

**Report under Section 49(1) of the
Surveillance Devices Act
for the period ending
31 December 2012**

June 2013

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Introduction

The use of surveillance devices by specified law enforcement agencies in New South Wales is permitted by the *Surveillance Devices Act 2007* (NSW) (the Act).¹ The Act allows surveillance devices to be used by these agencies to investigate crime and to obtain evidence of the commission of such crime or the identity or location of the offender(s). While the Act covers the installation, use and maintenance of listening, optical, tracking, and data surveillance devices, it also restricts the communication and publication of private conversations, surveillance activities, and information obtained from their use.

An accountability regime is established by the Act. Reporting and record keeping obligations are imposed on the law enforcement agencies which use surveillance devices and there are provisions for the safe keeping and destruction of information produced by surveillance devices.

The NSW Ombudsman is required by the Act to conduct inspections of the surveillance device records of the law enforcement agencies to determine the extent of compliance by the agency, and their individual officers, with the Act.

Currently, four law enforcement agencies¹ are the subject of these inspections:

- NSW Police Force
- NSW Crime Commission
- The Police Integrity Commission
- The Independent Commission Against Corruption.

The Ombudsman is required by s.49(1) of the Act to report to the Minister at 6-monthly intervals on the results of inspections. The Minister is required by s.49(2) to lay the report or cause the report to be laid before both Houses of Parliament within 15 days after receiving the report.

This report is for the period 1 July 2012 to 31 December 2012.

Scope of the inspection

The aim of the Act is to enable law enforcement agencies to utilise surveillance devices to assist in the successful investigation and prosecution of certain offences, subject to meeting certain procedural and record keeping requirements. The Ombudsman's inspection and monitoring provides public accountability through regular reporting to the Minister and Parliament, and to foster agency compliance with the Act. Inspections conducted by the Ombudsman examine the records of each agency for compliance with the record and document keeping requirements while also considering such other aspects of compliance as can be determined from those records and from asking questions of relevant officers.

Inspections focus on compliance outlined in three main areas of the Act.

- Part 3 dealing with warrants and emergency authorisations.
- Part 5 covering compliance and monitoring requirements, including dealing with records obtained by use of surveillance devices, the use, communication or publication of protected information and reporting and record keeping.
- Part 6 requiring notification to the Attorney about warrants sought, as well as notification to the subject of surveillance if directed by the eligible Judge.

Surveillance device warrants are issued by eligible Judges of the Supreme Court or eligible Magistrates in the case of a surveillance device warrant authorising the use of a tracking device only or a retrieval warrant in respect of a tracking device. Applications must include certain information and generally must be accompanied by an affidavit setting out the grounds on which the warrant is sought. While the inspection of the records includes examining the matters required to be specified it does not examine the sufficiency, or otherwise, of the information provided in support of the application. That is determined by the relevant judicial officer.

Each individual surveillance device warrant file at each agency is inspected. This involves an examination of the application, warrant, notice to the Attorney General and the report to the issuing judicial officer and the Attorney General, and any other information contained on the file.

¹ The Act also empowers the use of surveillance devices by the Australian Crime Commission but the inspection and reporting of that agency's use of surveillance devices is carried out by the Commonwealth Ombudsman.

The inspection involves checking that:

- the application is made to an eligible Judge or in appropriate cases, an eligible Magistrate
- the application includes the name of the applicant and the nature and duration of the warrant including the kind of device sought and is supported by an affidavit
- the warrant contains the information required by s.20
- any extension or variation to the warrant complies with s.22
- the revocation of a warrant complies with s.23
- the appropriate law enforcement officer notifies the chief officer immediately they are satisfied the use of the warrant is no longer necessary, and the chief officer takes steps to discontinue the use of the device or devices as soon as practicable
- where a warrant has been revoked the use of the device is discontinued immediately
- the s.51 notice contains the required information and has been provided to the Attorney General before the warrant has been issued and that the Attorney General has been given an opportunity to be heard on the application if so desired
- the report under s.44 has been provided to the eligible judge and the Attorney General within the time specified in the warrant (the standard reporting timeframe is 60 days)
- the report complies with the requirements of s.41
- the application for continued use of an authorised surveillance device in an emergency situation complies with ss.31-32
- where a surveillance device is used without a warrant, that an application for approval is made within two business days to an eligible judge and that such approval complies with s.33
- the register of warrants and emergency applications contains the information required by s.47
- that any directions under s.52 have been complied with.

