

RIPA/Surveillance Law Update

Welcome to the first of an occasional update on the latest developments in the area of surveillance law and the Regulation of Investigatory Powers Act 2000 (RIPA). Please let us have your feedback and stories for future editions.

Home Office RIPA Review

The Home Office is conducting a review of covert techniques (including surveillance and access to communications data) and the legislative framework used by the enforcement community.

The Review undertaken in 2004, by and for the police, made a number of recommendations proposing possible changes to RIPA, improving the guidance and advice available as well as reducing the bureaucratic burden and the associated costs. The Home Office has been working with LACORS and the police to develop and implement these recommendations and is holding a series of events for RIPA practitioners to discuss these issues and the development of a guide for RIPA practitioners.

The recommended audience for the event is your organisation's main RIPA practitioners and legal advisers. The event will be a mixture of interactive sessions and presentations. There is no charge for this event but delegates are encouraged to attend the event nearest to them. There's only one left .

Stirling

27th April – The Royal Hotel

Calder Event Management will be organising the event on behalf of the Home Office, supported by ACPO. Please contact Alan Smith or Nicola Hayton on 08703 828028 or email ripa@calders.org.uk

Feedback from York RIPA Review Meeting

Ibrahim Hasan attended the York meeting which was addressed by Simon Watkin, Head of Covert Policy at the Home Office, Nick Gargan, Assistant Chief Constable at Thames Valley Police, Andy Morling of the Specialist Operations Centre at the National Policing Improvement Agency and Liz Levett at York City Council. Over 75 delegates attended mainly from local authorities' regulatory services

The presentations were about the latest thinking on RIPA, the RIPA Review and also National Advice Line (see later). Many questions and concerns were raised including the different messages from the Home Office and the OSC, the inconsistencies in OSC reports

The Home Office said that they will pursue all the concerns. Their work list includes:

- The setting up of RIPA Review/Stakeholder forums throughout the UK
- More co ordination with the OSC
- More advice to local authorities through working with stakeholders
- More clearer guidance and revision of the codes of practice

The view of all the speakers was that local authorities need to be more robust and proactive in doing covert surveillance. In their view, not all surveillance required a RIPA authorisation. Too often councils were taking an over cautious approach. There was a call to “push the envelope” and test the legal boundaries.

Which local authorities are going to pick up the gauntlet?

All the presentations will appear on the LACORS website in due course.

RIPA/Covert Surveillance Advice Line

Local authorities can now ring the Specialist Operations Centre at the National Policing Improvement Agency. Amongst other things, the centre provides specialist verbal and written advice and support on the lawful and effective use of covert techniques. During the RIPA Review meeting in York, delegates were encouraged to ring or e mail the team to obtain free specialist advice on RIPA and covert surveillance law:

Tel: 0870 241 5641 Email: soc@npia.pnn.police.uk

The Covert Journal

This is a magazine on all matters of covert surveillance produced by the Specialist Operations Centre. Contact them if you would like a copy as it is a valuable resource and completely free. The back issues will be emailed to you. They cover definitions in RIPA, latest domestic and European cases and a common questions/queries page.

It is well worth a read and provides an insight into the police's thinking on RIPA and answers to questions often facing local authority investigators. There is discussion of some very useful caselaw that you may not have previously heard of.

Surveillance of Employees – Latest Case

Colleagues who advise on RIPA and employee surveillance will be interested in a recent decision by the Investigatory Powers Tribunal.

In *C v The Police* – 14th November 2006, the Tribunal held that covert surveillance of employees suspected of non criminal activities did not fall into the definition of directed surveillance because it was not for a “specific investigation or operation.” The tribunal interpreted the latter words as requiring an investigation to be carried out for the specific regulatory functions of a public authority not the general functions such as staffing.

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

Of course such surveillance will still be caught by part 3 of the Data Protection Employment Code: Surveillance of Staff and so employers will still need to do an Adverse Impact Assessment.

