

5 December 2022

AS Van Wey
fyi-request-20866-3b97f2fc@requests.fyi.org.nz

Dear AS Van Wey

Request for information

Thank you for your Official Information Act 1982 (OIA) request dated 16 October 2022 asking for information relating to Police Instructions.

My response to each of your questions can be found below.

I am writing to request a copy of the Police Manual chapters about Electronic interception, whether interception is by Police with a lawful warrant, or the unlawful interception by a known or unknown person/entity.

The Police manual chapter 'Introduction to Electronic Interception' has been provided as requested. Please note some information is withheld under section 6c of the OIA, as the making available of the information is likely to prejudice the maintenance of the law including the prevention, investigation and detection of offences and the right to a fair trial.

I also request information as to the general steps which must be taken by the Police when a person makes a formal complaint to the Police (e.g., documentation of complaint in the police system, general steps of an investigation, general steps for obtaining evidence, etc.).

This information is publicly available therefore this part of your request is refused under section 18(d) of the OIA. The following URL provides a good outline for victims of the general steps taken by Police:

<https://victimsinfo.govt.nz/en/home/police-investigation/>

Last, I request policies which inform the decision making for bringing charges and prosecution.

This information is publicly available therefore this part of your request is refused under section 18(d) of the OIA.

The following URL provides information on the Solicitor-Generals Prosecution Guidelines, these guidelines form the decision making of charging and prosecutions:

<https://www.crownlaw.govt.nz/publications/prosecution-guidelines/>

The Police manual chapter 'Charging Decisions' has also been published on open-source websites and recently updated. You can find a copy of such at the following URL:

<https://policepolicy.nz/policies/charging-decisions/>

You have the right to ask the Ombudsman to review my decision if you are not satisfied with the response to your request. Information about how to make a complaint is available at: www.ombudsman.parliament.nz.

Yours sincerely

A handwritten signature in black ink that reads "Alex Bryan". The signature is written in a cursive style with a large, stylized 'A' and 'B'.

Alex Bryan
Detective Sergeant
National Criminal Investigations Group
New Zealand Police National Headquarters

Introduction to Electronic Interception

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RESTRICTED” This is an operational Police document classified as Restricted. The contents may not be copied or disseminated without prior approval from the Manager: Crime Monitoring Centre

Policy statement and principles

What

The [Search and Surveillance Act 2012](#) regulates surveillance devices, including the use of electronic interception devices outlined in this chapter.

The use of surveillance devices must comply with the powers, rules and obligations of the Act to safeguard against unjustified intrusions on 'reasonable expectations of privacy', a right that is given expression in section [21](#) of the New Zealand Bill of Rights Act 1990.

s6(c)

Why

The use of electronic interception devices under the surveillance device regime of the Act enables Police to use these devices to investigate crime, target and catch offenders.

How

To meet its objectives and obligations when carrying out electronic interception, Police will:

- balance the complementary values of law enforcement and human rights
- ensure electronic interception is lawful and reasonable with respect to people's expectation of privacy
- make a careful assessment before using electronic interception devices to determine if the cost, criminal offending and evidential material available warrants such a commitment
- before intercepting or recording a private communication, generally obtain a surveillance device warrant, unless in some situations of emergency or urgency
- apply [TENR operational threat assessment](#) before placing interception devices operationally
- comply with the reporting requirements involving interception devices under the Act.

Overview

Introduction

s6(c) [Redacted]

s6(c) [Redacted]

This chapter is:

- designed as a comprehensive aid to all Police contemplating the use of covert policing techniques
- written with the assumption that a reader has no previous knowledge of the surveillance laws, practice and procedure pertaining to these topics
- produced and maintained by the Manager: CMC. Recommendations for amendments and alterations or additions should be directed to the manager.

Purpose of electronic surveillance operations

An electronic surveillance operation focuses on obtaining evidence against offenders by intercepting their private communications:

[Redacted]

s6(c) [Redacted]

Assessing the need for electronic interception

s6(c) [Redacted] A

careful assessment must be made:

- to determine if the criminal offending warrants such a commitment
- of the evidential material available to support any application for a surveillance device warrant.

s6(c) [Redacted]

Any electronic operation has to be approved at district (District Commander) level and Manager: CMC. To obtain these approvals a full operation order is required. s6(c) [Redacted]

See the section titled, 'Internal Approvals' in the part '[Surveillance device warrants](#)' of the 'Surveillance' chapter for more guidance about the approval requirements on the three types of surveillance devices intended to be used and the circumstances of how they will be used.

As with all investigative methods, careful and appropriate planning is required. It may identify an alternative or simpler investigative option. Ensure that your planning remains realistic and achievable.

