

Terry Thomas

Captive course

Grassing up

All the dope

The question of when workers in drug agencies should pass information to the police, and when they should not, has been brought into stark relief by the 'Wintercomfort' case

The sort of information that most drug agencies are concerned about is 'personal information' rather than anonymous 'aggregate information'. Personal information by definition relates to an identifiable person. If this type of information is passed to the police we might expect it to trigger some action by the police, directed toward that person. Aggregate information – on trends, street prices and so on – causes less controversy, as it does not so directly affect individuals.

Civic duty

It is said that all citizens, including drugs agency workers, have a civic duty to assist the police. This is an extension of the argument that the police are 'citizens in uniform'. The codes of practice of the Police and Criminal Evidence Act 1984 state that:

... all citizens have a duty to help police officers to prevent crime and discover offenders¹

The code of practice goes on to say this is 'a civic rather than a legal duty' – it respects a person's right not to talk to the police or answer police questions. In this sense it extends a suspect's recently qualified 'right of silence' to anyone else who has knowledge of a crime or criminal activity.²

Even in cases of child abuse there

is no mandatory duty on citizens or social workers to report cases to the police – the decision is left to the discretion of the person concerned.³

The idea of the police as 'citizens in uniform' had some plausibility 50 years ago, but is arguably of limited significance now. Today's police are complex organisations and can call on massive technological support, far beyond the resources of most citizens.

Rights to information

The police can question anyone they like – drug workers or the general public – when they are seeking to detect crime or criminals. And, in general terms, we have a choice whether or not to talk to the police.

The police have limited rights to override our discretion and 'demand' information. By and large, they depend on our consent to help them. In practice, their brusque approach and tactics may give people cause to believe they have no choice at all.

Drug agencies might also get drawn into inappropriate disclosures to the police through informal contacts. It is often said that you have to keep 'sweet' with the police because you never know when you might need them in an emergency – for instance, if violence breaks out.

Are people feeding information to the police, which perhaps should not

be passed to them, because they fear reprisals in the form of a lethargic police response to a crisis?

One might also question the professionalism of the drug agency in this case, and that of police who resort to such tactics to get information they might not otherwise obtain.

In some areas of activity people are obliged to give information: in cases of financial fraud under investigation, and on the whereabouts of children who may have been abused but cannot be found.^{4,5}

The police cannot demand to see files kept by drug agencies, as they are designated as 'excluded material' (in essence health, welfare and journalist files). They can only see them with the agency's consent and not even a magistrate's warrant can be signed to give them a right of access.⁶

The police do have powers if they insist on seeing files denied to them. They can apply to a High Court for a Production Order, which would require the agency to hand over records.⁷

When the police want BBC or ITN videotapes of news footage, where for example a demonstration has deteriorated into a riot and they want to identify the wrongdoers, Production Orders have been sought. This is because the videotapes – like drug agency files – are designated as

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'excluded material' and the police cannot take them without consent.

The BBC and ITN have policies that deny consent and insist on Production Orders from the High Court. This is because they do not want to put their journalists and cameramen at unnecessary risk from people who may otherwise regard them as police spies.

There are no recorded instances of Production Orders being made on drug agencies or local authority social services departments.⁸

Crime and disorder

Section 115 of the Crime and Disorder Act 1998 became law from 30 September 1998. It makes it easier for personal information to flow to and from the police and other agencies in the welfare and criminal justice network.

In Section 115 (1) 'Any person who, apart from this subsection, would not have power to disclose information, (a) to a relevant authority, (b) to a person acting on behalf of such an authority, shall have power to do so in any case where the disclosure is necessary or expedient for the purposes of any provision of this Act'.

Thus section 115 ensures that people have the power to disclose personal information but does not impose any duty or obligation to disclose such

information.

We can only surmise that, prior to the 1998 Act and Section 115, it was believed agencies were reluctant about the exchange of personal information for reasons of a duty of confidence or data protection. Section 115 is to reassure such agencies that information exchange is lawful if carried out for the 'purposes' of the Act, and that such exchanges will assist in the implementation of so called 'joined up' policies.

The 'purposes' of the Act cover youth offending teams, anti social behaviour orders and so on. It also includes the Act's requirement that every local authority 'exercise its various functions ... with due regard to ... the need to do all that it reasonably can to prevent ... crime and disorder in its area.'⁹

A 'relevant authority' is defined as a local authority, the police, the probation service and the health authority. The voluntary sector is not mentioned as such, but the more vague 'person(s) acting on behalf of such an authority' might include them. The Act elsewhere recognises the concept of 'co operating bodies', which might include the 'relevant authorities' and might, in the future, include those prescribed by order of the Secretary of State.¹⁰

Section 115 arguably changes very little in legal terms but it is presumably intended to encourage a free flow of information. Agencies are being advised to draw up protocols between themselves and the police, and the exchange of information then takes place on an agreed consensual basis.

The principles underlying exchange of information should be based on a 'need to know' in order to do your job. The police job is, at least in part, to arrest, charge and prosecute. If police 'arrest referral' schemes pass on information to drug agencies to do their job, should those same agencies be returning the favour? ■

1. Home Office. *Police and Criminal Evidence Act 1984 Codes of Practice*. para C1A. The Stationery Office, 5th edition, 1997.

2. *Rice v. Connolly* [1966] 2 Q B 414.

3. Department of Health and Social Security Review of Child Care Law, London: HMSO, 1985, paras 12.1 12.4.

4. Criminal Justice Act 1987 s2.

5. Through an emergency protection order granted by a magistrate. Children Act 1989 5 48.

6. Police and Criminal Evidence Act 1984 ss 11 13.

7. Police and Criminal Evidence Act 1984 Schedule One.

8. *R v Crown Court at Cardiff ex parte Kellam*, *The Times* 3 May 1993.

9. Crime and Disorder Act 1998 s17.

10. Crime and Disorder Act 1998 s15 (2).