

Surveillance device warrants

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The content of this chapter must not be disseminated external to Police without prior approval from the Director: Criminal Investigations Group.

Executive summary

This part provides instructions about surveillance device warrants:

- internal approvals
- making application for warrants
- de-confliction process
- Police internal protocols for communicating with Courts
- safe execution of warrants - entry to adjoining/neighbouring properties
- retention and security
- disclosure and requests for warrants.

Police must be aware of these key, critical points for surveillance device warrants:

- A surveillance device warrant must be obtained to use a surveillance device in respect of a person, place, vehicle, or thing, unless some situations of emergency or urgency apply under section 48.
- Any constable may apply for a surveillance device warrant, subject to [internal approval](#) from a Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager). Surveillance device warrant applications because of their complexity may be prepared outside the Search and Surveillance System using the enhanced features of the Microsoft Word platform.
- The warrant **must** be prepared in the Search and Surveillance System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TOG, **unless** the system cannot be accessed **and** there is urgency with making a written application. In this situation the warrant must be prepared in the S&S System as soon as practicable after it becomes accessible. **Note:** Preparing the warrant in the Search and Surveillance System also ensures:
 - data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament ([s170](#))
 - managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months ([s49\(3\)](#)).
- Approval to exercise a warrantless surveillance device power should first be obtained from a Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager), unless the specific criteria in the [internal approval](#) section are met.
- Warrant application owners and their supervisors upon receipt of a de-confliction email relating to conflicting surveillance device warrant/search warrant applications for the same target must comply with the actions set out in the [de-confliction](#) section.

Introduction to surveillance device warrants

When is a surveillance device warrant required?

Except as provided in sections [47](#) (some activities that do not require a warrant) and [48](#) (some situations of emergency and urgency), an enforcement officer who wishes to undertake any one or more of the following activities must obtain a surveillance device warrant:

- use of an interception device to intercept a private communication
- use of a tracking device, except where a tracking device is installed solely for the purpose of ascertaining whether a thing has been opened, tampered with, or in some other way dealt with, and the installation of the device does not involve trespass to land or trespass to goods
- observation of private activity in private premises, and any recording of that observation, by means of a visual surveillance device
- use of a surveillance device that involves trespass to land or trespass to goods
- observation of private activity in the curtilage of private premises, and any recording of that observation, if any part of the observation or recording is by means of a visual surveillance device, and the duration of the observation, for the purposes of a single investigation, or a connected series of investigations, exceeds:
 - 3 hours in any 24-hour period; or
 - 8 hours in total.

Note: The activities above for which a surveillance device warrant is required is subject to the restrictions on some trespass surveillance and use of interception device in section [45](#) of the Act.

What does a surveillance device warrant authorise?

A surveillance device warrant may authorise you to use surveillance device(s):

- for the purpose of:
 - intercepting private communications
 - tracking (unless the purpose is only to determine whether a thing is being handled and the installation of the device does not involve a trespass on land or trespass to goods)
 - visual observation of private activity on private premises, and any recording of that observation
 - visual observation of private activity in the curtilage of private premises for longer than 3 hours in any 24 hour period, or 8 hours in total, and any recording of that observation
 - visual surveillance that involves a trespass to land or goods
- to obtain evidential material from a person, place, vehicle or other thing in respect of specific offences (see [Grounds for applying](#) for description of offences) identified under section [45](#) of the Act.

Note: Offences under section [45](#) include those:

- punishable by 7 years imprisonment
- against section [44](#), [45](#), [50](#), [51](#), [54](#) or [55](#) of the [Arms Act 1983](#)
- against section [25](#), [26](#), or [70](#) of the Psychoactive Substances Act 2013.

Who may apply for a surveillance device warrant?

Any constable may apply for a surveillance device warrant, subject to [internal approval](#).

Any enforcement officer may apply for a surveillance device warrant, but if the application for a surveillance device warrant is seeking authority to use visual trespass surveillance or an interception device, then the officer must be employed or engaged by an enforcement agency that has been approved by an Order in Council. ([s49\(5\)](#))

Under section [50](#) an enforcement officer (such as a customs officer) must have their specified law enforcement agency approved (by the Governor-General, by Order in Council made on the recommendation of the Minister of Justice) to carry out visual trespass surveillance and to use interception devices.

Grounds for applying

You can apply for a surveillance device warrant if you have reasonable grounds:

- to suspect an offence punishable by 7 years imprisonment, or an offence against section [44](#), [45](#), [50](#), [51](#), [54](#) or [55](#) of the Arms Act 1983, or against section [25](#), [26](#), or [70](#) of the Psychoactive Substances Act 2013, for the most intrusive form of surveillance on privacy (e.g. use of interception devices and visual surveillance devices involving trespass), or an offence punishable by imprisonment when any lesser intrusion of privacy is contemplated (e.g. to use a visual surveillance devices not involving trespass and tracking devices), **and**
- to believe that the surveillance will obtain evidential material in respect of the offence, involving the person, or in the place, vehicle or other thing specified in the application.

See the section 'Evidential material' in '[Surveillance introduction](#)' for more information about what this term means. (ss[45](#) and [51](#))

See the section 'Category 2: surveillance using a device that requires a warrant' in '[Categories of surveillance with a device](#)' for more information.

No other restrictions for obtaining a warrant

Other than obtaining internal approval and satisfying the grounds for obtaining a surveillance device warrant, there are no other operational policy or legal restrictions. While there is no statutory preference for one form of evidence gathering over another, the least intrusive form that is reasonably practicable should be preferred. Another matter to be considered is the cost versus the benefit.

Period of warrant limited

A warrant may be issued for a period of no more than 60 days after the date on which the warrant is issued, and is in force for that period. ([s55](#))

Extending period of warrant

There is no warrant renewal procedure under the Act. To extend the period of 60 days or the lesser period for which the warrant is valid, a new application for a surveillance device warrant will be required. Use information provided in the original application and explain why you want to continue with the surveillance device beyond the expiry period of the earlier application under paragraph 6 of the application. The new warrant application can be made to the same Judge or a different Judge, but it is preferable to present the application to the same Judge if available.

