

Scottish police flout law to uncover journalist sources

Minnie Watson
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The Scottish newspaper *Herald* has carried a series of articles showing how the unified Scottish police force, Police Scotland, spied on journalists.

As part of a *Sunday Herald* investigation in August, the paper revealed that Police Scotland's Counter Corruption Unit (CCU) was being investigated by the surveillance watchdog, Interception of Communications Commissioner's Office (IOCCO).

According to the *Herald*, Police Scotland "has launched 23 internal investigations into suspected media leaks since 2013."

The IOCCO reports to the prime minister on a half-yearly basis, with a remit of reviewing the interception of communications and the acquisition and disclosure of communications data by intelligence agencies, police forces and other public bodies.

The CCU is increasingly a law unto itself, with no accountability. Established in 2013, the CCU, which is staffed by around 50 officers, has a double remit: "one team will focus internally within Police Scotland while a second team will be focused on the wider public sector arena." Police Scotland states, "The police unit will work across the entire public sector...."

Last year, the IOCCO carried out an investigation after many allegations surfaced that police forces across the UK had been using powers under the Regulation of Investigatory Powers Act (RIPA) to access the phone records, texts and e-mails of journalists.

The RIPA legislation was passed in 2000 by the Blair Labour government. It allows virtually every governmental body, department and affiliated organisation including HM Revenue & Customs to seek powers of surveillance in the supposed interests of the nation, whether for security, economic or other purposes. It permits the opening of postal correspondence; the review of subscriptions and phone

numbers, details of Internet searches, and e-mail communication; bugging of buildings and vehicles; pursuing and monitoring of individuals; and the use of informers.

The Investigatory Powers Tribunal (IPT) was set up under the RIPA legislation to hear complaints about surveillance by public bodies. But it functions virtually as an adjunct to RIPA. Out of 956 complaints over the abuse of power between 2000 and 2009, only 4 were upheld by the IPT.

Under the RIPA legislation, police officers can collect metadata relating to communication—i.e., who, where and when—but not the content. To access content, police officers have to seek internal approval.

The IOCCO investigation revealed that 34 police forces, over the course of three years, accessed the data of 105 journalists and 242 sources. It concluded that in a majority of the cases there had been a failure to show the "necessity and proportionality" of the police investigations.

Following the investigation, the RIPA regulations were amended this year requiring police forces to get a judge's agreement before using RIPA regulations to identify sources used by a journalist. However, in July, the IOCCO reported two police forces had infringed the code since the March amendment. In a statement, the IOCCO said, "Two police forces have acquired communications data to identify the interactions between journalists and their sources in two investigations without obtaining judicial approval."

The IOCCO did not name the two forces, and Police Scotland has consistently refused to confirm or deny that it is one of the two forces identified by the IOCCO investigation. However, the *Herald*'s August article said an insider source had told it that the CCU was one of the two forces being investigated.

In August, PEN International, the writers' association, called for an investigation into the allegations. It stated, "Spying on journalists is a serious violation of one of the central pillars of a democratic society: press freedom."

PEN's Scottish branch president, Drew Campbell, said in August, "Two weeks ago Nicola Sturgeon wrote to [Prime Minister] David Cameron demanding answers about [Britain's domestic spying operation] MI5 surveillance of MSPs [Members of the Scottish Parliament]—quite rightly as this would be an unacceptable abuse of state power. Now the first minister must apply the same standard to the security services under the locus of the Scottish parliament.... If the Scottish government is fighting for the moral high ground on such issues it must be clear on this matter—or risk becoming mired in a morass of its own making."

In a November 8 article, the *Herald* reported that the IOCCO had identified five instances of the CCU not abiding by the requirement to seek judicial approval. The same article reported that one of the breaches might relate to a newspaper investigation into the murder of prostitute Emma Caldwell. The murder remains unsolved.

The *Herald* wrote, "The *Sunday Mail* published a series of articles in April into the failings of the original police investigation into the Caldwell case. Retired detective Gerry Gallacher, who helped the newspaper expose the shortcomings, was paid a visit by the CCU after the stories were published. Gallacher was not at home at the time of the police visit and he was left a police calling card."

The Justice Committee of the Scottish National Party (SNP)-led Scottish Assembly has so far failed to launch an investigation into the matter. It cites the fact that to date the IOCCO has not yet confirmed that Police Scotland was one of the two forces being named as being in breach of the amended RIPA regulations, relating to access of journalists and sources by police officers.

For its part, the IOCCO had said it could not release such information until a new commissioner of the IOCCO had been appointed. Sir Stanley Burnton was appointed the new commissioner at the beginning of November. The Holyrood Justice Committee expects the IOCCO report will be published before the end of November.

This issue adds to the crisis of Police Scotland. The current chief constable, Stephen House, has resigned and is due to step down at the end of the month. A successor has yet to be announced.

In May, 31-year-old Sheku Bayoh died at the hands of the police when he was arrested by nine officers. There is an ongoing investigation into Bayoh's death, and his family strongly disputes the version of events recounted by the police.

In August, John Yull and Lamara Bell died after being left trapped in their car for three days, despite police being informed on the day of the crash that the car had left the road and landed in undergrowth.

In September, a sighting of missing dementia patient Janet McKay was not dealt with by officers, and, tragically, she was found dead nine days later.



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