The News of the World FOI Request on Surveillance

LACORS has been concerned about the nature of the news coverage about local authority surveillance ever since the story broke about the bugging of Sadiq Khan MP. (Read the <u>LACORS Press Release</u> on this subject and listen to Ibrahim Hasan's <u>Radio 4 interview</u>)

Many councils have now reported that The News of the World has contacted them with a Freedom of Information (FOI) request regarding the number of times they have applied to get access to personal information under the Regulation of Investigatory Powers Act 2000 (RIPA). Most of this information will have to be collated with the help of Trading Standards, Environmental Health, Licensing, Anti Social Behaviour and Planning Enforcement departments. These are the departments which make the most use of the RIPA powers.

There follows a suggested approach for FOI officers to take when dealing with such requests. Please note that this is not meant as a legal advice note and all readers should take independent legal advice over the precise facts and circumstances surrounding the information they hold.

The Request

Typically most councils have received requests to provide:

For the calendar year 2007:

1. The total number of requests made to access peoples' personal information

CONSIDER

You may wish to go back to the author and clarify exactly what he means. Does he mean under the provisions of RIPA Part 1 Chapter 2 (Accessing Communications Data) or under other powers e.g. The Data Protection Act 1998? You have the right to seek clarification under section 1(3) of the FOI Act and the time for compliance (20 working days) does not start until you have it.

If he means under RIPA consider, what are the consequences of disclosure? There may not be any if he just wants figures which would not identify any individuals or specific operations.

2. A list of the types of information sought – for example, but not limited to, mobile phone records, telephone subscriber info, and so on. Please provide as much information as to the different types of information that have been requested.

CONSIDER

What are the adverse consequences of disclosure? There may not be any as long as the applicant is not given the exact information sought about an individual and no names are released.

The section 30 (investigations and proceedings) and section 31 (law enforcement) exemptions may well apply to any information which may disclose investigation techniques or modes of operation. Both exemptions are subject to a public interest test. It may be more difficult to justify withholding information on public interest grounds in respect of very old cases where there is no longer a threat of prejudicing future investigations or proceedings or tipping off others pursuing the same activities.

Section 40 applies to names. It's also safe to withhold any information which may identify an individual. Sometimes section 40 can also be used if the information relates to an anonymous group but the group is so small that the individuals could be identified by those who know them or by the surrounding circumstances. See the ICO decision involving Cambridge University (30/7/07) mentioned in Ibrahim Hasan's podcast Episode 9: http://www.informationlaw.org.uk/page10.htm

3. For each request made - what was requested, and a summary of the reasons for the request. Please provide as much information as possible on each. For example: Request 1; Mobile phone records obtained for investigation into fly-tipping, etc..

CONSIDER

Consider the obligation under section 16 (advice and assistance). General information can be disclosed but no names or anything allowing someone to be identified (section 40). Also again section 30 and 31 (see above) will be relevant.

OTHER POINTS TO CONSIDER

- How long is it going to take to collate the information? If it is over 18 hours (the £450 limit) the information does not have to be supplied. The duty of advice and assistance (section 16) may require the public authority to allow the applicant to split up his request into manageable chunks.
- Note that the public authority cannot say that the information is not held if it does not have the figures but can collate them from looking through documents.
- An ICO Decision on surveillance information See Nottinghamshire Fire and Rescue (15/3/07) (I Hasan Podcast No: 6)
- Latest FOI Cases listen to Ibrahim Hasan's FOI Podcasts: www.informationlaw.org.uk
- LEGAL ADVICE If you would like specific legal advice on this or any other FOI/RIPA issue please feel free to contact Ibrahim Hasan on ih@informationlaw.org.uk

TRAINING COURSES FROM ACT NOW

Freedom of Information: An A-Z Guide

with Paul Simpkins and Ibrahim Hasan

Manchester - 25th Feb, 11th Nov

London - 7th Feb, 1st July **Belfast** - 2nd April **Edinburgh** - 28th Feb, 25th Sep

A complete guide to the Freedom of Information Act. Ideal for those who have little or no knowledge. Key issues including fees, exemptions and how to recognise, and practically deal with, an FOI request will be discussed. We will also examine the latest guidance from the Information Commissioner.

Freedom of Information Update: Latest Decisions and the PI Test

with Ibrahim Hasan and Tim Turner

Manchester - 1st April, 4th Dec

Belfast - 3rd July **London** - 6th March, 2nd Dec **Edinburgh** - 8th May, 20th Nov

An advanced workshop examining the latest decisions of the Information Commissioner and Tribunal. Packed full of exercises, case studies and discussions, this workshop will also examine the factors to be considered when applying the Public Interest Test. Essential for all those wishing to keep up to date with FOI/FOISA.

Covert Surveillance and RIPA/RIPSA

with Ibrahim Hasan

Manchester - 12th June, London - 18th Feb, 29th Oct Edinburgh - 13th March

This popular workshop covers directed surveillance, intrusive surveillance and the use of a CHIS. We will look at the new Home Office forms, how to survive an OSC inspection and standard local authority surveillance techniques and the applicability of RIPA. This is a must for all regulatory services within local authorities as well as the police, fire and ambulance services.

RIPA: Accessing Communications Data

with Ibrahim Hasan

Designated Person/Investigator Workshop Manchester - 15th Oct London - 17th June

Home Office SPoC Accreditation Course

London - 26th & 27th March Manchester - 26th & 27th Nov

These workshops (£499 plus vat) will teach delegates how to access communications data under the RIPA. The latest guidance and Code of Practice will be discussed. The two day course is for those wishing to be an accredited Single Point of Contact (SPoC).