



Governance & Security

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Our Ref 1607/08
Your Ref

www.hmrc.gov.uk

Dear Mr Maxwell,

Request for Information under the Freedom of Information Act 2000 (FOIA)

Thank you for your e-mail of 1st July 2008 requesting information under the Freedom of Information Act.

Your request: *"In light of the HMRC's powers to instigate and pursue surveillance activities against UK citizens (via Regulation of Investigatory Powers Act & Serious Crime Act), please answer the following questions or provide whatever statistics are available which broadly match the questions given:*

- 1) *How many times have each of the following surveillance methods been utilised: use of email monitoring, use of telephone monitoring, following an individual's movements, interception of mail delivered by the Royal Mail, interception of mobile phones calls, covert listening of a person's conversation (for example via a microphone device), retrieval of bank account records, tracking of a person's car or vehicle?*
- 2) *For each of the above methods of surveillance in (1), please sub-divide the results using the following aggregates: year, region (tax region for example), average duration time a person is under surveillance for.*

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number – 18001



INVESTOR IN PEOPLE



- 3) *Does HMRC have the power to covertly enter a person's private home?*
- 4) *Are these surveillance operations performed by HMRC employees or are they sub-contracted to external companies/other government agencies? If so, which companies and agencies?*
- 5) *Is the HMRC able to share information gained via this type of surveillance with other agencies, and do other agencies have a reciprocal type of agreement.*
- 6) *What percentage of persons subjected to this form of surveillance are proven guilty of a crime. Please also aggregate into types of crime.*
- 7) *Are HMRC staff subject to the same provisions?*
- 8) *Are HMRC buildings equipped with any of the following equipment: covert microphones or listening devices, mobile phone interception devices?*
- 9) *Can a person determine whether they have been subject to such surveillance and retrieve the records obtained.*
- 10) *What technology is used for each item in (1)."*

In response to your request:

1), 2), 4), 8) and 10) The information requested to disclose HMRC's surveillance methods, who carries out those methods, its investigation locations and its technology, could indicate the national capability of HMRC to carry out investigations. This falls within provisions of the Freedom of Information Act which exempt it from disclosure. The exemption in question is section 31(1), which provides that –

'information which is not exempt information by virtue of section 30, is exempt information if its disclosure under this Act would, or would be likely to, prejudice:

- (a) *The prevention or detection of crime,*
- (b) *The apprehension or prosecution of offenders,*

The information you have requested is sensitive, in that it would indicate HMRC's investigation capability and from where those investigations take place.

- Many criminals are constantly active and astute in their assessment of covert investigation capabilities and will capitalise on any information they can glean about policy and practice. They will use the information to compromise investigation methods and frustrate prevention and detection of their criminal activity, for example by enabling criminals to develop counter measures against disclosed surveillance techniques.

- Where information that relates directly to the efficiency and effectiveness of HMRC is released, it could be argued that this serves to reassure the public that proper corrective oversight arrangements are in place. However criticism that is not accurately representative and that has the potential to be quoted out of context, serves only to falsely undermine public confidence in HMRC to properly discharge its responsibility to collect tax and enforce border controls. It can also be used to construct specious defence arguments to HMRC prosecutions. This is one of the most difficult balances to strike. Release of this type of information contributes little to public debate. The Office of Surveillance Commissioners (OSC) was created specifically to give the independent high-level judicial oversight to this type of activity and supply the public reassurance that covert surveillance activity was properly regulated. It is the Chief Surveillance Commissioner's (CSC) annual report to Parliament and Scottish Ministers that is intended to spark public debate.

This is a qualified exemption and we are therefore required to weigh the public interest in maintaining the exemption against the public interest in disclosing the information.

When balancing the public interest test I have considered whether the information requested should be released into the public domain. The most persuasive reason for disclosure is accountability, which needs to be compared to the strongest negative reason, which in this case is public safety. As a major law enforcement agency HMRC, in common with the police service, cannot and will not disclose information that will place the public at risk or undermine law enforcement effectiveness thereby assisting those intent on committing crime.

Also, as was firmly established in the Information Tribunal case of the *Guardian Newspaper v. The Information Commissioner and the Avon and Somerset Constabulary*, the public interest in disclosure of information which is exempt by virtue of a qualified exemption, is not justified simply because it is what interests the public. Information released under FOIA, where exemptions prima facie apply, will only be done where there is a tangible community benefit that is more powerful than the harm that could be done. This does not apply in this case. It is my opinion that for these issues the balancing test for disclosure is not made out.

