

Regulation of Investigatory Powers Act 2000 - Guidance to CCTV Users

Introduction

The Regulation of Investigatory Powers Act 2000 (hereinafter referred to as the Act) came in to force on 2nd October 2000. It places a requirement on public authorities listed in Schedule 1; Part 1 of the Act to authorise certain types of covert surveillance during planned investigations.

The guidance contained in this Code of Practice serves to explain and highlight the legislation to be considered. A more detailed section will be included in the *CCTV Operating Procedures Manual* to assist users in the application of the requirements.

Background

General observation forms part of the duties of many law enforcement officers and other public bodies. Police officers will be on patrol at football grounds and other venues monitoring the crowd to maintain public safety and prevent disorder. Officers may also target a crime 'hot spot' in order to identify and arrest offenders committing crime at that location. Trading Standards or HM Customs & Excise officers might covertly observe and then visit a shop as part of their enforcement function to verify the supply or level of supply of goods or services that may be liable to a restriction or tax.

Such observation may involve the use of equipment to merely reinforce normal sensory perception, such as binoculars, or the use of cameras, where this does not involve systematic surveillance of an individual. It forms part of the everyday functions of law enforcement or other public bodies.

This low-level activity will not usually be regulated under the provisions of the 2000 Act.

Neither do the provisions of the Act cover the normal, everyday use of overt CCTV surveillance systems.

Members of the public are aware that such systems are in use, for their own protection, and to prevent crime. However, it had not been envisaged how much the Act would impact on specific, targeted use of public/private CCTV Systems by 'relevant Public Authorities' covered in Schedule 1: Part 1 of the Act, when used during their planned investigations.

The consequences of not obtaining an authorisation under this Part may be, where there is an interference by a public authority with Article 8 rights (invasion of privacy), and there is no other source of authority, that the action is unlawful by virtue of section 6 of the Human Rights Act 1998 (Right to Fair Trial) and the evidence obtained could be excluded in court under Section 78 Police & Criminal Evidence Act 1978.

The Act is divided in to five parts. Part II is the relevant part of the Act for CCTV. It creates a system of authorisation for various types of covert surveillance. The types of activity covered are 'intrusive surveillance' and 'directed surveillance'.

'Covert Surveillance' defined:

Observations which are carried out by, or with, the use of a surveillance device. Surveillance will be covert where it is carried out in a manner calculated to ensure that the person or persons subject to the surveillance are unaware that it is, or may be, taking place.

Part II – Surveillance types

We should clearly differentiate in this guidance between ‘intrusive’ surveillance which will be a great rarity for CCTV operations and ‘directed’ surveillance which will be the more likely.

‘Intrusive Surveillance’

This is a highly invasive type of covert surveillance, the like of which CCTV equipment and their images alone would not be able to engage in except on the most rare occasion. The Act says:

‘Intrusive surveillance’ is defined as covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle”.

This kind of surveillance may take place by means either of a person or device located inside residential premises or a private vehicle of the person who is subject to the surveillance, or by means of a device placed outside which consistently provides a product of equivalent quality and detail as a product which would be obtained from a device located inside.

Therefore it is not intrusive unless the camera capabilities are such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

Current interpretations re sustained gathering of images of persons in a car, in a car park, dealing in drugs; being able to see clearly inside the car would not be considered ‘intrusive’ under the Act.

In particular the following extract from Section 4 of this Code prevents us from carrying out intrusion of premises with cameras. This section puts us in a strong position to resist the use of public cameras in this way by investigators:

"Cameras will not be used to look in to private residential property".

Where the equipment permits it ‘Privacy Zones’ will be programmed in to the system as required in order to ensure that the interior of any private residential property within range of the system is not surveyed by cameras.

If such ‘zones’ cannot be programmed the operators will be specifically trained in privacy issues.

Directed Surveillance:

This level of covert surveillance is likely to be engaged more by public/private CCTV users when they are requested by ‘authorised bodies’ (see later) to operate their cameras in a specific way, for a planned purpose or operation, where ‘private information’ is to be gained.

The Act says:

‘Directed surveillance’ is defined in subsection (2) as ...

