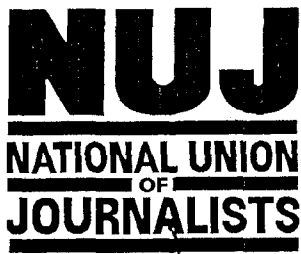


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RECEIVED



Richard Thomas
Information Commissioner
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

29 October 2006

Lee T-

Greener!
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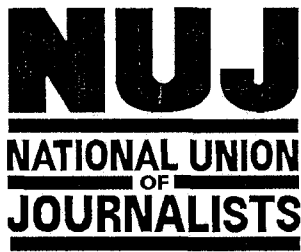
Dear Richard

Further to your recent letters please find enclosed a submission on behalf of the National Union of Journalists.

Yours sincerely

[Redacted signature box]

Jeremy Dear
General Secretary



The National Union of Journalists was founded in 1907 and represents 40,000 journalists working across all media. The union was the first to develop a Code of Conduct in the 1930s and still makes it a condition of membership that members sign up to abide by the code. We are proud of our commitment to ethics in journalism.

A copy of the code is enclosed.

Central to the Code is Clause 5 which states that *"a journalist shall obtain information, photographs, illustrations only by straightforward means. The use of other means can be justified only by over-riding considerations of the public interest"*.

Some 70 years after it was first written that remains a clear statement of principle on the question. If media are to maintain or win back public trust they must demonstrate that they are acting in the public interest.

The NUJ believes there are two key factors - cost-cutting and disillusionment with the Freedom of Information Act - which have led to a growth in the trade of unlawful material and the increased use of means to obtain information which call their legitimacy in to question.

In the first instance much of the industry has embarked on a savage cost-cutting exercise. Investigations, deemed expensive and sometimes ultimately producing nothing, have borne much of the brunt of this cost-cutting.

As a result other 'more reliable' and 'cheaper' alternatives have become more common-place.

Of course extraordinary steps may, sometimes, exceptionally, be necessary to stand up a story of public interest. But too many papers want private detectives for fishing expeditions, trawling for tit bits about rich and famous people. And they prefer this to investigative research, such as using "freedom of information" laws and other "open-access" provisions.

As newspapers cut legitimate, time-consuming, real investigative reporting, they increasingly turn to the "dark arts", everything from using private detectives to obtain personal data, through hacking into telephone messages to paying for documents scavenged from bins.

The NUJ is currently considering a proposal to add to the Code of Conduct an explicit reference to the fact a member should not publish or obtain information taken

either from a rubbish bag/bin left outside a home or office or in breach of Section 55 of the Data Protection Act (1998), whether that material is taken by the member or by another party, unless there are over-riding public-interest considerations.

Traditional investigative journalism means – such as meeting and cultivating whistle-blowers, gathering and sifting documents that they provide – was given a shot in the arm by the announcement of a Freedom of Information Act and other open-access laws.

But whilst many revelatory stories that would otherwise have remained hidden have been published as a result of the use of the FOIA and other open access laws there is a growing disillusionment with its operation among UK journalists which can only help promote a greater trade in unlawful information.

Some of the practices and techniques used by UK journalists to gather information which are considered unlawful would be considered unethical in other countries too, such as the United States. But in the US, there is less reason to use undercover surveillance or private detectives to get a story.

Most of the information that journalists are alleged to access 'illegally' is criminal records. These are public records in the United States as they should be in the UK by the simple fact that they are handed down in open court. It is illogical that they should be secret in their consolidated form, particularly as the public paid several hundred million pounds to create the Criminal Records Bureau. If someone has committed a crime, why shouldn't the public have a right to know about it?

Additionally, American reporters have full access to almost every court record with the exception of very few documents sealed by a judge.

If there is a black market in personal information in the UK, it is one increasingly created by the secrecy of the British state. Public records should be made more accessible through legitimate means. To that end the Information Commissioner should enforce the Freedom of Information Act in a more timely and tougher fashion.

Unless there is greater enforcement and a reduction in the delays in accessing information through the FOIA it is likely that fines and or the threat of greater sanctions alone will not stop the trade in 'unlawful' information.

“There is a public good in having an independent watchdog media to defend the public from corruption by exposing and isolating those officials who are corrupt,” says Gavin MacFadyen, director of the Centre for Investigative Journalism. “Without investigative journalism that struggle is compromised and the corrupt gain confidence, knowing they can get away with most anything.”

Surveillance cannot be used by journalists with impunity. The moral questions that should be asked before engaging in questionable activities such as bugging, going undercover or paying a private detective are these: Is the story in the over-riding public interest? If so, have we exhausted all other legitimate means of getting the information we need?

The NUJ welcomes moves which will lead to higher standards and ethics in journalism. However in proposing tougher penalties it is important to ensure individual journalists are not scape-goated for the sins of newspaper proprietors and managers who pressurise journalists in to breaking the law to obtain information by unlawful means. Higher fines and even imprisonment should be reserved for those who feed and encourage this trade by instructing journalists to break the law when there is no over-riding public interest in doing so.

Individual journalists should also have the right to act according to their own conscience and refuse without detriment any assignment or instruction which would involve them breaking industry codes of practice/conduct, including the NUJ's.

A curb on the "dark arts" will ultimately be good for journalism. As newspapers realise the legal risks they run by forcing reporters to engage in them, they will have to return to real journalism – digging out real news.

The NUJ believes:

- Cost cutting has led to fewer resources for investigative journalism and has thus contributed to the trade in unlawful information.
- That failings in the enforcement and scope of the Freedom of Information Act have encouraged this trade.
- That tougher penalties directed against those who feed the trade in unlawful information can be justified subject to a defence for journalists and media of their being an over-riding public interest in obtaining information by non-straightforward means
- That journalists should be able to refuse to act in breach of industry codes in obtaining information without fear of suffering detriment.

The NUJ would welcome the opportunity to provide any further evidence in any oral hearings which may take place in respect of this consultation.

October 2006