Internal approvals

Use of interception devices

Telephone interception and/or installation of a device for audio interception

Devices involving landline telephone/mobile phone interception or installation of a device for audio interception require CMC/TOG approval.

Approval requirements:

Stage	Description
1	<p>Initial approval from a Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) - hereafter referred to as "DI".</p> <p>Note: The applicant will invariably be the subject matter expert.</p>
2	<p>CMC Ops Manager approached to confirm capacity.</p>
3	<p>If no capacity and high priority request, CMC Ops Manager endeavours to reprioritise or involves CMC Approvals Committee.</p>
4	<p>Request for TSU assistance and confirmation of capacity if required.</p>
5	<p>Warrant application approved by CSM/FCM.</p> <p>Because of their complexity, surveillance device warrant applications may be prepared outside the Search and Surveillance (S&S) System using the enhanced features of the Microsoft Word platform.</p> <p>The warrant must be prepared in the S&S System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TOG, unless the system cannot be accessed and there is urgency with making a written application. In this situation the warrant must be prepared in the S&S System as soon as practicable after it becomes accessible.</p> <p>Mandatory fields in the system may be completed by referencing as appropriate to the 'Word' document (e.g. "Refer to Appendix A").</p> <p>Note: Preparing the warrant in the Search and Surveillance System ensures:</p> <ul style="list-style-type: none"> - data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (s170) - managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (s49(3)).
6	<p>Application checked by a Police legal advisor to verify that the legal requirements of the Search and Surveillance Act 2012 are met.</p> <p>Note:</p> <ul style="list-style-type: none"> - The consultation with a legal advisor should be recorded by way of a notebook entry and/or decision log entry. The notebook entry and/or decision log entry should also include a summary of the grounds relied upon for use of a surveillance device(s) pursuant to section 48. - The warrant must have a Search and Surveillance System generated identification number attached or a practicable explanation given as to why the unique number is missing, before the legal advisor provides advice on the legal requirements.
7	<p>Application made to Judge.</p> <p>Note:</p> <ul style="list-style-type: none"> - Any Police employee can physically file the application at Court on behalf of the applicant. - The application should be filed in the Court of jurisdiction most likely to hear any subsequent trial. - All communications with the judiciary should be conducted by Legal Services and not individual constabulary Police employees.
8	<p>On issue of warrant, copy of warrant and application provided to CMC/TSU.</p>

Warrantless power to use interception device

An interception device may be used for surveillance in some situations of emergency or urgency under the section 48 warrantless power. Approval to use an interception device should be obtained from a DI unless:

- the immediacy of the situation does not allow for prior planning and approval from a DI; and
- statutory criteria met; and
- an opportunity arises to obtain evidential material that would otherwise be lost if not taken at the time

Notes:

The DI should consult with Legal Services before approving the use of section [48](#) emergency/urgency power. If a Legal Advisor is:

- unavailable then the DI may proceed and approve a request once all the facts and law have been considered
- available then the consultation with a legal advisor should be recorded by way of a notebook entry and/or decision log entry.

See these Police Manual chapters:

- '[Categories of surveillance with a device](#)' for instructions relating to 'Category 3: Surveillance using a device that normally requires a warrant, but may be done without warrant in situations of urgency or emergency'
- '[Covert backstopping](#)' for the obtaining and use of covert equipment for audio, video, transmitting, tracking, intercepting and telecommunications purposes.
- '[Surveillance reporting](#)' for notifying the Commissioner of the use of the warrantless surveillance power on the Search and Surveillance System.

Use of tracking devices

Approval requirements largely reflect current policy:

Stage	Description
1	<p>Initial approval from a DI.</p> <p>Note: The drafter of the application will invariably be the subject matter expert.</p>
2	<p>Request for TSU assistance and confirmation of capacity if required. (This may also be a case where CMC is involved.)</p>
3	<p>Warrant application requires CSM/FCM approval.</p> <p>Because of their complexity, surveillance device warrant applications may be prepared outside the Search and Surveillance (S&S) System using the enhanced features of the Microsoft Word platform.</p> <p>The warrant must be prepared in the S&S System to obtain the system’s generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TOG, unless the system cannot be accessed and there is urgency with making a written application. In this situation the warrant must be prepared in the S&S System as soon as practicable after it becomes accessible.</p> <p>Mandatory fields in the system may be completed by referencing as appropriate to the ‘Word’ document (e.g. “Refer to Appendix A”).</p> <p>Note: Preparing the warrant in the Search and Surveillance System ensures:</p> <ul style="list-style-type: none"> - data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (s170) - managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (s49(3)).
4	<p>Application checked by a Police legal advisor to verify the legal requirements of the Search and Surveillance Act 2012 are met.</p> <p>Note:</p> <ul style="list-style-type: none"> - The consultation with a legal advisor must be recorded by way of a notebook entry and/or decision log entry. The notebook entry and/or decision log entry should also include a summary of the grounds relied upon for use of the surveillance device(s) pursuant to section 48. - The warrant must have a Search and Surveillance System generated identification number attached or an explanation given as to why the unique number is missing, before the legal advisor provides advice on the legal requirements.
5	<p>Application made to Judge.</p> <p>Note:</p> <ul style="list-style-type: none"> - Any Police employee can physically file the application at Court on behalf of the applicant. - The application should be filed in the Court of jurisdiction most likely to hear the subsequent trial. - All communications with the judiciary should be conducted by Legal Services and not individual constabulary Police employees.
6	<p>On issue of warrant, copy of warrant and application provided to TOG where the installation of a device is required.</p>

Use of visual surveillance devices

Installation of visual surveillance equipment

If device for observing and recording private activity through installation of covert visual surveillance equipment, whether or not involving trespass, must be done through TOG and under Police internal policy requires a surveillance device warrant:

Stage	Description
1	<p>Initial approval from a DI.</p> <p>Note: The drafter of the application will invariably be the subject matter expert.</p>
2	<p>Request for TOG assistance and confirmation of capacity. (This may also be a case where <u>CMC</u> is involved)</p>
3	<p>Warrant application approved by CSM/FCM.</p> <p>Because of their complexity, surveillance device warrant applications may be prepared outside the Search and Surveillance (S&S) System using the enhanced features of the Microsoft Word platform.</p> <p>The warrant must be prepared in the S&S System to obtain the system’s generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TSU, unless the system cannot be accessed and there is urgency with making a written application. In this situation the warrant must be prepared in the S&S System as soon as practicable after it becomes accessible.</p> <p>Mandatory fields in the system may be completed by referencing as appropriate to the ‘Word’ document (e.g. “Refer to Appendix A”).</p> <p>Note: Preparing the warrant in the Search and Surveillance System ensures:</p> <ul style="list-style-type: none"> - data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (s170) - managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (s49(3)).
4	<p>Application checked by a Police legal advisor to verify the legal requirements of the Search and Surveillance Act 2012 are met.</p> <p>Note:</p> <ul style="list-style-type: none"> - The consultation with a legal advisor must be recorded by way of a notebook entry and/or decision log entry. The notebook entry and/or decision log entry should also include a summary of the grounds relied upon for use of the surveillance device(s) pursuant to section 48. - The warrant must have a Search and Surveillance System generated identification number attached or an explanation given as to why the unique number is missing, before the legal advisor provides advice on the legal requirements.
5	<p>Application made to Judge.</p> <p>Note:</p> <ul style="list-style-type: none"> - Any Police employee can physically file the application at Court on behalf of the applicant. - The application should be filed in the Court of jurisdiction most likely to hear any subsequent trial. - All communications with the judiciary should be conducted by Legal Services and not individual constabulary Police employees.
6	<p>On issue of warrant, copy of warrant and application provided to TOG.</p>

Visual surveillance equipment not requiring installation

If other visual surveillance equipment is being used (e.g. binoculars, cameras, mobile phones with camera/video function):

Warrantless / warrant	Approval description
Warrantless	<p>Interception available in situations of emergency/urgency where:</p> <ul style="list-style-type: none"> - statutory criteria met; and - the immediacy of the situation does not allow for prior planning; and - an opportunity arises to obtain evidential material that would otherwise be lost if not taken at the time - approval required from a DI. <p>Notes:</p> <ul style="list-style-type: none"> - The DI should consult with Legal Services before approving the use of section 48 emergency/urgency power. If a Legal Advisor is: <ul style="list-style-type: none"> - unavailable then the DI may proceed and approve a request once all the facts and law have been considered - available then the consultation with a legal advisor must be recorded by way of a notebook entry and/or decision log entry. The notebook entry and/or decision log entry should also include a summary of the grounds relied upon for use of the surveillance device(s) pursuant to section 48. - See these chapters: <ul style="list-style-type: none"> - ‘Categories of surveillance with a device’ for instructions relating to ‘Category 3: Surveillance using a device that normally requires a warrant, but may be done without warrant in situations of urgency or emergency’ - ‘Surveillance reporting’ for notifying the Commissioner of the use of the warrantless surveillance power on the Search and Surveillance System.
Warrant	Follow the instructions in the step/action table for ' Installation of covert surveillance equipment '.

Any exceptions to the [internal approvals](#) policy, either in a particular case or in relation to a particular class of users, require the approval of the Director: Criminal Investigations.

How to apply for a surveillance device warrant

Mode of application

An application for a surveillance device warrant is normally made in writing and given to the Judge in hard copy.

However, if this is impracticable in the circumstances, you may, with prior agreement of the Judge:

- make an application orally, e.g. by telephone or personal appearance, or
- have your written application considered without a personal appearance before and/or without oral communication with the issuing officer.

Written applications may be transmitted to the Judge electronically via the Electronic Operating Model. **Note:** This system is not yet operational). ([ss52](#) and [100](#))

When are oral applications allowed?

A Judge may allow an application to be made orally (e.g. in person or by telephone call) and excuse an applicant from putting all or part of the application in writing if satisfied that:

- requiring a written application would result in a delay that would compromise the effectiveness of the surveillance operation, **and**
- the question of whether the warrant should be issued can be properly determined on the basis of an oral communication or personal appearance, **and**
- all the required information (i.e. that required in a written application) is supplied to the issuing officer. ([ss52](#) and [100\(3\)](#))

If an oral application is allowed, the Judge must record the grounds for the application as soon as practicable.

A written surveillance device warrant must also be issued. It is not possible to simply rely on the Judge's agreement to undertake the activities authorised. The Judge must sign a warrant. For this reason, it will be necessary for the applicant to supply the Judge with a draft warrant or a template that can be populated.

Applications without personal appearance or oral communication

A Judge may allow an application without a personal appearance or oral communication if satisfied that:

- the question of whether the warrant should be issued can be properly determined on the basis of the applicant's written communication, **and**
- the information required for the application has been supplied to the Judge, **and**
- the Judge is satisfied that there is no need to ask questions of, or seek further information from, the applicant. ([ss52](#) and [100\(4\)](#))

Applying for surveillance device warrants

Pre-application checks and set-up

Step	Action
1	Create a NIA Case if one does not already exist. Note: Avoid identifying target details for forthcoming warrant applications in the NIA case as this may compromise the security of subsequent warrant execution.
2	Check NIA for any information about the proposed target(s) and also any 'notings' for search warrants issued under other Acts in the previous three months. This information must be included in the application.