Caution and advice

Deployment of electronic investigative techniques are considered intrusive powers. It is paramount that we comply with the relevant law and obtain the appropriate authorities before using any such power to safeguard against unjustified intrusions on 'reasonable expectations of privacy', a right that is given expression in section 21 of the New Zealand Bill of Rights Act 1990.

Definitions, terminology and functions

Table of 'Police instructions' definitions, terminology and functions

s6(c)	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Term	Description
Act	Act means the Search and Surveillance Act 2012.
s6(c)	s6(c)
Call associated data	Information from the telecom service provider relating to how and when a communication was undertaken. Includes things like: call start time, call finish time, date of call, duration of call, source number, second party number, cell sites reference number, etc. but does not include call content.
s6(c)	s6(c)
s6(c)	s6(c)
Final report	A report required by statute to the Judge who issued the Surveillance Device warrant. Usually prepared when all prosecutions have been completed.
Legal advisor	A member of the Police Legal section who assists with warrant applications and checks all documents and attends the High Court where application is made.
s6(c)	s6(c)
s6(c)	s6(c)
s6(c)	s6(c)
s6(c)	s6(c)
s6(c)	s6(c)
s6(c)	s6(c)
s6(c)	s6(c)

Table of legislative definitions related to surveillance

The following table provides legislative definitions of key terms related to surveillance under section 3 of the Search and Surveillance Act 2012, unless otherwise stated:

Term	Definition
Arms	'Arms' means any firearm, airgun, pistol, restricted weapon, imitation firearm, or explosive (as those terms are defined in section 2 of the Arms Act 1983), or any ammunition).
Call associated data	<p>'Call associated data' has the same meaning as in section 3(1) of the Telecommunications (Interception Capability and Security) Act 2013, e.g. call associated data means:</p> <ul style="list-style-type: none"> - information: <ul style="list-style-type: none"> - that is generated as a result of the making of the telecommunication (whether or not the telecommunication is sent or received successfully); and - that identifies the origin, direction, destination, or termination of the telecommunication; and - includes, without limitation, any of the following information: <ul style="list-style-type: none"> - the number from which the telecommunication originates - the number to which the telecommunication is sent - if the telecommunication is diverted from one number to another number, those numbers - the time at which the telecommunication is sent - the duration of the telecommunication - if the telecommunication is generated from a mobile telephone, the point at which the telecommunication first enters a network; but - does not include the content of the telecommunication. <p>(s70)</p>
s6(c)	s6(c)
Commissioner	'Commissioner' means the Commissioner of Police.
Constable	<p>'Constable' has the same meaning as in section 4 of the Policing Act 2008, e.g. 'constable' means a Police employee who:</p> <p>(a) holds the office of constable (whether appointed as a constable under the Police Act 1958 or this Act); and</p> <p>(b) includes a constable who holds any level of position within the New Zealand Police.</p>
Controlled drug	'Controlled drug' has the same meaning as in section 2 of the Misuse of Drugs Act 1975, e.g. 'controlled drug' means any substance, preparation, mixture, or article specified or described in Schedule 1 , Schedule 2 , or Schedule 3 to the Act and includes any controlled drug analogue.
Customs officer	<p>'Customs officer' has the meaning given to it in section 2(1) of the Customs and Excise Act 1996, e.g. 'customs officer or officer':</p> <p>(a) in any provision of the Act, and in any enactment that is not the Act or a portion of it but that uses the definition in this subsection of both or either of those terms, means a person who is:</p> <ol style="list-style-type: none"> 1. a person appointed by the chief executive as a Customs officer for the purpose of the Act; or 2. any other person employed by the chief executive and who is declared, whether at the time of appointment or otherwise, by the chief executive to be a Customs officer for the purpose of the Act; and <p>(b) in a provision of the Act (other than this section, and sections 6(4), 7, 38P, and 175) includes an authorised person who:</p> <ol style="list-style-type: none"> 1. is performing or exercising a function or power in accordance with that person's authorisation; and 2. is therefore required by section 6(4) to be treated for the purposes of that provision as a Customs officer.

