

Victoria Police Manual – Procedures and Guidelines

Surveillance devices

Source Policy

These Procedures and Guidelines support and must be read in conjunction with the following:

- *Surveillance Devices Act 1999*
- *Privacy and Data Protection Act 2014*
- VPMP Investigation support
- VPMG Drug investigations
- Closed Circuit Television (CCTV) footage handling practitioner guide

Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended good practices and assessment tools to help employees make lawful, ethical and professional decisions. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are not mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

Procedures and Guidelines

1. Legislative authority

As stated in **VPMP Investigation support**, police members may install, use or maintain surveillance devices in accordance with the *Surveillance Devices Act 1999* ('the Act'). The Act permits surveillance devices to be used in any of the following circumstances:

- the express or implied consent of the parties involved
- a warrant or corresponding warrant
- an emergency authorisation or corresponding emergency authorisation

- to record a non-private activity.

2. Warrant applications

2.1 *Application to Technical Surveillance Unit*

- Where the use of a surveillance device is considered necessary as part of an investigation, contact the Technical Surveillance Unit (TSU), Intelligence and Covert Support Command, for advice. TSU will discuss the circumstances and advise whether a surveillance device is appropriate (refer to the TSU intranet site).
- Where the application is being made in relation to a Professional Standards Command (PSC) investigation, submit applications to the manager, Technical Unit, PSC. PSC Technical Unit has the same responsibilities as TSU for the purpose of these guidelines and references to TSU are also applicable PSC Technical Unit.
- After initial assessment by TSU, the member in charge of the investigation should complete an Application for Assistance Form to request the use of a surveillance device. This form is available on the TSU intranet site:
 - scan the completed application form once it is signed by the Inspector
 - attach the originally signed application to the investigation file
 - create an Interpose document module with access to profile: TSU CREATOR. This document shell will be used for the duration of the operation, if approved, to transmit documents between TSU and the Local Work Unit
 - upload the application in Word format as well as the scanned copy endorsed by the Inspector
 - forward the Interpose module to TSU at PBEA: SURVEILLANCE SERVICES-TECHNICAL SURVEILLANCE UNIT-SOP-OIC
- TSU will approve the application when:
 - other investigative procedures have been tried and have failed or are unlikely to succeed, or the urgency of the matter is such that it would be impractical to carry out the investigation using only other investigative procedures
 - the circumstances of the offence under investigation justify the use of intrusive or extraordinary measures
 - sufficient human and material resources are available
 - the operational plan for the installation, monitoring maintenance and removal of the equipment is sound.
- Once approved, the TSU will nominate a member (usually a sub-officer) to liaise with the investigation manager (Case officer). The Case Officer will act as a liaison between the investigation team and the TSU.

- Where certain criteria are met, the TSU will approve installation at the local level by a Regional Covert Camera Installer. Refer to section 5 for more information.
- In any major drug operation an Application for Assistance form, available from the TSU website, is to be approved and authorised by the Serious Crime and Organised Crime Tasking and Coordination Committee. Refer section 4, **VPMG Drug investigations** for information relating to major drug investigations authorisations
- In the event that the circumstances of the investigation have change dramatically and there is an identified urgent need for further TSU resources, the Case Officer must contact the Operations Senior Sergeant at the TSU.

2.2 *Permission to install surveillance equipment*

- Where TSU equipment is to be deployed to assist an investigation in non-police premises (ie. not under warrant), a 'Permission to Install Equipment' form, obtainable by contacting TSU, is required to be completed and signed by the owner/occupier of the premises. In all instances, the signature of the owner/occupier is to be obtained by the Case Officer. Only in exceptional circumstances will it be obtained by a TSU member.
- The original signed copy of the form, endorsed with the operation name is to be forwarded for retention to the Senior Sergeant, TSU Operations, at the earliest opportunity.
- Any damage to premises or property is to be repaired and reasonable remuneration provided. Refer Chapter 7, Victoria Police Accounting Manual for further guidance on ex-gratia payments.
- All reasonable precautions must be taken by investigators to ensure the identity of persons assisting police is kept secure, including at subsequent judicial proceedings.
- Investigators are responsible for the initial liaison with owner/occupier(s) and need to accurately explain to them of the nature of assistance being requested. Investigators need to be aware of existing case law relating to the veracity of information provided to members of the public assisting police with electronic surveillance operations. If in doubt contact the TSU for advice.
- The above instructions also apply in circumstances where an Assistance Order exists (s.22 the Act).

