

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 [LACORS Press Release](#) on this subject and listen to Ibrahim Hasan's [Radio 4 interview](#))

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>

See also the note below about the Enterprise Act

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.

Information received by Trading Standards pursuant to the Enterprise Act

In general most, but not all, of Trading Standards "RIPA" requests around the country are likely to come under the Enterprise Act. The Information Tribunal has confirmed that Part 9 of the Enterprise Act is a Prohibitions on Disclosure under Section 44 of FOI (See Ibrahim Hasan's FOI Podcast No 6 for discussion of the relevant decisions).

The duty to confirm or deny does not arise if (to paraphrase) the confirmation or denial would itself be prohibited by the enactment.

The Enterprise Act which states:

237 General restriction

(1) This section applies to specified information which relates to-
(a) the affairs of an individual;
(b) any business of an undertaking.

(2) Such information must not be disclosed-
(a) during the lifetime of the individual, or
(b) while the undertaking continues in existence,
unless the disclosure is permitted under this Part.

(3) But subsection (2) does not prevent the disclosure of any information if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene-
(a) that subsection;
(b) any other enactment or rule of law prohibiting or restricting the disclosure of the information.

(1) Information is specified information if it comes to a public authority in connection with the exercise of any function it has under or by virtue of-

(a) Part 1, 3, 4, 6, 7 or 8;
(b) an enactment specified in Schedule 14;
(c) such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.
(2) It is immaterial whether information comes to a public authority before or after the passing of this Act.

SCHEDULE 14 Specified functions

- *Parts 2, 3, 4, 5, 6, 7, 8 and 11 of the Fair Trading Act 1973 (c. 41).*
- *Trade Descriptions Act 1968 (c. 29).*
- *Prices Act 1974 (c. 24).*
- *Consumer Credit Act 1974 (c. 39).*
- *Estate Agents Act 1979 (c. 38).*
- *Competition Act 1980 (c. 21).*
- *Consumer Protection Act 1987 (c. 43).*

- *Property Misdescriptions Act 1991 (c. 29).*
- *Timeshare Act 1992 (c. 35).*
- *Competition Act 1998 (c. 41).*
- *Chapter 3 of Part 10 and Chapter 2 of Part 18 of the Financial Services and Markets Act 2000 (c. 8).*

but not the Consumer Protection (Cancellation of contracts away from business premises) Regulations which were made under the European Communities Act nor the Food Safety Act.

241 Statutory functions

(1) A public authority which holds information to which section 237 applies may disclose that information for the purpose of facilitating the exercise by the authority of any function it has under or by virtue of this Act or any other enactment.

(2) If information is disclosed under subsection (1) so that it is not made available to the public it must not be further disclosed by a person to whom it is so disclosed other than with the agreement of the public authority for the purpose mentioned in that subsection.

(3) A public authority which holds information to which section 237 applies may disclose that information to any other person for the purpose of facilitating the exercise by that person of any function he has under or by virtue of-

- (a) this Act;*
- (b) an enactment specified in Schedule 15;*

SCHEDULE 15

*Trade Descriptions Act 1968.
Consumer Protection Act 1987 (c. 43).
etc*

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

RELEVANT TRAINING COURSES FROM ACT NOW

<p><u>Freedom of Information: An A-Z Guide</u> <i>with Paul Simpkins and Ibrahim Hasan</i></p> <p>Manchester - 25th Feb, 11th Nov London - 7th Feb, 1st July Belfast - 2nd April Edinburgh - 28th Feb, 25th Sep</p> <p>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.</p>	<p><u>Freedom of Information Update: Latest Decisions and the PI Test</u> <i>with Ibrahim Hasan and Tim Turner</i></p> <p>Manchester - 1st April, 4th Dec Belfast - 3rd July London - 6th March, 2nd Dec Edinburgh - 8th May, 20th Nov</p> <p>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.</p>
<p><u>Covert Surveillance and RIPA/RIPSA</u> <i>with Ibrahim Hasan</i></p> <p>Manchester - 12th June, London - 18th Feb, 29th Oct Edinburgh - 13th March</p> <p>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.</p>	<p><u>RIPA: Accessing Communications Data</u> <i>with Ibrahim Hasan</i></p> <p><u>Designated Person/ Investigator Workshop</u> Manchester - 15th Oct London - 17th June</p> <p><u>Home Office SPoC Accreditation Course</u> London - 26th & 27th March Manchester - 26th & 27th Nov</p> <p>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).</p>

MORE COURSE INFO AND ONLINE BOOKING AT WWW.ACTNOW.ORG.UK