Document	<p>‘Document’ includes call associated data and the content of telecommunications in respect of which, at the time an application is made under section 71 for a production order against a network operator, the network operator has storage capability for, and stores in the normal course of its business, that data and content.</p> <p>(s70)</p>
Enforcement officer	<p>‘Enforcement officer’ means</p> <ol style="list-style-type: none"> 1. a constable 2. any person authorised by an enactment specified in column 2 of the Schedule, or by any other enactment that expressly applies any provision in Part 4, to exercise a power of entry, search, inspection, examination or seizure.
Evidential material	<p>‘Evidential material’, in relation to an offence, or a suspected offence, means evidence of the offence, or any other item, tangible or intangible, of relevance to the investigation of the offence</p>
Intercept	<p>‘Intercept’, in relation to a private communication, includes hear, listen to, record, monitor, acquire, or receive the communication either:</p> <ul style="list-style-type: none"> - while it is taking place; or - while it is in transit.
Interception device	<p>‘Interception device’ means any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept or record a private communication (including a telecommunication); but does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing.</p>
Issuing officer	<p>‘Issuing officer’ means:</p> <ul style="list-style-type: none"> - a Judge: - a person, such as a Justice of the Peace, Community Magistrate, Registrar, or Deputy Registrar, who is for the time being authorised to act as an issuing officer under section 108 of the Act.
Judge	<p>‘Judge’ means a District Court Judge or a Judge of the High Court.</p>
Law enforcement agency	<p>‘Law enforcement agency’ means any department of State, Crown entity, local authority, or other body that employs or engages enforcement officers as part of its functions.</p>
Network operator	<p>‘Network operator’ has the same meanings as in section 3(1) of the Telecommunications (Interception Capability) Act 2004, e.g. ‘network operator’ means:</p> <ul style="list-style-type: none"> - a person who owns, controls, or operates a public telecommunications network; or - a person who supplies (whether by wholesale or retail) another person with the capability to provide a telecommunications service. <p>(s70)</p>
Non-private premises	<p>‘Non-private premises’ means premises, or part of a premises, to which members of the public are frequently permitted to have access, and includes any part of a hospital, bus station, railway station, airport, or shop.</p>
Precursor substance	<p>‘Precursor substance’ has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975, e.g. any substance specified or described in Part 1 or Part 2 or Part 3 of Schedule 4.</p>

Psychoactive substance	<p>Psychoactive substance means a substance, mixture, preparation, article, device, or thing that is capable of inducing a psychoactive effect (by any means) in an individual who uses the psychoactive substance.</p> <p>Psychoactive substance includes:</p> <ul style="list-style-type: none"> - an approved product: - a substance, mixture, preparation, article, device, or thing that is, or that is of a kind that is, or belongs to a class that is, declared by the Governor-General by Order in Council made under section 99 to be a psychoactive substance for the purposes of this Act. <p>Section 9, Psychoactive Substances Act 2013</p> <p>See 'Part 13 - Psychoactive Substances' in the Drugs chapter for further information.</p>
Private activity	<p>'Private activity' means activity that, in the circumstances, any 1 or more of the participants in it ought reasonably to expect is observed or recorded by no one except the participants.</p>
Private communication	<p>'Private communication':</p> <ul style="list-style-type: none"> - means a communication (whether in oral or written form, or in the form of a telecommunication, or otherwise) made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but - does not include a communication of that kind occurring in circumstances in which any party to the communication ought reasonably to expect that the communication may be intercepted by some other person without having the express or implied consent of any party to do so.
Private premises	<p>'Private premises' means a private dwellinghouse, a marae, and any other premises that are not within the definition of non-private premises.</p>
Production order	<p>'Production order' means a production order made under section 74 of the Act.</p>
Raw surveillance data	<p>'Raw surveillance data':</p> <ul style="list-style-type: none"> - means actual video recordings or actual audio recordings; and - includes full transcripts, or substantial parts of transcripts, of audio recordings.
Surveillance device	<p>'Surveillance device' means a device that is any 1 or more of the following kinds of devices:</p> <ul style="list-style-type: none"> (a) an interception device (b) a tracking device (c) a visual surveillance device.
Surveillance device warrant report	<p>A report required by statute to the Judge who issued the Surveillance Device warrant, or if that Judge is unable to act, to a Judge of the same court who issued the warrant. The report must be provided within 1 month after the expiry of the period.</p> <p>(s59)</p>
Thing seized	<p>Does not include anything made or generated by a person exercising a search or surveillance power (for example, photographs, drawings, or audio or video recordings made by or on behalf of that person, or a forensic copy of a computer hard drive).</p>

Tracking device	<p>‘Tracking device’ means a device that may be used to help ascertain, by electronic or other means, either or both of the following:</p> <ol style="list-style-type: none">1. the location of a thing or a person2. whether a thing has been opened, tampered with, or in some other way dealt with <p>but does not include a vehicle or other means of transport, such as a boat or helicopter.</p>
Trespass surveillance	<p>‘Trespass surveillance’ means surveillance that involves trespass to land or trespass to goods.</p>
Vehicle	<p>‘Vehicle’ means any conveyance that is capable of being moved under a person’s control, whether or not the conveyance is used for the carriage of persons or goods, and includes a motor vehicle, aircraft, train, ship, or bicycle.</p>
Visual surveillance device	<p>‘Visual surveillance’ device:</p> <p>(a) means any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to observe, or to observe and record, a private activity; but</p> <p>(b) does not include spectacles, contact lenses, or a similar device used to correct subnormal vision of the user to no better than normal vision.</p>
Visual trespass surveillance	<p>‘Visual trespass surveillance’ means trespass surveillance involving the use of a visual surveillance device.</p>