

BIG BROTHER WATCH

Off the Record: How the police use surveillance powers

A Big Brother Watch report

October 2014

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Key Findings

All results are for the years 2010, 2011 and 2012 unless otherwise indicated. Tables 1-3 show that some police forces chose to breakdown the figures by calendar year, whilst others broke down the figures by financial year.¹

- Between 2010 and 2012 there were **27,115** authorisations for directed surveillance.
 - This is equivalent to **24** directed surveillance operations being authorised every day, or **one every hour**
- The force with the most authorisations was the **Metropolitan Police** with **7,170** authorisations being made. This reflects **26%** of the overall total.
- **Greater Manchester Police** is the force with the second highest total with **2,376 authorisations**.
- Overall the total number of authorizations has decreased:
 - From **10,175** in 2010 to **7,761** in 2012.
 - This is a **23%** reduction in authorisations.
- **31** police forces have shown overall decreases between 2010 and 2012
 - The force with the highest percentage decrease is **South Yorkshire Police**, with a reduction in authorisations of **71%**.
- **7** police forces have had an increase in authorisations between 2010 and 2012.
 - **North Yorkshire Police** recorded a **32%** increase in authorisations, which was the highest.
 - The others are **Cambridgeshire Constabulary, Cheshire Constabulary, South Wales Police, Derbyshire Police, Durham Police, Gwent Police**

¹ All figures reflect a 90% response rate to our Freedom of Information request from Police Forces

Introduction

This report highlights the various uses of Regulation of Investigatory Powers Act 2000 by police forces in the UK in the years 2010-2012. Our research shows the continuing trend of the overzealous use of RIPA by public authorities, and the desire to avoid scrutiny by many.

Half a decade ago Big Brother Watch was established to help challenge policies that threaten our civil liberties and shed transparency on the level of surveillance carried out by public bodies. Perhaps more than any other example, our work on the use of the **Regulation of Investigatory Powers Act 2000 (RIPA)** embodies both of these principles.

Under RIPA public authorities, such as local authorities and police forces, are permitted to use very intrusive methods of surveillance, for example bugging targets or the use of “*covert human intelligence sources*” (informers).

Attempts were made to build a complete picture of how RIPA powers are being used by police, with our Freedom of Information request asking for details of the use of ‘directed surveillance’, ‘covert human intelligence’ and ‘intrusive surveillance’ (covert surveillance carried out in residential premises or private vehicles). However all police forces rejected our request for information on the second and third questions as they believe that releasing the information would negatively impact on police capability.

Therefore, this report focuses specifically on the use of ‘directed surveillance’ by police forces; a form of covert surveillance which is deemed to be non-intrusive, but is still likely to result in personal information about the subject being obtained.²

The research builds on previous Big Brother Watch reports, ***The Grim RIPA (2010)***³ and ***A Legacy of Suspicion (2012)***.⁴ This is however, our first report that focuses on the use of these powers by police forces.

² Home Office, *Regulation of Investigatory Powers Act (RIPA) 2000 guidance*, 18th December 2013, p. 9:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270617/ripa.pdf

³ Big Brother Watch, *The Grim RIPA* (2010) www.bigbrotherwatch.org.uk/TheGrimRIPA.pdf

⁴ Big Brother Watch, *A Legacy of Suspicion* (2012)

www.bigbrotherwatch.org.uk/files/ripa/RIPA_Aug12_final.pdf

The **Protection of Freedoms Act 2012** forced local authorities to apply to a Magistrate if they wish to use **RIPA**, yet the same cannot be said for other public authorities. Indeed, the authorisation for the vast majority of RIPA use is still being signed off internally by police forces. However, perhaps what is more worrying is the lack of any duty for law enforcement agencies, or indeed any public authority, to proactively publish information about how these powers are being used.

Indeed in his 2013 annual report the Interception of Communications Commissioner warned of “*institutional overuse of [the] powers*”. Sir Anthony May also acknowledged that there is still no meaningful detail on what sort of offences are being investigated being recorded, stating “*In my view the unreliability and inadequacy of the statistical requirements is a significant problem which requires attention.*”⁵

What is clear is that it is possible for the UK's police forces to vastly increase their transparency, without negatively impacting on their operational effectiveness. One guide for how this can be achieved can be found in America. The US Department of Justice currently publishes annual statistics on the use of surveillance techniques by both state and federal level law enforcement authorities.⁶

Another aspect that requires attention is the right of a subject to seek redress for what they might deem unlawful or unnecessary surveillance. Currently there is no obligation to inform the target that surveillance has taken place. Whilst it would arguably be counter-productive to inform an individual that they are currently under surveillance or have been as part of an ongoing investigation, individuals should be told that surveillance has taken place as soon as it is practical. This would allow members of the public to judge for themselves whether they had been unfairly targeted, or indeed to obtain legal advice on the subject.