"covert surveillance that is undertaken in relation to a specific investigation or a specific operation which is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance. – (planned)".

In this section ‘private information’, in relation to a person, includes any information relating to his private or family life.

If a CCTV user is carrying out normal everyday observations by operating a particular camera to gain the best information, albeit it may not be the most obvious camera to use, or the nearest to the incident being observed, that use will not be deemed to be ‘covert’ under the terms of the Act. It is using modern technology to the advantage of the operator.

It will only be where CCTV cameras are to be used in a planned, targeted way to gain private information that the requirements of authorised directed surveillance need to be met.

If users are requested to operate their cameras as part of a planned operation where the subject is unaware that targeted surveillance is, or may be, taking place, 'private information' is to be gained and it involves systematic surveillance of an individual/s (whether or not the target of the operation) then a RIPA 'directed surveillance' authority must be obtained.

Authorisations:

Intrusive surveillance can only be 'authorised' by Chief Officers within UK police forces and H.M. Customs and Excise and is therefore irrelevant for any other authority or agency. It is an area of RIPA that CCTV users can largely disregard.

Those who can authorise covert surveillance for public authorities listed in Sch.1/Part1, in respect to directed surveillance are detailed in Article2/Part 1 – Statutory Instrument 2417/2000: The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000.

E.g.: A Local Authority (within the meaning of section 1 of the Local Government Act 1999). The prescribed office as a minimum level of authority is:

Assistant Chief Officer; Officer responsible for the management of an investigation.

Police Forces – A police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales). The prescribed level is a Superintendent; for urgent cases an Inspector.

The impact for staff in Police Control Rooms and CCTV Monitoring Centres is that there might be cause to monitor for some time, a person or premises using the cameras. In most cases this will be an immediate response to events or circumstances. In this case it would not require authorisation unless it were to continue for some time. The RIPA draft Code of Practice suggests some hours rather than minutes.

In cases where a pre-planned incident or operation wishes to make use of public/private CCTV for such monitoring, an authority will almost certainly be required from the appropriate person with the authorised agency.

The authority must indicate the reasons and should fall within one of the following categories:

An authorisation is necessary on grounds falling within this subsection if it is necessary -

- a) in the interests of national security
- b) for the purpose of preventing or detecting crime or of preventing disorder
- c) in the interests of the economic well-being of the United Kingdom
- d) in the interests of public safety
- e) for the purposes of protecting public health
- f) for the purposes of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
- g) for any purpose (not falling within paragraphs (a) to (f) which is specified for the purposes of this subsection by an order made by the Secretary of State.

Every RIPA authority must be thought through and the thought process clearly demonstrated and recorded on the application. Necessity and proportionality must be fully considered; asking the questions: "is it the only way?", "what else have I considered?" It should not be a repeat of principles – in order to prevent & detect crime or in the interests of public safety etc.

Whenever an authority is issued it must be regularly reviewed as the investigation progresses and it must be cancelled properly upon conclusion. The completion of these stages will be looked at during any inspection process.

In cases where there is doubt as to whether an authorisation is required or not, it may be prudent to obtain the necessary authority verbally and then later in writing using the forms.

Forms should be available at each CCTV monitoring centre and are to be included in the procedural manual and available from the CCTV User Group website.

Policing examples:

Inspector Authorisation – urgent request (up to 72 hours)

An example of a request requiring urgent Inspectors authority might be where a car is found in a car park late at night and known to belong to drugs dealers. The officers might task CCTV to watch the vehicle over a period of time (no longer response to immediate events) and note who goes to and from the vehicle (sustained surveillance of individual/s gaining private information).

Superintendent Authorisation – non-urgent request

Where crime squad officers are acting on intelligence linked to a long term, planned operation and they wish to have shop premises, which is suspected of dealing in stolen goods, monitored from the outside over a period of days.

No authorisation required

Where officers are on patrol and come across a local drug dealer sitting in the town centre/street. It would not be effective for them to remain in a shop doorway and wish to have cameras monitor them instead, so as not to divulge the observation taking place. Response to immediate events.

For access to all relevant information on this Act, including the Schedules and Statutory Instruments referred to in this guidance please visit:

www.homeoffice.gov.uk/ripa/ripact.htm