Making application

Follow these steps when making an application for a surveillance device warrant:

Step	Action
1	Any constable may apply, subject to meeting internal approval requirements. Note: The application should be filed in the Court of jurisdiction most likely to hear any subsequent trial. See the section titled, ' Internal approvals ' in this chapter.
2	Make the application for surveillance device warrant in the Search and Surveillance system. Because of their complexity, surveillance device warrant applications may instead be prepared outside the Search and Surveillance (S&S) System using the enhanced features of the Microsoft Word platform. The warrant must be prepared in the S&S System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TSU, unless the system cannot be accessed and there is urgency with making a written application. In this situation the warrant must be prepared in the S&S System as soon as practicable after it becomes accessible. Mandatory fields in the system may be completed by referencing as appropriate to the 'Word' document (e.g. "Refer to Appendix A"). Note: Preparing the warrant in the Search and Surveillance System ensures: <ul style="list-style-type: none">- data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (s170)- managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (s49(3)).
3	Direct application to High Court or District Court Judge. Identify the Judge by name (if known). Note: Whether the application is lodged in the District Court or the High Court is determined by the Court that any resulting proceedings are likely to be heard. If the application involves a complex legal issue or is likely to set a significant precedent, the application should be directed to a High Court Judge.
4	Identify constable applying for warrant. (s49(1))

Step	Action
5	<p>Identify type of devices to be used and the method of use intended:</p> <ul style="list-style-type: none"> - visual surveillance device (e.g. visual surveillance device to observe and record private activity on private premises) interception device (e.g. interception (audio) device to intercept and record private conversations) - tracking device (e.g. tracking device to ascertain location of target). (s49(1)) <p>Note: A single application can include more than one type of device to be used.</p>
6	<p>Accurately list and describe in reasonable detail the name and address or other description of the person(s), place(s), vehicle(s), or other thing(s) that are the target(s) of the surveillance. (s49(1))</p> <p>Note: If this information cannot be provided, then under section 49(2) of the Act describe as specifically as possible the parameters of, and objectives to be achieved by, the use of the surveillance device(s).</p>
7	<p>State how many days the surveillance device is sought to be used for</p> <p>Note:</p> <ul style="list-style-type: none"> - The maximum period is 60 days. - The period the surveillance device(s) is in force commences after the date on which the surveillance device warrant is issued, even though the warrant may be executed immediately after it is signed by the Judge (i.e. 60 days on the application and warrant becomes 61 days, because it includes the part day remaining when the warrant is signed.) (s55(1))
8	<p>Set out the grounds on which the warrant is sought. (s49(1))</p> <p>For more information about the grounds for a warrant, see:</p> <ul style="list-style-type: none"> - the section, 'Grounds for applying' - the section 'Category 2: surveillance using a device that requires a warrant' in 'Categories of surveillance with a device'. <p>Note: Each offence should be separately specified.</p>
9	<p>Outline information relied on in support of suspicion as to offence(s):</p> <ul style="list-style-type: none"> - establish the link between what information is sought and the target and the target person(s), place(s), vehicle(s) or other things that are the object of the surveillance <p>Note: All known targets of surveillance must be disclosed in the application for a surveillance device warrant to ensure that the online de-confliction process in the S&S system operates in compliance with the legal requirements of section 49(3) of the Act. See 'All known targets of surveillance must be disclosed in the application' for an example.</p> <ul style="list-style-type: none"> - set out all relevant information whether favourable or unfavourable - describe information received, details of who received it, when and in what circumstances (where appropriate provide an assessment of the significance and reliability of the information) - describe what relevant inquiries have been made - explain any delay between the last receipt of information or the last enquiry and this application for a warrant - if evidence relied on is provided by a confidential informant, as much information as possible about the informant (without compromising a confidential informant's identity) must be given - in respect of information received from other people, details are to be provided of who received it, when and in what circumstances - as far as possible, information received from an informant should be reported in the informant's own words - all relevant information is to be included, even if confidential, except that information revealing the name, address, or any other identifying details of an informant - the reason for every expression of belief in the application must be explained (personal knowledge is not required, but where the applicant does not have personal knowledge of a matter, the basis for believing in its truth should be set out). <p>(<i>R v Williams</i> refers)</p>

Step	Action
10	<p>Describe as specifically as possible, the nature of the evidential material believed to be obtainable.</p> <p>Note:</p> <ul style="list-style-type: none"> - Use the same guide for information relied on under step 9 to support your belief that evidential material is obtainable. - If this information cannot be provided, then under section 49(2) of the Act describe as specifically as possible the parameters of, and objectives to be achieved by the use of surveillance device(s).
11	<p>Specify the details of any relevant other application(s) for a search warrant or a surveillance device warrant, including the result of that application(s), for the previous 3 months.</p> <p>Note: You should check in NIA for further information in relation to previous applications, especially when those previous applications related to multiple targets. (s49(3))</p>
12	<p>Provide any additional information in paragraph 8 of the application that is required to enable the Judge to approve the application, for example:</p> <ul style="list-style-type: none"> - information about your intended use that is relevant to its reasonableness - reasons for period of warrant - any special features of the device that might affect the reasonableness of its use - any information about the steps that will be taken to protect privileged or confidential material - the condition that the Judge must be provided with a report on the use of the surveillance device within 1 month of the expiry of the warrant (or an earlier date specified by the Judge) additional conditions to be added (e.g. shorter warrant period for one device over another) and reasons.
13	<p>If the application is for/includes the use of a visual surveillance device then the following information should be provided under paragraph 8 of the application:</p> <ul style="list-style-type: none"> - the intended location or locations of the devices - the intended field(s) of view - the procedure to be adopted to keep private images (particularly of non-suspects) not required for the purposes of the investigation.
14	<p>Include as an annex any document in support of the application and ensure:</p> <ul style="list-style-type: none"> - it accompanies the application; and - that it is referred to in the: <ul style="list-style-type: none"> - 'Information in support of suspicion as to offence(s)' in paragraph 4 of the application - 'Description of evidential material believed to be obtainable' in paragraph 5 of the application - 'Information supporting belief that evidential material available' in paragraph 6 of the application - 'Additional information' in paragraph 8 of the application. <p>Note:</p> <ul style="list-style-type: none"> - Supporting documents should only be used if necessary (e.g. to provide detailed narrative if matter has complex history, or to set out an association chart or timeline). - Include a table of contents as a front sheet in lengthy and complex applications that have many subheadings.
15	<p>Confirm the truth and accuracy of the contents of the application. (ss52 and 99)</p> <p>Note: In addition to confirming the truth and accuracy at paragraph 9 of the application, you also state: "I am aware that it is an offence to make an application containing any assertion or other statement known to me to be false".</p>
16	<p>Sign and date the application including location of the signing.</p>

Step	Action
17	<p>Submit the application to a Police Legal Advisor to check the application and accompanying unsigned warrant.</p> <p>Note: The warrant must have a Search and Surveillance System generated identification number attached or an explanation given as to why the unique number is missing, before the legal advisor provides advice on the legal requirements.</p>

Note:

- A significant departure from these procedures and guidelines risks the warrant (and therefore the surveillance) being deemed unlawful. This in turn may lead to the exclusion of evidential material under section 30 of the Evidence Act 2006.
- There is no difference in application procedures between different forms of surveillance (e.g. visual, audio or tracking).