A more detailed overview of how this transparency can be achieved can be found in our paper, ***Enhancing surveillance transparency: A UK policy framework.***⁷

⁵ Big Brother Watch, The IOCC Report Finds Institutional Overuse of Powers and Woefully Inadequate Record Keeping <http://www.bigbrotherwatch.org.uk/home/2014/04/iocc-report-finds-institutional-overuse-powers-woefully-inadequate-record-keeping.html>

⁶ United States Courts, *Wiretap Reports*: <http://www.uscourts.gov/Statistics/WiretapReports/wiretap-report-2013.aspx>

⁷ Big Brother Watch, *Enhancing surveillance transparency: A UK policy framework* www.bigbrotherwatch.org.uk/files/briefings/BBW_transparency_2014.pdf

The Regulation of Investigatory Powers Act 2000

What is the Regulation of Investigatory Powers Act 2000 (RIPA)?

RIPA regulates the use of the surveillance techniques that are available to public bodies to assist in their investigations of criminal or suspected criminal activity. The powers covered by this include “*interception*”, the “*acquisition and disclosure of communications data*”, “*surveillance and covert human intelligence sources*”. In previous reports we have called for public bodies to proactively publish information relating to their use of RIPA as well as there to be judicial authorisation for surveillance warrants, we now renew these calls.⁸

What is Directed Surveillance?

Directed Surveillance is a form of surveillance that occurs covertly, but is non-intrusive, this therefore excludes practices such as bugging and entering property.

For a **practice to be deemed as Directed Surveillance** it must satisfy the following criteria:

1. It must be covert, but non-intrusive.
2. It must be conducted for the purposes of a specific operation of investigation.
3. It has a high likelihood of obtaining private information about an individual (this can either be the subject or another person, not previously stipulated in the investigation).
4. It is not being conducted as part of an immediate response to events or circumstances.⁹

Examples of this form of surveillance include “*operations involving the covert monitoring of targets’ movements, conversations and other activities.*”¹⁰

An authorisation for directed surveillance may be granted by an authorising officer where they believe that it is:

⁸ Big Brother Watch, *A Legacy of Suspicion: How RIPA has been used by local authorities and public bodies*, August 2012, p. 4: http://www.bigbrotherwatch.org.uk/files/ripa/RIPA_Aug12_final.pdf

⁹ Home Office, *Covert Surveillance and Property Interference: Revised Code of Practice; Pursuant to Section 71 of the Regulation of Investigatory Powers Act 2000*, 2010, p. 11: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97960/code-of-practice-covert.pdf

¹⁰ MI5, *Directed Surveillance*: <https://www.mi5.gov.uk/home/about-us/how-we-operate/gathering-intelligence/directed-surveillance.html>

- In the interests of national security
- For the purpose of preventing or detecting crime or of preventing disorder
- In the interests of the economic well-being of the UK
- In the interests of public safety
- For the purpose of protecting public health
- For the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
- For any other purpose prescribed by an order made by the Secretary of State.

An authorising officer must give their authorisation in writing, except in urgent cases when they may be given orally by the authorising officer or in writing by the officer entitled to act in urgent cases. In such cases, a record that the authorising officer has expressly authorised the action should be recorded in writing by both the authorising officer and the applicant as soon as is reasonably practicable.¹¹

¹¹ www.homeoffice.gov.uk/publications/coutner-terrorism/ripa-forms/code-of-practice-covert?view=Binary
p.47

Policy Recommendations

1. Judicial authorisation of surveillance should be extended to cover all public authorities

Currently there is no requirement to involve a judge in the authorization process for Police RIPA warrants. This should change; the judiciary can and should play an important role in deciding whether or not surveillance is necessary and proportionate.

2. Any public authority using RIPA should be required to publish standardised information about how, when and to what outcome they use the powers.

Our paper *Enhancing surveillance transparency: A UK policy framework* argued that it is possible for public bodies, such as police forces to publish more information about the surveillance techniques they use.