2.3 *Application to Affidavit Preparation Section*

- As required by **VPMP Investigation support**, all applications for surveillance device warrants, other than for PSC investigations, are to be made to the Affidavit Preparation Section (APS), Special Projects Unit (SPU).
- Where the application is being made in relation to an PSC investigation, submit applications to the Technical Projects Unit (TPU), PSC. TPU has the same responsibilities as APS for the purpose of these guidelines and references to APS are also applicable to TPU.
- Investigators should contact the APS prior to submitting an application, for an initial assessment of the circumstances.
- The Case Officer is to complete a Surveillance Device Application Form available on the APS intranet site. It is to be submitted to APS along with a draft affidavit prepared by investigators. Examples of affidavits can be found on the APS intranet site. The draft affidavit is to contain the following:
 - details of the offence and evidence of the suspect having committed/about to commit that offence
 - what avenues of enquiry and investigatory techniques have been used
 - use of the relevant vehicle/premises/device etc by the suspect and the likelihood of evidence being gained by use of surveillance devices
 - all relevant information including exculpatory information
 - complete the following details of any persons named:
 - date of birth
 - address
 - any MNI reference number
 - whether the person has prior convictions
 - a summary of prior convictions.
- The APS will prepare the affidavit in consultation with the Case Officer who will be responsible for checking the completed affidavit for accuracy. The Case Officer is then responsible for:
 - signing and dating each page and signing a declaration stating:
 - the contents of the affidavit are true and correct
 - the affidavit contains all information relevant to the making of the application, including matters of which I am aware that are adverse to the application, such as exculpatory material.
 - obtaining the approval from an Inspector
 - having the authorisation form signed by a Superintendent
 - returning the affidavit and authorisation form to APS.
- APS will liaise with the TSU prior to an application being made for a warrant. After obtaining final advice from the Victorian Government Solicitor's Office (VGSO). APS will submit the warrant application before the relevant court.

- Further details can be found at the APS intranet site and on the Surveillance Device Application Form.

3. Emergency authorisation

- Any police member may make a written application to a Senior Officer for an emergency authorisation to use a surveillance device according to s.26(1) and s.27(1) the Act.
- A Senior Officer is any of the following (s.3, *Surveillance Devices Act*):
 - Chief, Deputy or Assistant Commissioner,
 - an authorised member of or above the rank of Commander
 - a member of or above the rank of Inspector authorised in writing by the Chief Commissioner.
- Before making an application to a Senior Officer, contact the Manager, TSU via the online supervisor at Police Communications for advice.
- Emergency Authorisations will only be considered where the prerequisite circumstances as defined in the Act exist.
- Within two business days of making an emergency authorisation, the Senior Officer is required to apply to a Supreme Court Judge for approval to exercise the emergency authorisation powers. The police member who made the original application is required to make themselves available to attend court with the Senior Officer.

4. Monitoring, reviewing and retrieving a surveillance device

4.1 Monitoring

- Once surveillance device(s) have been installed under warrant they are required to be constantly monitored (24/7) by investigators for the duration of the operation.
- Where the continuous monitoring of a device cannot be ensured, a warrant for a device should not be sought.
- If during the course of monitoring, information is received that the surveillance device has or may possibly be compromised, the TSU is to be notified immediately. Investigators must take timely action to ensure that surveillance devices are not removed from premises/vehicles even if this requires overt actions.

4.2 *Retrieval and revocation*

- If at any stage of the investigation the surveillance device is no longer required, the Case Officer should contact TSU to arrange for retrieval of the device. Investigators need to provide the TSU with sufficient notice that a device is no longer required to enable the device to be physically retrieved (covertly) prior to the warrant expiry date.
- Investigators are responsible for providing strategies and resources to assist TSU personnel with the retrieval of surveillance equipment prior to the expiry date of the relevant surveillance device warrant.
- In the event that circumstances preclude the retrieval of a surveillance device prior to the warrant expiry date, investigators are responsible for liaising with APS to organise to either extend the warrant and continue to monitor or obtain a retrieval warrant.
- Where a warrant or other authorisation to use a surveillance device is still in force, although the device has been retrieved because it is no longer necessary for the purpose for which it was sought, the Manager, TSU should ensure that all steps are taken to ensure the use of the device is discontinued and to contact APS to revoke the warrant in accordance with the Act.

