



Protecting Journalistic Material





Protecting Journalistic Material Police Powers

PACE 1984

Section 13 “Journalistic Material”

“material acquired or created for the purposes of journalism”

“in the possession of a person who acquired or created it for the purposes of journalism”

Section 11 “Excluded Material”

“journalistic material which a person holds in confidence”

“subject to an undertaking, restriction or obligation and...continuously held (by one or more persons) subject to such an undertaking [etc] since it was first acquired or created for the purposes of journalism.”

Schedule 1 Access Conditions (Production Orders)

Indictable Offence

Material which consists or includes Special Procedure Material on premises controlled or occupied

Other methods tried without success/were bound to fail

In the public interest having regard to i) the benefit likely to accrue to the investigation ii) the circumstances under which the person holds the material

Schedule 1 Para 12 (Search and Seizure)

Access conditions fulfilled and Production Order not complied with or

Not practical to communicate to gain entry to premises

Service of a notice of application for Production Order may seriously prejudice the investigation



Terrorism Act 2000 Schedule 5

Para 5

Journalistic Material including Excluded material

Material sought for purposes of a Terrorist investigation

Likely to be of substantial value to a terrorist investigation

In the public interest having regard to a) the benefit likely to accrue to the investigation and b) the circumstances under which the person has the material on his possession

Para 11

Search and seizure

Production not complied with

Not practicable to communicate to gain entry to premises

Terrorist investigation may be seriously prejudice unless immediate access to material

(British Sky Broadcasting Ltd and Others) v Chelmsford Crown Court and Essex Police (interested party) 2012

Regina (British Sky Broadcasting Ltd) v Central Criminal Court (B and another intervening) 2014



Bindmans

“First, the objective must be sufficiently important to justify the inhibition such orders inflict on the exercise of the fundamental right to disseminate information. Secondly, the means chosen to limit the right must be rational, fair and not arbitrary and third, the means used must impair the right as little as reasonably possible.”

“...a section 9 application may well involve an attempt to compel the disclosure of sources, which is always a sensitive and difficult area because of the potential impact on the ability of responsible journalists to gather and analyse information on matters of public interest.”



Developments in Journalistic Source Protection

Alex Bailin QC

Matrix

- **MPS blocked Press Gazette FoIA request re RIPA**
- **19 forces used RIPA 600+ times against journalists in 3y**
- **Article 10 and confidential journalistic sources given insufficient weight / consideration**
- **Home Office Codes of Practice re Comms Data (past and revised) inadequate**
- **Judicial authorization for access to comms data where confidential source may be revealed**

- **Save Our Sources → new Comms Data Code (Mar 2015)**
- **Labour – HRA + Art. 10**
- **Conservatives – explicit protection for journalists’ sources in Bill of Rights**
- **Lib Dem – Charter on Press Freedom (US 1st amendment) + public interest defence for media**
- **Greens – repeal RIPA**
- **The Sun’s Secure Drop Service for whistleblowers / sources**

- **ECtHR application lodged Sep 2014**
- **Priority status (judgment within 1y)**
- **Gov Obs due 6 May**
- **Section 8 RIPA and use by GCHQ to collect material relating to journalists (esp. comms data and metadata) violates A10 and A8**
- **No prior domestic litigation**
- **Heard with Big Brother v UK, Liberty v UK?**
- **Will build on ECtHR decisions (Goodwin, Tillack, FT, Sanoma)?**

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Thank you!

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