



Office of Surveillance
Commissioners

ANNUAL REPORT

of the Chief Surveillance Commissioner
to the Prime Minister and
to the Scottish Ministers
for 2013-2014

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- 5.25. It is also disappointing that public authorities find such disparate levels of knowledge within the magistrates' court. This is a matter that ought to have been tackled by those responsible for their training. Most public authorities now require their Authorising Officers to have completed RIPA training before they can so act, and this is obviously good, if not essential, practice which should be no less a requirement for magistrates.

Collaborative working arrangements

- 5.26. I have commented in previous reports about the growth of collaborative arrangements, and in the past year there have been further joint ventures between police forces and councils, and the establishment of regional teams serving a wide variety of enforcement/investigative interests. My Inspectorate will continue to ensure that there is a compliant legal basis for any covert activities undertaken by these units or collaborative partnerships and that the policies and processes underpinning those activities are satisfactory.
- 5.27. Wherever possible, the annual inspection programme seeks to ensure that collaborative entities are inspected either jointly, or individually during a defined period, alongside their counterparts. By doing so, my Surveillance Inspectors can better assess those collaborative processes and corporate standards, and seek to lessen the impact of the inspection process in terms of the required engagement of key members of staff.
- 5.28. I have not had cause to inspect any private organisation that has conducted covert activity on behalf of a public authority, but I continue to reserve the right to do so as may be necessary.

Availability of senior officers

- 5.29. I acknowledge that, in these straightened times, there are heavy demands placed upon senior officers within public authorities. Nonetheless, there have been a number of occasions in the past year, in both law enforcement and other public authorities, when the Senior Responsible Officer or Chief Officer has been unavailable to meet my Inspectors. Given that they provide notice well in advance of inspection dates, I expect senior officers to make themselves available unless there are genuinely extenuating circumstances.

Social Networks

- 5.30. This is now a deeply embedded means of communication between people and one that public authorities can exploit for investigative purposes. I am reasonably satisfied that there is now a heightened awareness of the use of the tactic and the advisable authorisations under RIPA that should be considered. Although there remains a significant debate as to how anything made publicly available in this medium can be considered private, my Commissioners remain of the view that the repeat viewing of individual "open source" sites for the purpose of intelligence gathering and data collation should be considered within the context of the protection that RIPA affords to such activity.

- 5.31.** In cash-strapped public authorities, it might be tempting to conduct on line investigations from a desktop, as this saves time and money, and often provides far more detail about someone's personal lifestyle, employment, associates, etc. But just because one can, does not mean one should. The same considerations of privacy, and especially collateral intrusion against innocent parties, must be applied regardless of the technological advances. It is worth repeating something I said in my 2011-2012 report, paragraph 5.18:

“There is a fine line between general observation, systematic observation and research and it is unwise to rely on a perception of a person's reasonable expectations or their ability to control their personal data. Like ANPR and CCTV, the Internet is a useful investigative tool but they each operate in domains which are public and private. As with ANPR and CCTV, it is inappropriate to define surveillance solely by the device used; the act of surveillance is of primary consideration and this is defined at section 48(2-4) of RIPA (monitoring, observing, listening and recording by or with the assistance of a surveillance device). The Internet is a surveillance device as defined by RIPA section 48(1). Surveillance is covert “if, and only if, it is conducted in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is, or may be taking place.” Knowing that something is capable of happening is not the same as an awareness that it is or may be taking place. The ease with which an activity meets the legislative threshold demands improved supervision.”

- 5.32.** Access to social networking sites by investigators in all public authorities is something we examine on inspections. Many, particularly the law enforcement agencies, now have national and local guidance available for their officers and staff. However, many local authorities and government departments have still to recognise the potential for inadvertent or inappropriate use of the sites in their investigative and enforcement role. Whilst many have warned their staff of the dangers of using social media from the perspective of personal security and to avoid any corporate damage, the potential need for a RIPA authorisation has not been so readily explained.
- 5.33.** I strongly advise all public authorities empowered to use RIPA to have in place a corporate policy on the use of social media in investigations. Some public authorities have also found it sensible to run an awareness campaign, with an amnesty period for declarations of any unauthorised activity or where, for example, officers have created false personae to disguise their on line activities.

Common inspection findings

- 5.34.** I do not, for obvious reasons, divulge in this Report details of operations, or authorisation contents, nor comment upon the performance of individual public authorities. The inspection reports completed by my Assistant Surveillance Commissioners and Surveillance Inspectors, and endorsed by me, contain sufficient detail for the Chief Officer of each public authority to appreciate the context of the findings and any accompanying recommendations. It is, I am pleased to report, a rare occasion for remedial action not to result.