4.3 *Renewal of warrant*

- Where a warrant is nearing expiry and its use is still required in an investigation, the Case Officer should contact the APS two weeks before the warrant's expiration to make an application for extension to the court.
- All requests for extension are to be made in writing to the APS, at least two weeks before the expiration of the existing warrant.

5. Installation by Regional Covert Camera Installers

5.1 *General provisions*

- As stated in **VPMP Investigation support**, TSU may determine that a surveillance device (covert camera) can be placed, managed and removed by a Regional Covert Camera Installer (RCCI) operating from, or assigned to, the Local Work Unit.
- RCCIs are trained and authorised by TSU to carry out this function.
- TSU maintains oversight of the device's deployment and use.

5.2 *TSU assessment and oversight*

- TSU may approve installation of the device by an RCCI when:

- no warrant is required
 - written consent is provided by the victim/owner
 - the victim will not be exposed to further risk
 - the investigation does not involve serious violent offences or firearms
 - the deployment is not likely to escalate or have contact with the target
 - the device does not require placement at height
 - footage will be captured from no more than 20 metres of placement
 - night vision capabilities are not required
 - live monitoring is not required
 - multiple surveillance devices (tracking/Listening Devices etc.) are not required
 - the overall investigation is not of a level where specialist skills, equipment or training are required due to the nature of the task or the environment
 - the target of the operation does not have experience with police surveillance methodologies
 - the operation will not draw unusual or higher than expected public interest
 - the installation area is not a hazardous environment (Clandestine laboratory, confined spaces etc.).
- Once approved for RCCI installation, a TSU sergeant will be appointed as a liaison officer to the primary investigator and local RCCI.
 - The liaison officer will prepare a deployment plan with the primary investigator and forward applicable installation documents to the primary investigator via the Interpose module.
 - An RCCI will be allocated to undertake the covert installation of equipment in accordance with TSU protocols and training. The RCCI will be required to document the installation as required under RCCI training protocols.
 - TSU will provide ongoing support to the primary investigator through regular contact as well as oversight to ensure approved timelines for the device's deployment are met.
 - All data obtained through the device must be treated in accordance with the **Closed Circuit Television (CCTV) footage handling** Practitioner Guide.

5.3 **Completion of activity**

- At the conclusion of the surveillance period the RCCI will recover the equipment.
- The primary investigator is to advise TSU of the results of the surveillance.

6. Victorian Inspectorate

The role of the Victorian Inspectorate is to inspect the records of authorised law enforcement agencies using surveillance devices and to report to the Minister on legislative compliance. The Victorian Inspectorate has a range of powers including powers of entry and access, powers to ask questions, request production, and take copies of documents. See **VPMP Investigations support** for requirements of Victorian Inspectorate inspections.

7. Protected information

7.1 *Definition*

Protected information means any information (s.30D of the Act):

- obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation
- relating to an application:
 - for, issue of, existence of or expiry of a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation or;
 - for approval of powers exercised under an emergency authorisation or;
 - under a corresponding law for approval of powers exercised under a corresponding emergency authorisation.

7.2 *Permitted uses*

Under section 30E of the Act, it is an offence to use, communicate or publish protected information. Section 30E(4) provides a number of exceptions where protected information may be disclosed, including where it:

- has already been disclosed in open court
- has already entered the public domain
- is being disclosed on the basis that it is necessary to help prevent or reduce the risk of serious violence to a person, or substantial damage to property.

Protected information is permitted to be used, communicated or published in certain circumstances (s. 30F for local protected information and s.30G corresponding protected information), including:

- the investigation of an offence, whether or not it is the offence for which the use of a surveillance device was initially sought
- the making of a decision about whether or not to bring a relevant proceeding in respect of an offence

- a relevant proceeding in respect of an offence.

