

Controlling Police Surveillance

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METROPOLITAN POLICE CHIEF Maurice J. Cullinane's new directive on police investigations is an important attempt to keep the department's intelligence operations within legitimate bounds. The order recognizes that relevant, accurate and timely information, properly collected and used, is vital to protecting the community and combatting crime, especially well-planned or "patterned" offenses such as drug trafficking and white-collar frauds. The constant problem is to keep intelligence-gathering from getting out of hand as it did in the years of mass demonstrations and urban unrest, when the local police—like so many other nervous law-enforcement agencies—engaged in improper surveillance and amassed information on many law-abiding individuals and groups.

The new rules are quite detailed and stricter in many ways than the current guidelines for the FBI. The basic policy is that information must be obtained by lawful means and must relate to criminal activity or persons or events that present threats to life or property. Data on someone's family, associates, personal habits or social interests (which we certainly hope includes non-violent political activities) shall not be collected unless they are directly relevant, as in an investigation of organized crime. Among other things, bank records may not be obtained without a subpoena. Physical and photographic surveillance and the use of informants are to be carefully controlled.

The order is clearly intended to prohibit the kinds of mindless snooping and squirreling of scraps of information that have caused so many problems in the past. This is explicit in the rule that nothing is to be collected or kept merely because somebody thinks it might become useful some day. It is implicit in the tone of the entire document, which suggests that key terms such as "relevance" are to be narrowly construed. And it is backed up by requirements that all

files must be reviewed every few months by senior officers, and that outdated or unproductive material must be destroyed.

There are, of course, limits to the force of any internal directive, even one that attempts to spell out policies and officers' obligations so carefully. For one thing, an order is not a law; its weight depends almost entirely on the chief's commitment and the department's ability to police itself. Future commanders could change or ignore the rules at any time. Thus Chief Cullinane's initiative does not make local legislation superfluous, any more than the Justice Department's guidelines eliminate the need for a congressional charter for the FBI. Quite understandably, this view is especially strong among those City Council members who were subjects of excessive police surveillance in the past.

The order also illustrates, however, the central problem facing any policy-maker in this intricate field. That is the near-impossibility of drawing hard lines between proper and improper intelligence-gathering. Some distinctions are easy: You can say that groups planning peaceful demonstrations should not generally be spied on, and that bands of heroin smugglers should get intensive scrutiny. But a lot of investigations start in murkier circumstances. For instance, how much should the police try to find out about a businessman who may be embezzling funds? No rules, however tight, can eliminate the need for some reliance on investigators' discretion, judgment and experience—and on intelligent oversight and review. Legislators need to recognize this, and acknowledge in effect what legislation cannot do. The City Council seems to understand the challenge and is proceeding cautiously. By outlining some sound policies and pointing to some tough questions, Chief Cullinane's order may prove useful to the Council as well as to the police.