Forces should make the following information available as part of a regular report:

- What offence is being investigated and whether or not the investigation led to a prosecution or conviction.
- How much data was collected and how many citizens were affected.
- The total number of individuals affected by the requests.

The onus for the publication of this information should fall on police forces, not oversight bodies such as the Office of Surveillance Commissioners or Interception of Communications Commissioner.

3. As soon as it is practicable the subject of surveillance should be informed that the surveillance has taken place.

Subjects of investigations should be informed that surveillance has taken place when there is no risk to an on-going investigation. This should occur within 12 months of the conclusion of the investigation; however allowance should be made for judicial extensions of 6 monthly increments.

Informing a member of the public that they have been a subject of surveillance is recognised as being an important oversight mechanism in countries such as Germany. Currently in the UK there is no requirement for this to take place.

Table 1: Police Use of RIPA (2010-2012 calendar years)

Police Force	2010	2011	2012	Total	Percentage Change between 2010 and 2012
Avon and Somerset Police	Broken down by financial year - see table 2				
Bedfordshire Police	105	104	64	273	-39%
Cambridgeshire Constabulary	82	94	99	275	+21%
Cheshire Constabulary	220	220	239	679	+9%
City of London Police	Broken down by financial year - see table 2				
Cleveland Police	135	116	101	352	-25%
Cumbria Constabulary	Broken down by financial year - see table 2				
Derbyshire Constabulary	Broken down by financial year - see table 2				
Devon and Cornwall Police	Refused: Cost and Time				
Dorset Police	Did not respond				
Durham Police	Broken down by financial year - see table 2				
Dyfed Powys Police	Broken down by financial year - see table 2				
Essex Police	Did not respond				
Gloucestershire Constabulary	Broken down by financial year - see table 2				
Greater Manchester Police	916	790	670	2,376	-27%
Gwent Constabulary	Broken down by financial year - see table 2				

Hertfordshire Constabulary	Did not respond				
Hampshire Constabulary	Refused: Not held in a retrievable format				
Humberside Police	Broken down by financial year - see table 2				
Kent Police	270	327	253	850	-6%
Lancashire Constabulary	182	129	108	419	-41%
Leicestershire Constabulary	131	118	126	375	-4%
Lincolnshire Police	137	49	76	262	-45%
Merseyside Police	Broken down by financial year - see table 2				
Metropolitan Police	2714	2392	2064	7170	-24%
Norfolk Constabulary	Broken down by financial year - see table 2				
North Wales Police	Broken down by financial year - see table 2				
North Yorkshire Police	Broken down by financial year - see table 2				
Northamptonshire Police	149	131	75	355	-50%
Northumbria Police	Broken down by financial year - see table 2				
Nottinghamshire Police	Broken down by financial year - see table 2				
Police Scotland	Established in 2013				
South Wales Police	Information not held	39	49	88	+26%
South Yorkshire Police	Not broken down by calendar or financial year - see table 3				
Staffordshire Police	158	141	124	423	-22%
Suffolk Constabulary	Broken down by financial year - see table 2				
Surrey Police	254	236	203	693	-20%
Sussex Police	268	252	169	689	-37%
Thames Valley Police	273	265	202	740	-26%
Warwickshire Police	Broken down by financial year - see table 2				

West Mercia Constabulary	139	123	117	379	-16%
West Midlands Police	Broken down by financial year - see table 2				
West Yorkshire Police	169	138	136	443	-20%
Wiltshire Constabulary	99	93	70	262	-29%
Yearly Total	6,401	5,757	4,945	17,103	-22%
Grand Total	17,103				

Table 2: Police Use of RIPA (2010-2012 financial years)

Police Force	2010/11	2011/12	2012/13	Total	Percentage Change
Avon and Somerset Police	271	301	266	567	-12%
<i>(See footnote)¹²</i>					
Bedfordshire Police	Broken down by calendar year - see table 1				
Cambridgeshire Constabulary	Broken down by calendar year - see table 1				
Cheshire Constabulary	Broken down by calendar year - see table 1				
City of London Police	59	66	57	182	-3%
Cleveland Police	Broken down by calendar year - see table 1				
Cumbria Constabulary	96	98	63	257	-34%
Derbyshire Constabulary	152	145	163	460	7%
Devon and Cornwall Police	Refused: Cost and Time				
Dorset Police	Did not Respond				
Durham Police	73	89	86	248	18%

