities of the NZSIS or GCSB. An inquiry may be requested by the responsible Minister or the Prime Minister or commenced on the IGIS's own initiative;
- inspecting and reviewing (*ex post*) all intelligence and interception warrants and authorisations issued to the NZSIS and GCSB and, their compliance systems in relation to all operational activities (the IGIS is required to certify annually whether the agency's compliance systems are 'sound');
- conducting unscheduled audits of warrants, authorisations and compliance systems. The IGIS, under the *Protected Disclosures Act 2000*, is the designated authority to whom employees of the NZSIS and GCSB may disclose information about potential wrongdoing in a 'whistleblower' sense.

Powers:

The IGIS Act provides authority for the IGIS to exercise the following powers:

- right of access to all security records held by the NZSIS and GCSB, to their premises and to ICT systems;
- strong investigative powers akin to those of a New Zealand Royal Commission, including the power to compel persons to answer questions and produce documents and to take sworn evidence;
- it is an offence to obstruct or hinder the IGIS, to give a false or misleading statement, or without excuse resist or hinder the IGIS in the execution of powers under the IGIS Act;
- the IGIS must report publicly, both annually and in relation to each inquiry, including inquiries into complaints (with certain, privacy-related exceptions);

- the discretion to refuse to inquire into a complaint;
- at the conclusion of an inquiry, the IGIS has recommendatory powers only but can publicly report on whether recommendations have been accepted, and implemented; and
- the IGIS's proceedings, reports and findings are challengeable only for a lack of jurisdiction.

The powers of the IGIS are limited as follows:

- the IGIS must consult with the Director of the intelligence and security agency involved about the security requirements before publishing any inquiry report
- the responsible Minister may limit or restrict the IGIS's access to any information that the Minister believes may prejudice the security or defence of New Zealand, endanger the safety of any person, or prejudice information sharing and confidence of a foreign government or international organisation; and
- the IGIS cannot inquire into the propriety of actions taken by the Minister/s responsible for the intelligence and security agencies.

FIORC AGENCY SUMMARY SHEET

Country: UNITED KINGDOM

Oversight body: Interception of Communications Commissioner's Office

Acronym: IOCCO

Agency Head: Rt Hon Sir Stanley Burnton
(former Lord Chief Justice of Appeal)

Size of agency: 1 statutory appointee (as above), supported by team of 20+ inspectors and 6+ secretariat, which is shared with Office of Surveillance Commissioners, and the Intelligence Services Commissioner's Office

Term of office: 3 years

Website: <http://www.iocco-uk.info/>

Enabling law: Appointed under Part IV of the *Regulation of Investigatory Powers Act 2000* (the RIPA)

Link to statute: <http://www.legislation.gov.uk/ukpga/2000/23/contents>

Scope/reach: The Interception of Communications Commissioner is appointed within Part IV of the RIPA.

The scope and functions of the Interception of Communications Commissioner is published on the following website:

<http://www.iocco-uk.info/sections.asp?sectionID=2&type=top>

Role/Functions: The Interception of Communications Commissioner is required within statute (RIPA) to provide an annual report to the Prime Minister at the end of each year.

The Prime Minister is required to lay a copy of the Interception of Communications Commissioner's report before each House of Parliament together with a statement as to whether any matter has been excluded because it has appeared to the Prime Minister, after consulting the Commissioner, that publication of that matter would be contrary to the public interest or prejudicial to matters specified in section 58(7) of the RIPA.

The Interception of Communications Commissioner may also publish further reports to the Prime Minister as the need arises.

The functions overseen by the Interception of Communications Commissioner is published on the following website:

<http://www.iocco-uk.info/sections.asp?sectionID=2&type=top>

The Interception of Communications Commissioner is empowered to oversee and review:

- Interception of communications;
- Acquisition of communications data;
- Encryption notices issued by a secretary of state in relation to information obtained as a consequence of an interception warrant;
- Acquisition of bulk communications data;
- Interception of communications within prisons & interference with wireless telegraphy.