For further advice on permitted uses of protected information, contact the Evidence Preparation Section (EPS), SPU.

7.3 Protected information release during court proceedings

Where information is sought to be released during court proceedings, consideration should be given to public interest immunity and whether the disclosure is necessary for the fair trial of the defendant. Contact the VGSO or the Manager, TSU for advice where required.

7.4 Record keeping

As required by **VPMP Investigation support**, the investigating member is to complete the Protected Information Register issued by SPU or for PSC investigations, the register issued by PSC. In this register they are required to record the following:

- at the rear of the register, all use or communication of protected information
- at the front of the register, all DVDs, documents, logs or copies of the intercepted information received and any sharing or movement.

8. Storage of surveillance device material

8.1 Legislative requirement

Section 30H of the Act requires that all records or reports obtained by use of a surveillance device are required to be kept in a secure place which is not accessible to persons who are not entitled to access them.

8.2 Pre-Committal Stage

The investigating member is responsible for storing the Protected Information Register and all surveillance device material. This involves ensuring that it:

- is stored in a secure location which cannot be accessed by persons not entitled to access the material
- is at a minimum, kept in a locked metal filing cabinet (material for separate investigations can be stored in the same cabinet if the drawers can be individually locked).

8.3 Post-Committal Stage

- Once the defendant(s) has been committed for trial, the investigating member is responsible for transferring the Protected Information Register

and surveillance device material to the regional/departmental central storage point.

- Prior to transferring the material, a full reconciliation is to be carried out by the Work Unit Manager, to ensure all material is accounted for.
- The register's inspection log is required to be updated and movement of the material is to be recorded in the register.
- Upon receipt at the relevant central storage point a further full reconciliation is to be carried out by the Manager of the central storage point, to ensure that all material is accounted for. The inspection log in the register is again required to be updated.
- The material and register are then:
 - placed in a heat sealed and labelled bag with the operation name and warrant number visible
 - stored in a secure location that cannot be accessed by persons not entitled to the material
 - at a minimum, kept in a locked metal filing cabinet.
- A Movement of Material TI/SD form, available from the EPS intranet site, is to be completed to record the transfer and acceptance of material at the central storage point. The original form is filed at the relevant regional/departmental central storage point, and a copy is sent to the Manager, EPS.
- A separate property book is to be kept at each regional/departmental central storage point to record the exact location of all surveillance material stored within the facility. Responsibility for the maintenance of the property book rests with the Manager of the central storage point.

9. Destruction of surveillance device material

- When no longer required for a permitted purpose, all surveillance device records and reports including computer files are to be destroyed in accordance with s.30H (1) (b), *Surveillance Devices Act*.
- Before destruction, the case officer is to:
 - consult the Protected Information Register for detailed instructions
 - ensure all material is to be reconciled against the Protected Information Register
- The destruction is to be carried out in the presence of an independent sub-officer
- The register is not to be destroyed. It is to be retained until destruction is approved in accordance with **VPMP Information review, retention and disposal**. The Manager EPS must be kept notified of its location.

- After destruction:
 - the case officer is to complete the declaration certifying the destruction has been carried out
 - the independent sub-officer is to complete the declaration certifying the destruction was carried out in their presence
 - the destruction declaration form is to be returned to EPS.
- For further advice contact the Manager EPS.

Quick Links

- [VPMG Closed Circuit Television \(CCTV\) footage handling](#) practitioner guide

Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact the Technical Support Unit or Special Projects Unit, Intelligence and Covert Support Command.

Update history

Date of first issue	22/02/10	
Date updated	Summary of change	Force File number
24/09/12	Inclusion of guidelines for major drug operations; on the role of the Special Investigations Monitor; and on the storage and destruction of surveillance material	068905/11
14/01/13	Updated to reflect organisational governance and structural changes.	FF-074790
11/06/13	Update to section 5 to include reference at Victorian Inspectorate	067539/11
18/11/13	References to redundant instruments following IMSSD review have been updated with corresponding new instruments.	069562/11
01/09/14	Updated to reflect organisational structural changes.	FF-078741
31/08/15	Introduction of protocols for surveillance devices to be fitted and monitored by Regional Covert Camera Installers operating from local work units.	FF-094996