Manual application process

If the online Search and Surveillance system is not available, you may manually complete:

- these documents:
 - Application for Surveillance Device Warrant Pol SD1
 - Surveillance Device Warrant Pol SD2
 - Surveillance Device Warrant Report Pol SD3
 - Warrantless Surveillance Power Notification Pol SD6
- the application process by:
 - manually creating (type up) applications/warrants
 - obtaining copies of the official standard forms from the National Criminal Investigations Group (NCIG)
 - seeking the indulgence of the Court to make oral surveillance device warrant application if the circumstances are urgent (section 52 of the Search and Surveillance Act refers).

What should be included and avoided in applications?

Including informant information in surveillance device applications

Informant defined

Under section 3 of the Act, 'informant' has the same meaning as in section 6(1) of the Criminal Disclosure Act 2008, i.e. any person who provides verbal or written information, whether or not in recorded form, to a law enforcement officer.

'Informant' is not restricted to Covert Human Intelligence Sources (CHIS).

Revealing identity of informants

The names and other identifying details of informants who are not registered as CHIS may be withheld but care must be exercised to ensure they are informants rather than witnesses, i.e. that they gave information with an expectation that their identity would be protected (refer [R v Williams](#) - see Law Notes - 30 May 2007 & *R v Kissling*).

While the Judge may require you to supply further information concerning the grounds on which the warrant is sought, they must **not**, in any circumstances, require you to disclose the name, address, or any other identifying detail of an informant **unless**, and only to the extent that the information is necessary for them to assess:

- the credibility of the informant, and/or
- whether there is a proper basis for issuing the warrant. (s98(2)(b))

Including CHIS information

Follow these steps to include CHIS information in a surveillance device warrant application.

Step	Action
1	Do not name a CHIS in the surveillance device warrant application or, include any information that could lead to their identification. Explain to the Judge that you do not want the identity of the CHIS revealed.
2	As far as possible, report information received in the CHIS's own words.
3	You can use hearsay information to outline the grounds for the application, if it is of high reliability. Indicate its reliability by stating: <ul style="list-style-type: none">- the CHIS's credibility- the CHIS's reliability and whether they have given reliable information in the past, e.g. "In the past, Covert Human Intelligence Source 'A' has supplied Police with information that has proved to be reliable"- whether the information has been confirmed by other means. <p>Note: Current Police guidance on providing sufficient information to the warrant issuer about a CHIS is contained in Law Notes issued in respect of R v Williams [2007] NZCA 52 (see Law Notes - 30 May 2007) and <i>R v Kissling</i>, so the warrant issuer can assess reliability.</p>
4	Indicate in the application who received the information from the CHIS, when and in what circumstances.
5	Be prepared to withdraw any surveillance device warrant application if the Judge demands details that identify the CHIS.

Good practice with preparing application

As an applicant for a surveillance device warrant you should follow the steps in this table. It outlines good practice for [written applications](#) and for [orally communicating applications](#) for surveillance device warrants.

Step	Action
1	Accurately describe the offence you believe the surveillance relates to.
2	Explain what evidential material you expect to obtain and why, how and where you expect to obtain it and why. You should be as specific as possible.
3	Make sure you describe the target person, place, vehicle or other thing where you expect to obtain the evidential material, such as the correct address or if unavailable other description of the place or registration number of a car. Note: See also ' All known targets of surveillance must be disclosed in the application ' in this chapter for guidance.
4	Include a description of all relevant information held or received (whether favourable or unfavourable) and all relevant inquiries made.
5	If there has been a delay in applying for a warrant, make any necessary inquiry to ensure everything contained in the application is current and explain why that is so. Explain any delay between the last receipt of information and/or the last inquiry and the application for a warrant.
6	Follow the guidance on including informant information above.
7	Disclose all relevant information, even if confidential. If you are concerned about inadvertent disclosure of confidential information, then consider putting it in an attachment to the application, sealed and marked confidential. You should refer in the application to the attachment.
8	Explain the reason for every expression of belief in the application. You should never express a conclusion without saying why.
9	Scrutinise the grounds on which you apply for a warrant and consider, taking the role of 'devil's advocate', whether the application meets the statutory criteria.
10	Refer the application to a legal advisor with Legal Services for checking before submitting the application to the Judge.

Errors commonly made when applying for surveillance device warrants

If you are the applicant for a surveillance device warrant, then **do not**:

- apply for too wide a warrant (i.e. be specific about describing person, place, vehicle or other thing requiring surveillance, or evidential material to be obtained)
- state conclusions without saying why
- include standard form material on the criminal activity being investigated unless it is relevant to the particular application
- leave out relevant information
- include misleading information
- describe the belief of "the Police" or the belief of another person. Applicants must describe their own personal belief in a state of affairs justifying the issue of a warrant, and the facts that make them hold that belief. If you refer to the belief of another Police constable, or information received by another constable, then that constable should be identified
- omit an explanation for a delay in applying for the warrant
- omit information concerning the reliability of a [CHIS](#)
- seek to undertake surveillance activities where there is limited information to support a belief that evidential material will be obtained.