Powers: The Interception of Communications Commissioner has powers within Part IV of the RIPA – which enables the Commissioner to require any information from a public authority (for example, a police force or intelligence agency) to

be made available to enable or assist the Commissioner in carrying out their functions.

It is therefore the duty of every person within a public authority to comply with any request made by the Interception of Communications Commissioner to disclose or provide to the Commissioner all such documents and information as they may require to carry out their functions – see section 58(1) of the RIPA. This means that the inspection teams supporting the Interception of Communications Commissioner have full and unrestricted access to all of the information, systems and documents that they need.

Other factors concerning safeguards

The European Convention of Human Rights (“the Convention”) has had various amendments and additions made to it over the years. Article 13 of the Convention relates to the Right to an Effective Remedy -

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity

Section 65 of the RIPA sets out the role and responsibilities of the Investigatory Powers Tribunal (“the Tribunal”). This section is explicit that it is the Tribunal that is the appropriate forum for handling complaints from a person who is aggrieved by conduct such as forms of covert surveillance, the interception of their communications, or the acquisition of their communications data and which a person believes to have taken place in relation to them.

The Tribunal is a court which investigates and determines complaints which allege that public authorities or law enforcement agencies have unlawfully used covert techniques and infringed our right to privacy, as well as claims against the security and intelligence agencies for conduct which breaches a wider range of our human rights.

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

The references to a threshold for complaints dealt with by the Tribunal in the RIPA appears at:

section 65(4) and states that a person needs to be “.....*aggrieved by any conduct*.....”

section 65(5) indicates complaints must be relating to conduct within 1 year of the conducts occurrence.

section 67(4) states that a Tribunal does not have to hear complaints that are “.....*frivolous or vexatious*.....”.

Should a Commissioner establish that an individual has been adversely affected by any wilful or reckless failure by any person within a relevant public authority exercising or complying with the powers and duties under the RIPA or the other Acts relating to forms of covert surveillance, the interception of communications or the acquisition or disclosure of communications data, he shall, subject to safeguarding national security, inform the affected individual of the existence of the Tribunal and its role. The Commissioner should disclose sufficient information to the affected individual to enable him or her to effectively engage the Tribunal.

The Tribunal may request the Interception of Communications Commissioner gives all such assistance as necessary to investigate a compliant.

A complaint can only be made to the Tribunal by an affected individual.

Upcoming changes: A new Act of Parliament the *Investigatory Powers Act 2016* (“the IPA”) received *Royal Assent* late 2016, see

<http://www.parliament.uk/about/how/laws/passage-bill/lords/lrds-royal-assent>

The IPA will replace several pieces of legislation including the Regulation of Investigatory Powers Act 2000.

On the 3rd of March 2017 the Prime Minister approved the appointment of Lord Justice Fulford as the first Investigatory Powers Commissioner for a 3-year term. Lord Justice Fulford took up appointment with immediate effect.

<https://www.gov.uk/government/news/investigatory-powers-commissioner-appointed-lord-justice-fulford>.

Although the first Investigatory Powers Commissioner has been appointed (3.3.2017) commencement orders have yet to be affirmed by Parliament in relation to the various elements within the IPA itself (i.e. interception of communications; acquisition and disclosure of communications data etc.).

The various 'current' Commissioners (Interception, Surveillance and Intelligence Services) appointed under the 'still active' Regulation of Investigatory Powers Act 2000 will continue in their current roles until the end of 2017.

The Investigatory Powers Commissioner's Office (IPCO) will be set up in September 2017. The existing oversight bodies such as IOCCO, the Office for Surveillance Commissioner's and Intelligence Services Commissioner's Office will become a part of IPCO.