¹² Avon and Somerset provided figures for 2009-11. 2009/10 = 271, 2010/11 = 301, 2011/12= 266, 2012/13= did not provide figures

Dyfed Powys Police	61	61	48	170	-21%
Essex Police	Did not respond				
Gloucestershire Constabulary	79	73	49	201	-38%
Greater Manchester Police	Broken down by calendar year - see table 1				
Gwent Constabulary	82	112	93	287	13%
Hertfordshire Constabulary	Did not respond				
Hampshire Constabulary	Refused: Not held in a retrievable format				
Humberside Police	123	128	109	360	-11%
Kent Police	Broken down by calendar year - see table 1				
Lancashire Constabulary	Broken down by calendar year - see table 1				
Leicestershire Constabulary	Broken down by calendar year - see table 1				
Lincolnshire Police	Broken down by calendar year - see table 1				
Merseyside Police	254	211	207	672	-19%
Metropolitan Police	Broken down by calendar year - see table 1				
Norfolk Constabulary	311	317	203	831	-35%
North Wales Police	102	88	73	263	-28%
North Yorkshire Police	79	111	104	294	32%
Northamptonshire Police	Broken down by calendar year - see table 1				
Northumbria Police	510	417	385	1,312	-25%
Nottinghamshire Police	181	166	173	520	-4%
Police Scotland	Established in 2013				
South Wales Police	Broken down by calendar year - see table 1				
South Yorkshire Police	Not broken down by calendar or financial year - see table 3				
Staffordshire Police	Broken down by calendar year - see table 1				
Suffolk Constabulary	148	131	131	410	-11%
Surrey Police	Broken down by calendar year - see table 1				
Sussex Police	Broken down by calendar year - see table 1				

Thames Valley Police	Broken down by calendar year - see table 1				
Warwickshire Police	52	42	34	128	-35%
West Mercia Constabulary	Broken down by calendar year - see table 1				
West Midlands Police	587	562	411	1,560	-30%
West Yorkshire Police	Broken down by calendar year - see table 1				
Wiltshire Constabulary	Broken down by calendar year - see table 1				
Yearly Total	3,220	3,118	2,655	8,993	-33%
Grand Total	8,993				

Table 3: South Yorkshire Use of RIPA

South Yorkshire Police provided us with a breakdown of their use of RIPA in neither a calendar nor financial year format.

Police Force	29/09/2009- 09/12/2010	10/12/2010- 24/11/2011	01/01/2012- 21/11/2012	Total	Percentage Change between 2010 and 2012
South Yorkshire Police	554	304	161	1,019	-71%

Methodology

A Freedom of Information request was submitted on the 26th July 2014 to all UK police forces. Originally it was sent as part of a wider request, which asked for information on the number of covert human intelligence sources (CHIS) and intrusive surveillance operations authorised.

Questions 2 and 3 of our request were rejected on the grounds that releasing the information would negatively impact on police capability.

As of 9th September 2014 40 forces had sent responses, leaving only 3 (Dorset Police, Hertfordshire Constabulary, Essex Police) to reply. This represents a 90% response rate.

Freedom of Information Request

Dear Sir or Madam

I am writing to you to request the following information under the terms of the Freedom of Information (FOI) Act.

1. The number of RIPA authorisations executed by your force for directed surveillance.
2. The number of RIPA authorisations executed by your force for the use of covert human intelligence sources.
3. The number of RIPA authorisations executed for intrusive surveillance.

Please provide answers to each question for the calendar years 2010, 2011 and 2012. If your figures are kept in a different format please provide the three most recent years data.

About Big Brother Watch

Big Brother Watch was set up to challenge policies that threaten our privacy, our freedoms and our civil liberties, and to expose the true scale of the surveillance state.

Founded in 2009, we have produced unique research exposing the erosion of civil liberties in the UK, looking at the dramatic expansion of surveillance powers, the growth of the database state and the misuse of personal information.

We campaign to give individuals more control over their personal data, and hold to account those who fail to respect our privacy, whether private companies, government departments or local authorities.

Protecting individual privacy and defending civil liberties, Big Brother Watch is a campaign group for the digital age.

If you are a journalist and you would like to contact Big Brother Watch, including outside office hours, please call +44 (0) 7505 448925 (24hrs). You can also email press@bigbrotherwatch.org.uk for written enquiries.

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