De-confliction

Introduction

Where more than one active document shares the same [NIA](#) target (i.e. two surveillance device warrant applications or a surveillance device warrant application and a search warrant application), the de-confliction process aims to prevent the interests of one investigation from conflicting with the interests of the other.

Open and closed applications explained

An 'open' classification means the application is revealed to other applicants for a warrant on the same target.

A 'closed' classification means the application is not seen by other applicants.

Every application for a surveillance device warrant is 'closed' by default.

With every application for a search warrant, the applicant must decide whether their application is 'open' or 'closed'.

See the table in the 'De-confliction process outlined' section below to verify who will or will not receive a de-confliction message revealing another application for the same target.

De-confliction process outlined

The Search and Surveillance system may send a de-confliction email to the owners of documents (and their supervisors) which share the same NIA target, according to the table below. If you are advised of a conflict, you must act to resolve the potential conflict.

Note: The online Search and Surveillance system automatically identifies other search warrant and surveillance device warrant applications made in the previous 3 months.

The system enables Police to comply with the provisions of the Search and Surveillance Act 2012. The law requires that an issuing officer in respect of a surveillance device warrant is made aware of any applications for either surveillance device warrants or search warrants in the preceding 3 months. An issuing officer in respect of a search warrant needs to be made aware of applications for search warrants in the preceding 3 months only.

This diagram illustrates the document owners or users who will or will not receive de-confliction messages from the Search and Surveillance system.

Original Document (User 1)	New Application (User 2)	Who is notified by email
Surveillance Device Warrant (closed)	Surveillance Device Warrant (closed)	Both user 1 and 2
'Open' Search Warrant	Surveillance Device Warrant (closed)	User 2 only
'Closed' Search Warrant	Surveillance Device Warrant (closed)	User 2 only*
Surveillance Device Warrant (closed)	'Open' Search Warrant	User 1 only
Surveillance Device Warrant (closed)	'Closed' Search Warrant	User 1 only*

* The owner of the 'closed' surveillance device warrant will be notified of the 'closed' search warrant application, as the surveillance device system overrides this setting.

Conflicting surveillance device warrant applications

Both document owners and their supervisors receive a message, if two Surveillance Device Warrant applications are made in respect of the same target.

De-confliction action

If you receive a de-confliction email you must contact the other applicant/supervisor and agree on a course of action. This action will depend on individual circumstances and on the potential that each investigation has to impact on the other.

The agreed outcome may involve:

- joint execution of both warrants
- one of the applications being delayed/withdrawn,
or
- co-ordination of the execution of both warrants.

Conflicting surveillance device warrant/search warrant applications

Irrespective of the security status of a search warrant application, an applicant for a surveillance device warrant on the same target will receive a notification of the search warrant application. The search warrant applicant will not receive any notification.

When a surveillance device warrant applicant (and supervisor) is made aware of a search warrant application, they must carefully consider the implications of how the search warrant could affect their investigation and weigh this up against the need to inform the other applicant.

The surveillance device warrant applicant or their supervisor will take all reasonable steps to contact the search warrant applicant, or their supervisor or senior manager, if the warrant has not yet been executed.

De-confliction actions - surveillance device warrant applicant

The outcome may involve:

- where the search warrant has not yet been executed:
 - arranging for the search warrant applicant to withdraw or delay their warrant; or
 - allowing the proposed search warrant to proceed, and disclosing the warrant application in the new surveillance device warrant application; or
- where the search warrant has already been executed:
 - not advising the search warrant applicant but disclosing the search warrant and results in the surveillance device warrant application.

All known targets of surveillance must be disclosed in the application

All **known** targets of surveillance **must** be disclosed in the application for a surveillance device warrant to ensure that the online de-confliction process in the S&S system operates in compliance with the legal requirements of section [49\(3\)](#) of the Act (i.e. the applicant must disclose in the application the details of any other applications for a search warrant or a surveillance device warrant that the applicant knows to have been made within the previous 3 months in respect of the person, place, vehicle, or other thing proposed as the object of the surveillance; and the result of that application or those applications).

For example, it is unacceptable for the purpose of protecting the confidentiality of an investigation to only identify a phone number as a target for an interception device on an application, when the identity of the user and the place applying to that phone number are also known.

Under section [49\(4\)](#) of the Act you must, before making an application for a surveillance device warrant, **make reasonable inquiries** within Police for the purpose of complying with section [49\(3\)](#). **Note:** 'Reasonable inquiries' includes making your application online and responding to automated de-confliction alerts should they arise in the S&S system.

Practice note for the hearing of applications

The Chief High Court Judge and the Chief District Court Judge in consultation with Police have issued a practice note that governs the arrangements to apply in relation to the hearing of applications for surveillance device warrants and declaratory orders under the [Search and Surveillance Act 2012](#) in the District Courts and the High Court.

The practice note does not seek to describe the statutory requirements for the granting of warrants and orders (which are defined in the Act), but rather to prescribe the arrangements for making, and for the hearing and security of applications.

These topics are included in the practice note:

- advice of an intended application for a surveillance device warrant or declaratory order
- application documentation for surveillance device warrants
- assessment of written applications for surveillance device warrants
- applications for declaratory orders
- the surveillance device warrant or declaratory order
- subsequent applications for surveillance device warrants
- oral applications for surveillance device warrants
- surveillance device warrant report.

View the 2012 Practice note: Procedures for processing surveillance device warrant applications. (PDF below)

-

 [2012_Practice_Note_\(SS_Act_2012\).pdf](#)

288.03 KB

See the section '**Police internal protocols for communicating with Courts**' below for further guidance contacting the Courts over surveillance matters.

Police internal protocols for communicating with Courts

In all High Court matters filed in centres where Legal Services employees are based, Legal Services will liaise with High Court staff and arrange for the filing of applications, in consultation with the case OC. In provincial centres, Case OCs will arrange and file their applications, in consultation with Legal Services.