Ibrahim has written short articles on this case for the Solicitors Journal and IRRV Benefits Magazine. You can read a fuller version by going to <http://tinyurl.com/296jsc>

RIPA/Surveillance Law Workshops

Ibrahim will be discussing the above case in more detail in the forthcoming RIPA/surveillance law workshops. He will be looking at the latest thinking and cases on directed surveillance, intrusive surveillance and CHIS. This remains one of his most popular courses.

Download the flyer at <http://www.actnow.org.uk/2006/RIPA07.pdf>

New RIPA Website and Forms

There is a new RIPA website at <http://security.homeoffice.gov.uk/ripa/>. Since February the revised Part 2 forms have been uploaded. The new website also contains links to the various Home Office Codes of Practice. The Home Office have said that they will be adding more information and guidance here.

Accessing Communications Data – ICC Inspections

Many authorities have now started to be inspected by the Interception of Communications Commissioners (ICC). These have a similar role to the OSC in reviewing and scrutinizing the way public authorities access communications data from communications service providers under RIPA. Common criticisms include:

- Using old forms
- Not considering necessity and proportionality properly
- Using cut and paste techniques
- Lack of training

Some of you who did the SPoC Accreditation course may not have received your Home Office PIN number. Ibrahim raised this issue with the Home Office who advised that they have a backlog at present due to a member of staff leaving. They are working hard to issue the numbers. In the meantime SpOCs can still apply for communications data. They should quote the training company they passed the exam with and state that they are awaiting the numbers from the Home Office.

One Day Designated Person/ Investigator Workshop, Birmingham, 22 May

This is a practical workshop on how to access communications data under the Regulation of Investigatory Powers Act 2000 (RIPA). It is essential that those who are seeking to use these powers as well as those who are authorizing their use (Designated Persons), have a good understanding of the law and practice in this area. This workshop will examine the latest Code of Practice and Home Office forms/guidance in this complex area and help your organisation prepare for inspections by the Interception of Communications Commissioners. This is an interactive course with plenty of opportunity for questions, discussion and for working through case studies and exercises.

Two Day Home Office SPoC Accreditation Course, London - 6 & 7 June

All organisations using RIPA powers to access communications data must have a named Single Point of Contact (SPoC) who should have attended a Home Office approved training course by 31st March 2005. Many have still not done this. This is one of the few courses still running. It is suitable for Scottish delegates too as the law is the same. At the end of the two days delegates will sit a one hour multiple choice exam. So far we have trained almost 150 delegates. All have passed the exam with flying colours (Note: This course carries 8 CPD Hours.)

Email and Internet Monitoring Workshop, London, 31 May

Monitoring and recording of employee's email, internet and telephone usage, whether with or without consent, is a legal minefield. This is a thorough examination of the law and practice in this area. We will look at Part 1 of the Regulation of Investigatory Powers Act 2000 (RIPA) as well as the Lawful Business Practice Regulations, the Human Rights Act and the Data Protection Act and related codes.

This is an interactive workshop full of exercises and case studies. As well as the latest caselaw we will discuss the possibility of using written policies and procedures to guard against the legal problems. This course is a must for all employment lawyers and personnel advisers, whether in the public or the private sector, who are often called upon to advise on these issues. See <http://www.actnow.org.uk> for full details

OSC Inspections – Help!

The Office of the Surveillance Commissioners (OSC) has now started doing much more rigorous inspections. Some councils have been inspected twice in one year!

<http://www.surveillancecommissioners.gov.uk/>

Ibrahim has read many OSC inspection reports. He has a very good understanding of the process they adopt and also the questions they ask. He has a comprehensive list of common criticisms made of councils by the OSC in their reports. If you would like a copy or wish to discuss your forthcoming inspection, please e mail or ring Ibrahim.

Email: ih@informationlaw.org.uk Tel : 07808 079264

Are all your officers and managers up-to-date with the latest developments on Directed Surveillance and use of a CHIS? Act Now speakers deliver in-house training at your site on all aspects of surveillance law. In the last six months we have worked for North East Lincolnshire District Council, Doncaster Council, Birmingham City Council, Harrogate Council, Blackburn Council, North West Leicestershire District Council, and many more.

If you would like a quote to bring the trainer to you, please email info@actnow.org.uk