

The Poole Council Decision

In July the Investigatory Powers IPT (IPT) gave a ruling concerning a local authority's use of surveillance powers under Part 2 of the Regulation of Investigatory Powers Act 2000 (RIPA). The ruling contains guidance that will assist all staff who do Directed Surveillance under RIPA especially those investigating any type of fraud.

Poole Borough Council suspected that Jenny Paton may have lied about living in the catchment area of a sought-after primary school in Dorset in order to get a place there for one of her children. It therefore conducted covert surveillance of the family for three weeks in February and March 2008. This included covertly monitoring the movements of Miss Paton, her children and partner as well as their car. The family made complaints to the IPT who found (*Jenny Paton and others v Poole Borough Council* (2010) IPT/09/01/C) that due regard had not been taken of the provisions of RIPA and consequently the Council had breached the family's rights under Article 8 (right to privacy) of the European Convention on Human Rights (ECHR) (<http://www.boroughofpoole.com/news/ref:N4C56ACFE8ACC1/>).

The IPT considered the Council's surveillance authorisation in the light of section 28(2) of RIPA which sets out when Directed Surveillance can be authorised. It ruled that three questions needed to be asked. The first question is, for what purpose was the authorisation sought and granted for Directed Surveillance of the complainants? Since January 2004 local authorities can only authorise Directed Surveillance if it is necessary "for the purpose of preventing or detecting crime or of preventing disorder" (section 28(3) (b)). The council stated that the possibility of an offence under the Fraud Act 2006 was considered before it was granted.

The IPT did not see it necessary to determine whether there was actually an offence under the Fraud Act although it did express some doubts. In any event the children could not have committed the offence, yet they were still the subject of surveillance. As for Ms Paton, the IPT ruled that the Council had not established that, even if the information supplied to the Council by her about the family's ordinary residence was false (which it accepted it was not), that could have amounted to a criminal offence.

The second point to note here is that the IPT interpreted section 28(3)(b) as requiring the surveillance to be for the predominant purpose of preventing or detecting crime. Having considered the Council's authorisation form and the circumstances surrounding it, the IPT determined that it was not. In coming to this conclusion, the IPT gave weight to the complainants' contention that the sole or predominant purpose of the surveillance was to implement, maintain and enforce the catchment area element of the Council's schools admissions policy, which is not expressed in the application form or the booklet to be supported by a criminal sanction.

Furthermore there was no evidence from the Council of any real intention or likelihood of it prosecuting the target of the surveillance for a criminal offence against the general criminal law. No warning or caution was given about the possible commission of a criminal offence by supplying incorrect information and there was no evidence of any instance of the Council bringing or even threatening to bring a criminal prosecution.

The second question is, did the person granting the authorisation of Directed Surveillance believe that it was necessary on the grounds of preventing or detecting crime? The complainants contended that it was not. The IPT agreed especially in the case of the three children. There was no consideration of whether it

was necessary to put them under surveillance in order to prevent or detect a crime by their mother in supplying allegedly false information to the Council about their ordinary residence. The IPT also took account of the fact that the surveillance was done after the cut off date when children are required to be resident in the preferred school's catchment area. Therefore the surveillance information could not have proven any offence.

The third question is, did the person granting the authorisation believe that the surveillance was proportionate to what was sought to be achieved by carrying it out? The IPT concluded that the surveillance was not proportionate. In particular no consideration was given and no allowance was made, in the setting of conditions on the surveillance, for the fact that three of the targets were young children who were not believed to be parties to a suspected crime. The alleged crime could be prevented or detected without the children themselves being made targets of the surveillance.

Clearly this ruling has implications for local authorities and all those carrying out Directed Surveillance under Part 2 of RIPA. Those completing the RIPA authorisation application forms, as well as those authorising them, must have a sound understanding of the human rights concepts of necessity and proportionality and be able to explain their conclusions fully within the forms.

Ibrahim Hasan is a solicitor and director of Act Now Training (www.actnow.org.uk). He runs free web seminars on all aspects of information and surveillance law.

Covert Surveillance and RIPA Update

The latest changes to Part 2 of the Regulation of Investigatory Powers Act 2000

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The recent headlines involving the News of the World mean that the spotlight is very much on the law of surveillance and monitoring. There have been many recent developments in this area including new codes of practice and cases before the Investigatory Powers Tribunal. The Protection of Freedoms Bill will mean big changes to the way local authorities conduct Directed Surveillance and Intrusive Surveillance and deploy a CHIS. This workshop is suitable for delegates new to RIPA as well as those seeking an update. It will help them implement the changes announced by the Home Secretary, prepare for an Office of Surveillance Commissioners (OSC) inspection and implement any action points from a previous inspection. Case studies and exercises will assist the learning experience.

STOP PRESS: This workshop will cover the latest developments in this fast changing area of law right up to the day of the workshop including:

The requirement, in future, to seek a Magistrate's approval before doing any surveillance

Only doing Directed Surveillance where it satisfies the serious crime test

The Investigatory Powers Tribunal decision involving Poole Council which has a big impact on the role of the authorising officer in Directed Surveillance.

The workshop will be taught in a practical context with the use of sector specific case studies and discussion. Time will also be spent going through the authorisation forms, an area which is often highlighted in OSC reports.

Full details: http://www.actnow.org.uk/courses/RIPA/Surveillance_Law

RIPA Forms Guidance - version 3 (April 2010)

A guide to completing the Home Office forms for Directed Surveillance and CHIS

Incorrect form filling is a regular criticism made by the Office of Surveillance Commissioners (OSC) when doing compliance inspections of local authorities.

Ibrahim Hasan has developed this detailed guidance specifically tailored to the needs of local authorities. It consists of each form reproduced with detailed notes on how to complete each section. Over seventy different organisations have so far taken advantage of this unique resource. At a time of increasing pressure on local authority budgets, the RIPA Forms Guidance Document will save you time and money.

Version 3 of the Guidance has been fully revised in the light of the new RIPA Order and Codes of Practice, which came into force on 6th April 2010. The Home Office forms still make reference to the old codes. Our forms are reproduced with references to the new codes.

DETAILS: <http://www.actnow.org.uk/content/26>

RIPA HELPLINE

A helpline advising public sector professionals on the Regulation of Investigatory Powers Act 2000 (RIPA) and the Regulation of Investigatory Powers (Scotland) Act 2002 (RIPSA)

The Act Now RIPA/RIPSA Helpline is designed to supplement your internal surveillance law expertise by acting as a “sounding board” or “signpost service” for you to discuss your covert surveillance operations. Our experts will guide you through the relevant area of law, discuss possible legal tactics and how to complete the relevant standard Home Office/Scottish Executive forms. The helpline is managed by Ibrahim Hasan, who is renowned throughout the UK as a leading surveillance law expert. At a time of increasing pressure on public sector budgets, the Act Now RIPA/RIPSA Helpline is the most cost effective solution for your surveillance law problems.

Our experts are fully aware of the latest changes to the RIPA regime which came into force on 6th April 2010. They can guide you in interpreting the new codes of practice and can assist you to implement changes within your organisation.

For more details and to download the course flyer please visit

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