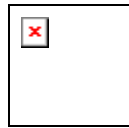


INTERCEPTION OF COMMUNICATIONS (JERSEY) LAW 1993: FIFTH REPORT OF THE COMMISSIONERS

Presented to the States on 8th June 1999



STATES OF JERSEY

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Report

1. On 23rd June 1998 I was appointed by the Bailiff of Jersey to carry out the functions of Commissioner under Article 9 of the Interception of Communications (Jersey) Law 1993, in succession to the first Commissioner so appointed, Robert Harman, Q.C.
2. At the outset, I consider that it would be helpful to outline the responsibilities which the Commissioner has under the Law, since this is the first report I make to the Bailiff.
3. The Interception of Communications (Jersey) Law 1993 makes provision for and in connection with the interception of communications sent by post or by means of the public telecommunications system. Article 2 creates an offence of unlawful interception where a person intentionally intercepts a communication in the course of the transmission by post or by means of the public communication system. However, a person is not guilty of an offence under the Article if (a) the communication is intercepted in obedience to a warrant issued by the Attorney General under Article 3; or (b) where other defences provided by Article 2(2)(b) to (d) are applicable.
4. Applications for a warrant are made to the Attorney General by the States of Jersey Police and by Customs and Excise, and are subject to strict requirements and controls. Every application by the Police must be signed by the Chief Officer, or in his absence by an Assistant Chief Officer; in the case of the Customs and Excise applications must be signed by the Agent of the Impôts or in his absence by his Deputy.
5. The Chief Officer or Agent of the Impôts in each case is required to confirm that the warrant is necessary and to justify his statement with sufficient material to enable the Attorney General to form an independent judgement. The application must further state reasons for concluding that the information could not reasonably be acquired by other means and must confirm that all intercepted material will be dealt with in accordance with the guidelines agreed with the Attorney General and which are intended to comply with the safeguards described in Article 7.
6. By virtue of Article 3(2) the Attorney General must not issue a warrant unless he considers it necessary (a) in the interests of national security; or (b) for the purpose of preventing or detecting serious crime. Serious crime is defined in Article 1(3), the offence being committed only if (a) it involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose; or (b) the offence is one for which a person, who has attained the age of twenty-one and has no previous convictions, could reasonably be expected to be sentenced to imprisonment for a term of three years or more.
7. The issue and duration of warrants is covered by Article 5. A warrant shall, unless renewed, cease to have effect at the end of the relevant period, which, under paragraph (6)(a), means two months beginning with the day on which it was issued. Under paragraph (6)(b)(ii) renewals are for one month, although applications may be made for further renewals.
8. My duties are to keep under review the carrying-out by the Attorney General of the functions conferred on him by Articles 3 to 6 and the adequacy of any arrangements made for the purpose of Article 7. In addition, I have the duty to give to the Tribunal appointed under Article 8 such assistance as it may require for the purpose of enabling it to carry out its functions under this Law. I am required to make a report to the Bailiff as soon as practicable after the end of each year.
9. This report covers the period of the calendar year 1998. In the course of my investigations for its preparation, I have visited Police Headquarters. I have met the Chief Officer and officers who participate in the mechanics of interception and I have viewed the facilities available to them. I have also met the Attorney General and the Solicitor General to discuss their roles in the procedure of the grant of warrants.
10. All concerned have been most helpful in answering the queries which I have needed to raise. I am particularly grateful to the Attorney General for his help in the resolution of one particular matter which took a time to investigate and report. All the relevant documentation has been made available to me and I have read all the reports, examined all the warrants, and reviewed the progress of every enquiry in respect of which warrants were issued.
11. I was impressed by the attitude and approach of those concerned. I am satisfied they are all aware that interception is rightly considered to be a grave infringement of the rights of the individual and that it should only be used when all other investigative methods have been tried or failed or have been considered and for sound and persuasive reasons rejected. I am satisfied too that a rigorous internal vetting procedure is in place for those engaged in the duties of interception under the Law and that there is an appropriate system of supervision by senior officers. It was apparent that all were aware that intercepted material should not be reproduced and that no material is removed from

the appropriate locations. I was assured, and have no reasons to doubt, that knowledge of any intercepted material is imparted on a strict basis and is limited to those with a need to know. Finally, I am satisfied that all concerned understand the requirements to restrict any period of interception to the minimum required.

12. I have been left in no doubt that the intercepted material has been of great value to the Police and that it has made a real contribution to the detection of serious crime on the Island.
13. I take the view, as did my predecessor Robert Harman Q.C., that it would not be in the public interest to include in this report details of interceptions for which warrants have been issued. Accordingly, I have included further information in a confidential Appendix.
14. I conclude by paying tribute to my predecessor, who had the responsible task of monitoring the application of the Law in its early years. The careful and conscientious way in which he undertook his duties helped to ensure that the Law was operated in such a way that a fair balance was struck between the liberty of the individual and the prevention and detection of serious crime.

SIR JOHN NUTTING B.T. Q.C.