Communications with any High Court Judge should be conducted by Legal Services advisors, wherever possible. Operational employees should not communicate directly with, or appear before a High Court Judge without the involvement of a Legal Advisor. If a Judge contacts the applicant directly, the applicant should request the involvement of a Police Legal Advisor in the discussion. If a High Court Judge requires an appearance, a Legal Advisor should be present. If a District Court Judge requires an appearance in a centre in which no Legal Services advisors are based, the Legal Services section responsible for that centre should be advised. A request may be made for a Legal Advisor to appear by phone.

No operational employees should appear before a Judge on a surveillance device warrant matter without first consulting Legal Services.

See the section '[Practice note for hearing of applications](#)' in this chapter for further information about Court protocols for processing surveillance device warrant applications.

Issuing surveillance device warrant

A surveillance device warrant may be issued by a Judge of the District or High Court only. The Judge must be satisfied with the [grounds for the warrant](#) and that the offence category restrictions under section [45](#) and conditions under section [51](#) do not prevent the issuing of the warrant. ([s53](#))

Note:

- If it is not practicable to get a physical warrant before execution, then it is sufficient to have:
 - a facsimile
 - a printout of electronically generated copy
 - a copy made by a constable or authorised officer at the direction of the Judge and endorsed to that effect.

([ss58](#) and [105](#))

- A warrant may not be issued for surveillance of a legally privileged communication unless there is a prima facie case that a communication will be made or received for a dishonest purpose or for the purpose of planning or committing an offence.

([s54](#))

When is a surveillance device warrant invalid?

A surveillance device warrant is invalid:

- if having regard to the information contained in the application, the grounds or conditions for lawful issue of the warrant were not satisfied at the time the surveillance device warrant was issued. Those grounds being:
 - to suspect that an offence specified in the application and punishable by imprisonment has been, or is being, or will be committed **and**
 - to believe that the surveillance of the person(s), place(s), vehicle(s) or other thing(s) will obtain 'evidential material' (defined in '[Surveillance introduction](#)') in respect of the offence(s) specified in the application
- if the warrant contains a defect, irregularity, omission, or want of form that is likely to mislead anyone executing or affected by the warrant as to its purpose or scope.

Note: If a warrant is invalid under section [107](#) of the Act, then neither section [204](#) of the Summary Proceedings Act 1957 (proceedings not to be questioned for want of form) nor section [379](#) of the Criminal Procedure Act 2011 (proceedings not to be questioned for want of form) applies to that warrant. (ss [58](#) and [107](#))

Safe execution of surveillance device warrants - entry to adjoining/neighbouring properties

Introduction

When it is known in advance that Police employees will need to enter properties adjoining/near the target property for the safe execution of a surveillance device warrant (for example, TOG will be involved in executing a surveillance device warrant for an interception device), it is good practice to seek a power of **entry** to those adjoining/nearby properties.

Where specialist groups such as [AOS](#) or TOG are going to be involved in the execution of a surveillance device warrant they must be consulted about how the warrant will be executed and whether entry to adjoining properties is necessary.

In situations of urgency, it is accepted that Police may need to briefly enter onto properties adjoining/near the target property, for the safe execution of the warrant, even though no specific authorisation has been obtained.

Application to include entry to adjoining/neighbouring properties

If a warrant is to be sought to install a surveillance device located at one address (e.g. 5 East Street), but in the process of executing the warrant, Police need to trespass on adjoining or neighbouring properties (e.g. 3 and 7 East Street), then the warrant application should also seek a warrant to **enter** the adjoining or neighbouring properties (e.g. 3 and 7 East Street).

The justification for this is in section [55\(3\)\(h\)\(i\)](#) of the Act.

Wording application and warrants

Make it clear that you are seeking a power of entry only in respect of the adjoining/neighbouring properties for safe execution of the surveillance device warrant and explain why and provide the Judge or issuing officer with the relevant legal basis. Where appropriate, also make it clear that the entry to dwellings on the adjoining/neighbouring property is not sought.

For the warrant application form, use 'Additional information' section (paragraph 7). For example:

7. Additional information

I provide the following additional information:

Power of entry on other properties required for safe execution of surveillance device warrant

7.1 Police specialists will be assisting with carrying out the activities authorised by this warrant. In order to ensure safe execution of the warrant, those specialists may need to enter onto the following properties in addition to the properties specified at paragraph 1:

- a. [address].
- b. [address].
- c. [address].
(the "neighbouring properties")

7.2 The reasons why Police employees may need to enter these neighbouring properties are:

- a. [explain why e.g. why is [TSU](#) required in the first place (e.g. covert operation, risks associated with the particular individual or address), why these particular properties need to be entered. Could be to do with location of property where device is to be installed (e.g. in rear section not easily viewed from street), may need to be able to observe property from different angles in order to ensure covert nature of operation preserved and no one returns to house. Should have a paragraph dedicated to each property and why necessary to enter that property. Should explain in relation to each property what the entry will involve (e.g. just within the yard - don't need to enter premises).]
- b. etc

7.3 This power to enter the neighbouring properties is sought in reliance on s.55(3)(h)(i) of the Search and Surveillance Act 2012, which permits a warrant to specify which premises or area may be entered.

For the surveillance device warrant form use the following wording as a guide in paragraph (2.6). For example:

2.6 To enter (but not search) the following premises or areas:

(i) [the property (but not the dwelling) at address 1]

(ii) [the property (but not the dwelling) at address 2] etc.

In order to install, maintain, or remove the surveillance device/surveillance devices.

Note: If practicable seek legal guidance in regards wording the application and warrant for entry to adjoining or neighbouring properties.

Quick reference guide: surveillance device warrants and warrantless powers

Pre-application checks and set-up

Step	Action
1	Setup a NIA Case if one does not already exist. Note: Avoid identifying target details for forthcoming warrant applications in the NIA case as this may compromise the security of subsequent warrant execution.
2	Check NIA for any information about the proposed target(s) and also any 'notings' for search warrants issued under other Acts in the previous three months. This information must be included in the application.
3	Establish the NIA Person, Location, Vehicle or Item ID number for each target. This is the ID number which appears in the blue bar at the top of the NIA response. If there is no NIA identifier, create one in NIA by creating a link in the occurrence for the location, vehicle or item under surveillance.

