



The Network for Police Monitoring

Consultation on Home Office proposals to update the covert human intelligence sources code of practice and the covert surveillance code of practice

Response from Netpol – Network for Police Monitoring.

There are significant public concerns about the use of Covert Human Intelligence Sources (CHIS). According to a 2011 Justice report¹, 39,815 covert human intelligence sources were recruited between 2000 and 2010, including 1,814 by non-law enforcement bodies such as government departments and local authorities. Between 2001 and 2010, some 1120 complaints were made to the IPT concerning unwarranted or excessive surveillance by public bodies. Out of more than 1,000 complaints over the last decade, only 10 have been upheld by the Tribunal.

In addition, a number of very serious allegations have been made relating to the behaviour of undercover officers infiltrating protest groups.

Damian Green, Minister of State for Policing, Criminal Justice and Victims, claims that 'significant changes' have been made to the Covert Human Intelligence Sources Code of Practice published for public consultation.

These include:

- enhanced judicial oversight of all undercover law enforcement deployments, requiring prior approval by the Office for Surveillance Commissioners for all long term deployments;
- the definition of 'relevant source' as a particular type of CHIS, being a source holding an office, rank or position within relevant public authorities;
- enhanced authorization for the use of 'relevant sources' at the level of Assistant Chief Constable, and at the level of Chief Constable / Assistant Commissioner for long term authorisation (more than 12 months).

¹ Justice: 'Freedom from Suspicion: Surveillance Reform for a Digital Age', October 2011

Given the widespread public concern about “undercover policing” the scope and extent of the proposed amendments is disappointing. While we welcome improvements to authorisation arrangements and oversight, the amended code does not add any detail regarding who constitutes a legitimate subject of surveillance, nor does it tackle the nature of the relationships that officers and other covert human intelligence sources (CHIS) are permitted to engage in.

The broad nature of the authorisation criteria continues to provide excessive latitude in decision making, and provides insufficient guidance for interpreting the proportionality of CHIS deployments. In short, the amendments provide little in the way of reassurance that the ‘historic’ cases of unethical use of surveillance will not be repeated.

Maintaining relationships

The Metropolitan Police Operation Herne report by Creedon and Mackay² found ““there are and have never been any circumstances where it would be appropriate for such covertly deployed officers to engage in intimate sexual relationships with those they are employed to infiltrate and target.”

The report also concluded there had been “an abject failure of the deployment, a gross abuse of their role and their position as a police officer and an individual and organisational failing,”

It is therefore surprising and concerning that there are no amendments to the CHIS code under the section *Establishing, maintaining and using a relationship* (2.13 of code). The description of a ‘relationship’ as the inoffensive and largely atypical example of the relationship between shopkeeper and customer is grossly inadequate.

The code fails to recognise the compelling allegations of inappropriate intimate and sexual relationships entered into by undercover police. There is no guidance on whether such relationships are permitted, or the circumstances in which they may be considered proportionate.

A new section of the CHIS code ‘*Legend building*’ (2.14 of the code), states that, in relation to activities required to ‘build up their cover profile’ consideration should be given to an authorisation under the 2000 Act. There are no limitations on the actions that may be taken for this purpose, or the circumstances in which a prior authorisation would be considered necessary.

Whilst appreciating the sensitivity of the subject, we believe the Code must provide some clarity in this area. We would like to see a categorical statement, reflecting the position adopted in the Herne Report quoted above, that entering into sexual relationships for the purposes of obtaining information or building/maintaining cover is neither acceptable nor lawful. If that is not the position adopted by the government, the code must reference the extent to which, and the broad circumstances in which police officers are permitted to engage in such behaviour.

2 Operation Herne - Report 2: Allegations of Peter Francis (Operation Trinity)

Authorisation Criteria

The Code of Practice provides no additional or revised guidance on the application of authorisation criteria laid down by section 29(3) of RIPA. This is a particularly disappointing omission.

Section 29(3) authorises CHIS for (amongst other purposes) the prevention or detection of crime and the prevention of disorder. Preventing and detecting crime goes beyond the prosecution of offenders and includes actions taken to avert, end or disrupt the commission of criminal offences.

This category of offences is extremely broad, potentially permitting the use of long term CHIS deployment to disrupt minor offences.

The Act does not differentiate undercover police officers from other categories of CHIS. The creation of the definition, in the Code of Practice, of a distinct group of CHIS – ‘relevant sources’ – provides an opportunity to present more detailed guidance on the types of criminality that would justify the use of undercover officers.

We consider that it can never be proportionate to deploy undercover police officers in relation to minor crime or disorder. We therefore suggest that the Code should contain explicit guidance restricting the use of ‘relevant sources’ to the prevention or detection of serious crime.

Infiltration of political groups

The Operation Herne report, published in March 2014, stated;

‘A source known as ‘Officer A’ claimed in The Observer in March 2010 that the SDS [Special Demonstration Squad] ‘targeted black campaigns’ that had been formed in response to deaths in police custody, police shootings and serious racial assaults. ‘Officer A’ also added that ‘once the SDS got into an organisation it is effectively finished. This effectively made justice harder to obtain.’

Operation Herne has identified that undercover officers were tasked into groups to provide intelligence regarding potential public disorder. This included both left and right wing groups and organisations and animal rights groups. A tactic of ‘entryism’ was used by activists to promote their own political agendas. It was inevitable that undercover officers would find themselves reporting on these groups that would become embroiled with their target organisation.

There are occasions where undercover officers sought and recorded material that would now be considered as ‘personal information’. At that time, there was no relevant legislation to regulate such action, in the absence of a definition of the concept of ‘collateral intrusion’,. SDS undercover officers were not gathering evidence to support criminal investigations, but intelligence to prevent public disorder and criminality.

We do not consider this to be a historic problem. Activists have expressed their belief that undercover officers working up until 2009 also collected personal information on political activists uninvolved in criminality, disrupted the lawful functioning of groups, and the engagement of individuals in lawful activity.

In addition we are concerned at reports³ that individuals associated with protest groups are being recruited as CHIS. People engaged in lawful protest are subject to unacceptable levels of doubt over the circumstances in which they or their colleagues can be approached by police to provide information. Such acts have a significant chilling effect on the right to protest.

Remarkably, considering that the police have particular responsibilities to refrain from unnecessary interference with rights to freedom of assembly and expression, there is no guidance in the code relating to CHIS and political activity. We consider that this is a serious omission, and that the responsibility of police to respect the right, set out in the Human Rights Act, to peaceful protest should be made explicit in the guidance.

Netpol – March 2014

About Netpol – the Network for Police Monitoring

The Network for Police Monitoring (Netpol) seeks to monitor public order, protest and street policing that is excessive, discriminatory or threatens civil rights. We are a network of activists, campaigners, lawyers and researchers sharing knowledge, experience and expertise to effectively challenge policing strategies which are unnecessarily damaging to any sector of our society.

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³ See for example The Guardian, 'Police techniques for recruiting and running informants revealed' 21st March 2014