Whilst there is a public interest in the transparency of HMRC operations and in this case providing assurance that appropriate surveillance techniques are used properly, there is a very strong public interest in safeguarding national security and covert surveillance strategies. To confirm or deny a level of policing activity has or has not occurred in any specific area would indicate to those engaged in criminal activity where operations may be centred. Any information identifying the focus of covert investigation activity could be used to the advantage of criminal organisations. In turn this would undermine the operational integrity of these activities and have a negative impact on both national security and law

enforcement. It may be the case that to reveal this information would again identify the focus of HMRC investigation activity across the UK.

The OSC, as the regulators for covert surveillance activity, have a legal obligation to ensure appropriate use and recording of this activity. As necessary they can report directly to closed prime-ministerial and governmental security committees on this activity. These regulatory regimes provide a secure accountability framework for HMRC in common with the Association of Chief Police Officers (ACPO) Constabularies to ensure they are engaged in appropriate activity even in matters concerning national security. This means all law enforcement agencies are already accountable and will be no more so by disclosures under FOIA. These established regulation processes further weaken the public interest argument on disclosure as law enforcement activity is already closely and independently monitored.

On balance, and from the real risk of harm evidenced above, I have decided that the information must be protected and the exemptions applied. In practice this means that I have decided not to release it.

2) See above at 1)

3) The Regulation of Investigatory Powers Act 2000 (RIPA) Schedule 1 details what activities agencies can lawfully authorise. HMRC is one of the agencies that can lawfully authorise intrusive surveillance.

4) See above at 1)

5) The Codes of Practice for Covert Surveillance of RIPA states in paragraph 2.18, "There is nothing in the 2000 Act which prevents material obtained from properly authorised surveillance from being used in other investigations".

6) HMRC does not collate this information and is not required to create it. To assist, you should bear in mind that directed surveillance does not concern itself with crime. It concerns itself with the abuse of an individual's human rights. So if an agency thinks it is likely to obtain private information about an individual through surveillance it must apply for an authority. This could be for any number of criminal/civil matters or for the purposes of collecting or assessing tax. (See also Annex 1.)

7) Any member of HMRC staff who was suspected of being involved in illegal activity covered by an HMRC core business activity would be accorded the same protection under RIPA as any other person.

8) See above at 1)

9) RIPA part 4 provides for the Investigatory Powers Tribunal (IPT) which investigates complaints about conduct of such matters.

10) See above at 1)

You may find the following additional information helpful.

If you have not already done so, you may be interested to read the Codes of Practice that cover RIPA which are available at:

<http://www.security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/>

As mentioned above, the CSC does lay an annual report before Parliament, which is a matter of public record. This does provide statistics on the use of RIPA Part II across all law enforcement agencies and public authorities, broken down to offence. Having regard to the operating practices of law enforcement agencies, the CSC states that he purposely does not report the number of authorisations per agency as this could be misleading. In relation to statistics for RIPA Part II, HMRC fully complies with the Covert Surveillance Code of Practice paragraphs 2.14 – 2.15.

The OSC annual reports can be found at:

<http://www.surveillancecommissioners.gov.uk/docs1/OSC%20Annual%20Rpt%202006-07%20final%20version.pdf>

The Interception of Communications Commissioner (ICC) also lays an annual report before Parliament in respect of those RIPA matters within his remit. These annual reports can be found at:

<http://www.official-documents.gov.uk/>

Information on the IPT can be found at:

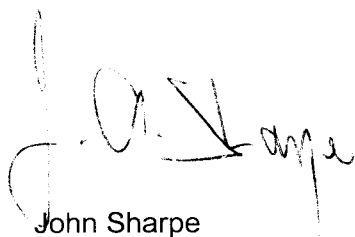
<http://www.ipt-uk.com/>

Please contact me if you have any queries about this letter. Please remember to quote the reference number above in all communications with the Department.

If you are not happy with this reply you may request a review by writing to HMRC FOI Team, Room 4/52, 100 Parliament Street London SW1A 2BQ. You must request a review within 2 months of the date of this letter. It would assist our review if you set out which aspects of the reply concern you and why you are dissatisfied.

If you are not content with the outcome of the internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner cannot make a decision unless you have exhausted the review procedure provided by HMRC. He can be contacted at The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Sharpe', written in a cursive style. The signature is positioned above the printed name 'John Sharpe'.

John Sharpe