FIORC AGENCY SUMMARY SHEET

Country:	UNITED KINGDOM
Oversight body:	Office of Surveillance Commissioners
Acronym:	OSC
Agency Head:	Rt Hon Lord Judge (former Lord Chief Justice of England and Wales)
Size of agency:	1 statutory appointee (as above), supported by team of 20+ inspectors and 6+ secretariat, which is shared with the Interception of Communications Commissioner's Office, and the Intelligence Services Commissioner's Office.
Term of office:	3 years
Website:	http://osc.independant.gov.uk/
Enabling law:	Appointed under Part IV of the <i>Regulation of Investigatory Powers Act 2000</i> (the RIPA)
Link to statute:	http://www.legislation.gov.uk/ukpga/2000/23/contents
Scope/reach:	The Chief Surveillance Commissioner is appointed within Part IV of the RIPA. The scope and functions of the Chief Surveillance Commissioner is published on the following website:

<https://www.osc.independent.gov.uk/how-we-work/the-chief-surveillance-commissioner/>

Role/Functions:

The Chief Surveillance Commissioner is required within statute (RIPA) to provide an annual report to the Prime Minister at the end of each year.

The Prime Minister is required to lay a copy of the Chief Surveillance Commissioner's report before each House of Parliament together with a statement as to whether any matter has been excluded because it has appeared to the Prime Minister, after consulting the Commissioner, that publication of that matter would be contrary to the public interest or prejudicial to matters specified in section 58(7) of the RIPA.

The Chief Surveillance Commissioner may also publish further reports to the Prime Minister as the need arises.

The functions overseen by the Chief Surveillance Commissioner are published on the following website:

<https://www.osc.independent.gov.uk/>

The Chief Surveillance Commissioner is empowered to oversee and review:

- covert property interference
- intrusive surveillance
- directed surveillance
- covert human intelligence sources
- protected electronic information

Powers:

The Chief Surveillance Commissioner has powers within Part IV of the RIPA – which enables the Commissioner to require any information from a public authority (for example, a police force or intelligence agency) to be made available to enable or assist the Commissioner in carrying out their functions.

It is therefore the duty of every person within a public authority to comply with any request made by the Chief Surveillance Commissioner to disclose or provide to the Commissioner all such documents and information as they

may require to carry out their functions – see section 58(1) of the RIPA. This means that the inspection teams supporting the Chief Surveillance Commissioner have full and unrestricted access to all of the information, systems and documents that they need.

Other factors concerning safeguards

The European Convention of Human Rights (“the Convention”) has had various amendments and additions made to it over the years. Article 13 of the Convention relates to the Right to an Effective Remedy -

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity

Section 65 of the RIPA sets out the role and responsibilities of the Investigatory Powers Tribunal (“the Tribunal”). This section is explicit that it is the Tribunal that is the appropriate forum for handling complaints from a person who is aggrieved by conduct such as forms of covert surveillance, the interception of their communications, or the acquisition of their communications data and which a person believes to have taken place in relation to them.

The Tribunal is a court which investigates and determines complaints which allege that public authorities or law enforcement agencies have unlawfully used covert techniques and infringed our right to privacy, as well as claims against the security and intelligence agencies for conduct which breaches a wider range of our human rights.

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

The references to a threshold for complaints dealt with by the Tribunal in the RIPA appears at:

section 65(4) and states that a person needs to be “.....aggrieved by any conduct.....”

section 65(5) indicates complaints must be relating to conduct within 1 year of the conducts occurrence.

section 67(4) states that a Tribunal does not have to hear complaints that are “.....*frivolous or vexatious*.....”.

Should a Commissioner establish that an individual has been adversely affected by any wilful or reckless failure by any person within a relevant public authority exercising or complying with the powers and duties under the RIPA or the other Acts relating to forms of covert surveillance, the interception of communications or the acquisition or disclosure of communications data, he shall, subject to safeguarding national security, inform the affected individual of the existence of the Tribunal and its role. The Commissioner should disclose sufficient information to the affected individual to enable him or her to effectively engage the Tribunal.