Apply for Surveillance Device Warrant

Step	Action
1	Create the warrant application. Because of their complexity, surveillance device warrant applications may be prepared outside the Search and Surveillance (S&S) System using the enhanced features of the Microsoft Word platform. The warrant must be prepared in the S&S System to obtain the system's generated unique identification number on the warrant before it is provided to a Judge and accepted by the CMC and TOG, unless the system cannot be accessed and there is urgency with making a written application. In this situation the warrant must be prepared in the S&S System as soon as practicable after it becomes accessible. Mandatory fields in the system may be completed by referencing as appropriate to the 'Word' document (e.g. "Refer to Appendix A"). Note: Preparing the warrant in the Search and Surveillance System ensures: <ul style="list-style-type: none">- data is collected for the annual reporting of search and surveillance powers by the Commissioner to Parliament (s170)- managing de-confliction involving any other application for a search warrant or a surveillance device warrant within 3 months (s49(3)).
2	Review and follow-up on any de-confliction notifications advising of other active warrant applications for the same target(s). Contact the other applicant(s) and determine whether or not to proceed. Notes: <ul style="list-style-type: none">- The online S&S system automatically identifies other search warrant and surveillance device warrant applications made in the previous 3 months.- You may also need to check NIA for any additional targets identified in the three-month history and include explanation in the "Additional Information" section of the application.

Approvals

StepAction

- 1 Submit the draft application to the approving officer (see '[Internal Approvals](#)'). Review and revise as required.
- 2 Gain approval to proceed, see the section titled '[Internal approvals](#)' in this chapter for the level of approval and requirements.
- 3 Submit the draft application and warrant to Legal Services for review.
- 4 Finalise the application and recheck the three-month history. Entries in this section will be automatically refreshed prior to printing and may change as time progresses during preparation of the warrant.
- 5 Print the application and warrants, sign the application and present them for authorisation to a Judge. Use a Judge from a District or High Court depending on where proceedings are likely to be heard.
- 6 Review/revise the warrant as required, to gain authorisation.
- 7 Record any conditions specified by the Judge in the Search and Surveillance system.
- 8 Execute the warrant.

Using warrantless surveillance device power

StepAction

- 1 Gain approval to proceed, see the section titled '[Internal approvals](#)' in this chapter for the level of approval and requirements.
- 2 Use powers without warrant if required (e.g. section 48 in an emergency situation).
- 3 See '[Categories of surveillance with a device](#)' for instructions relating to 'Category 3: Surveillance using a device that normally requires a warrant, but may be done without warrant in situations of urgency or emergency'.

Surveillance device warrant notifications and reporting

StepAction

- 1 Record the outcomes and other information in the S&S system.
- 2 Within one month after execution (or earlier if this is was a condition of the issuing officer), complete through the online S&S system:

- a surveillance device warrant report (**Note:** report back to the same Judge who authorised the warrant)
- a surveillance device warrant application notification.

Note: The Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) who approved the surveillance device warrant application should also approve the report to the Judge and the notification to the Commissioner.

- 3 See the section:
 - 'Surveillance device warrant report' of '[Surveillance reporting](#)' for further guidance with the reporting procedure
 - 'Notification to Commissioner' of '[Surveillance reporting](#)' for further guidance with completing the notification.

Warrantless surveillance device power notifications and reporting

StepAction

- 1 Record the outcomes and other information in the S&S system.
- 2 Within one month after exercising warrantless surveillance device power complete:
 - a warrantless surveillance device power report (POL SD4)
 - a warrantless surveillance power notification (POL SD5),

notifying the use of warrantless powers used and the outcomes associated with the exercise of the warrantless powers online in the S&S system.

Note: The Detective Inspector or Acting Detective Inspector (District Crime/Field Crime Manager) who approved the surveillance device warrantless power should also approve the report to the Judge and the notification to the Commissioner.

- 3 See the section:
 - 'Warrantless surveillance device power report' of '[Surveillance reporting](#)' for further guidance with the reporting procedure
 - 'Notification to Commissioner' of '[Surveillance reporting](#)' for further guidance with completing the notification.

Retention and security of applications for warrants

The responsibility for retaining and securing the applications once they have been presented for signing remains with the issuing officer.

For further guidance on the retention and security of applications for warrants and action to be taken whenever security of the application retained by an issuing officer may be compromised, see the 'Search' chapter, [Part 2 - Search warrants](#).

Disclosure and requests for copies of surveillance device warrant applications

Surveillance device warrant applications are subject to disclosure under the [Criminal Disclosure Act 2008](#). They should generally be disclosed, subjected to the redaction of sensitive information such as Covert Human Intelligence Source (CHIS) information. Applications may also be the subject of a request under the [Official Information Act 1982](#) or the [Privacy Act 2020](#).

Surveillance device warrant applications or parts of applications containing sensitive information can be withheld under all three Acts (Criminal Disclosure Act 2008, Official Information 1982 and Privacy Act 2020).

Before any of the contents are released you must:

- consult the primary owner who prepared the surveillance device warrant application, and
- if the disclosure may reveal the identity of a CHIS or contains any CHIS information, then also obtain approval from the O/C Human Source Management Unit (HSMU)
- consider consulting with Police Legal Section if necessary.

Note: Information must not be electronically released, unless the minimum approved redaction software at Police being Adobe Pro 9 is applied which permanently redacts texts and images from PDF files. Only Adobe Pro 9 or an upgraded version must be used for all cases of electronic redaction.

See:

- [Electronic redaction and disclosure](#) for specific instructions relating to redaction using Adobe Pro
- [‘Criminal disclosure’](#) chapter for information about restrictions on disclosure
- [‘Privacy and official information’](#) chapter for guidance with personal and official information requests
- [Part 8 Police Human Source information in warrants orders and disclosure](#) for CHIS and human related source disclosure.

See also: [Adobe Redaction Training Material](#).