The Tribunal may request the Interception of Communications Commissioner gives all such assistance as necessary to investigate a complaint.

A complaint can only be made to the Tribunal by an affected individual.

Upcoming changes: A new Act of Parliament the *Investigatory Powers Act 2016* (“the IPA”) received *Royal Assent* late 2016, see

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The IPA will replace several pieces of legislation including the RIPA.

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Although the first Investigatory Powers Commissioner has been appointed, commencement orders have yet to be affirmed by Parliament in relation to the various elements within the IPA itself (i.e. interception of communications; acquisition and disclosure of communications data etc.).

The various 'current' Commissioners (Interception, Surveillance and Intelligence Services) appointed under the 'still active' RIPA will continue in their current roles until the end of 2017.

The Investigatory Powers Commissioner's Office (IPCO) will be set up in September 2017. The existing oversight bodies such as IOCCO, the Office for Surveillance Commissioner's and Intelligence Services Commissioner's Office will become a part of IPCO.

FIORC AGENCY SUMMARY SHEET

Country:	UNITED KINGDOM
Oversight body:	Intelligence Services Commissioners Office
Acronym:	ISComm
Agency Head:	Rt Hon Sir John Golding (former high court judge)
Size of agency:	1 statutory appointee (as above), supported by team of 20+ inspectors and 6+ secretariat, which is shared with the Interception of Communications Commissioner's Office, and the Office of Surveillance Commissioners.
Term of office:	3 years
Website:	http://intelligencecommissioner.com/
Enabling law:	Appointed under Part IV of the <i>Regulation of Investigatory Powers Act 2000</i> (the RIPA)
Link to statute:	http://www.legislation.gov.uk/ukpga/2000/23/contents
Scope/reach:	The Intelligence Services Commissioner is appointed within Part IV of the RIPA. The scope and functions of the Intelligence Services Commissioner is published on the following website:

<http://www.intelligencecommissioner.com/content.asp?id=4>

Role/Functions:

The Intelligence Services Commissioner is required within statute (RIPA) to provide an annual report to the Prime Minister at the end of each year.

The Prime Minister is required to lay a copy of the Intelligence Services Commissioner's report before each House of Parliament together with a statement as to whether any matter has been excluded because it has appeared to the Prime Minister, after consulting the Commissioner, that publication of that matter would be contrary to the public interest or prejudicial to matters specified in section 58(7) of the RIPA.

The Intelligence Services Commissioner may also publish further reports to the Prime Minister as the need arises.

The functions overseen by the Intelligence Services Commissioner is published on the following website:

<http://www.intelligencecommissioner.com/content.asp?id=4>

The Intelligence Services Commissioner has similar powers the Chief Surveillance Commissioner (which are detailed below) but they relate specifically to the activities of the intelligence agencies:

- covert property interference
- intrusive surveillance
- directed surveillance
- covert human intelligence sources
- protected electronic information

Powers:

The Intelligence Services Commissioner has powers within Part IV of the RIPA – which enables the Commissioner to require any information from a public authority (for example, a police force or intelligence agency) to be made available to enable or assist the Commissioner in carrying out their functions.

It is therefore the duty of every person within a public authority to comply with any request made by the Intelligence Services Commissioner to disclose or provide to the Commissioner all such documents and information as they may require to carry out their functions – see section 58(1) of the RIPA. This means that the inspection teams supporting the Surveillance Commissioner have full and unrestricted access to all of the information, systems and documents that they need.

Other factors concerning safeguards

The European Convention of Human Rights (“the Convention”) has had various amendments and additions made to it over the years. Article 13 of the Convention relates to the Right to an Effective Remedy -

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FIORC AGENCY SUMMARY SHEET

Country: UNITED STATES OF AMERICA

Agency: Inspector General of the Intelligence Community

Acronym: IC IG

Agency Head: The Hon. Wayne Stone (Acting)

Size of agency: 1 Presidential appointee

Term of office: N/A

Website: <https://www.dni.gov/index.php/about/organization/office-of-the-intelligence-community-inspector-general-who-we-are>.

Enabling law: Inspector General Act of 1978 as amended (The IG Act)

Title 50 United States Code, section 3033 (50 U.S.C. § 3033)

Link to statute: 50 U.S.C. § 3033: <https://www.gpo.gov/fdsys/pkg/USCODE-2014-title50/pdf/USCODE-2014-title50-chap44-subchapl-sec3033.pdf>

Scope/reach: The IC IG is an independent statutory office, the IC IG is appointed by the United States President and confirmed by and with the advice and consent of the United States Senate.

The IC IG is independent from but administratively housed within the Office of the Director of National Intelligence (ODNI). IC IG is funded through its own budget appropriations and recruits and employs its own staff, each of

whom are required to hold and maintain the highest level security clearances.

- Role/Functions:** The role of the IC IG is to:⁴ (1) create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independent investigations, inspections, audits, and reviews on programs and activities within the responsibility and authority of the Director of National Intelligence (DNI);
- (2) provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration and implementation of such programs and activities; and to prevent and detect fraud and abuse in such programs and activities;
- (3) provide a means for keeping the DNI fully and currently informed about problems and deficiencies relating to the administration of programs and activities within the responsibility and authority of the DNI; and the necessity for, and the progress of, corrective actions;
- (4) ensure that the congressional intelligence committees are kept similarly informed of significant problems and deficiencies relating to programs and activities within the responsibility and authority of the DNI and the necessity for, and the progress of, corrective actions in the manner prescribed by law; and to
- (5) chair the Intelligence Community Inspectors General Forum, which serves as a mechanism for informing the member IGs of their respective work products, discussing questions about jurisdiction or access to individuals, documents or materials, training opportunities, and other best practices for oversight.⁵

Powers: The National Security Act of 1947 as amended provides authority for the IC IG to exercise the following powers:⁶

⁴ 50 U.S.C. § 3033(b).

⁵ 50 U.S.C. § 3033(h)(2).

⁶ 50 U.S.C. § 3033(g).

- Direct and prompt access to the DNI when necessary for any purpose pertaining to the performance of the duties of the IC IG and access to any employee or contractor of any IC element in the course of IC duties.
- Direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials related to the IG's responsibilities. The level of classification or compartmentation of information shall not, in and of itself, provide a sufficient rationale for denying the IC IG access to any materials.
- The DNI or other appropriate IC official shall take appropriate administrative actions against an IC employee or contractor that fails to cooperate with the IG which may include loss of employment or the termination of an existing contractual relationship.
- Authority to receive complaints and information from any person concerning the existence of an activity within the DNI's authorities and responsibilities which constitutes a violation of law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety.
- Authority to administer an oath from an individual with the same force and effect as if admitted by an officer having a seal.
- Issue subpoenas to non-federal governmental entities for the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in performance of IG duties. Subpoenas are enforceable in federal court in the case of contumacy or failure to obey.
- Keep confidential the names of individuals (whistleblowers) that report wrongdoing to the IC IG unless disclosure is unavoidable in the course of an IC IG proceeding.

The powers of the IC IG are limited as follows:⁷

- The DNI may prohibit the IC IG from initiating, carrying out, or completing any investigation, inspection, audit, or review if the DNI

⁷ 50 U.S.C. § 3033(f).

determines that such prohibition is necessary to protect vital national security interests of the United States.

- Not later than seven days after the DNI exercises that authority, he shall submit to the congressional intelligence committees an appropriately classified statement of the reasons for the exercise of that authority.
- At the time the statement is submitted, the DNI shall advise the IC IG and, to the extent consistent with the protection of intelligence sources and methods, provide the IC IG with a copy of the statement.
- The IC IG may submit to the congressional intelligence committees any appropriate comments on the statement of which the IC IG has notice.