Records relating to the use of protected information obtained by using surveillance devices, and the security of those records held at various locations, are also inspected.

Inspection Overview

During the period 1 July 2012 to 31 December 2012 we conducted inspections across the four NSW law enforcement agencies over 15 days.

Table 1. Surveillance device warrants issued 1 July 2012 - 31 December 2012

	Number of warrants issued
NSW Police Force	397
NSW Crime Commission	90
Independent Commission Against Corruption	2
Police Integrity Commission	3
	492

Table 2. Surveillance device warrant reports received 1 July 2012 - 31 December 2012

	Number of warrants issued
NSW Police Force	364
NSW Crime Commission	154
Independent Commission Against Corruption	1
Police Integrity Commission	2
	521

Table 3. Surveillance device warrants revoked 1 July 2012 - 31 December 2012

	Number of warrants issued
NSW Police Force	64
NSW Crime Commission	9
Independent Commission Against Corruption	0
Police Integrity Commission	0
	73

Table 4. Emergency use of surveillance devices 1 July 2012 - 31 December 2012

	Number of warrants issued
NSW Police Force	397
NSW Crime Commission	90
Independent Commission Against Corruption	2
Police Integrity Commission	3
	492

NSW Police Force

During the reporting period 397 warrants were issued and four applications were refused. Fifty eight further applications have not been proceeded with or have been cancelled. Three hundred and sixty four (364) reports were received.

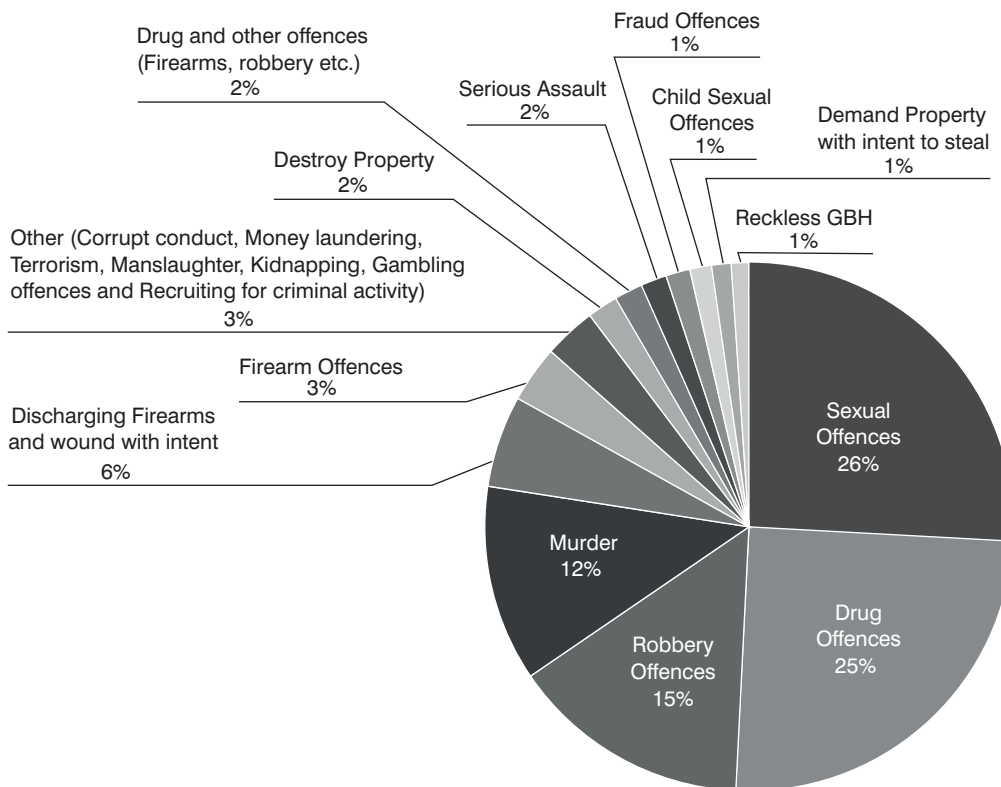
The majority of records – including applications, warrants, s.51 notices and s.44 reports, are located at the Covert Applications Unit (Police Prosecutions). Protected information received as a result of a surveillance device warrant is kept with the officer responsible for the warrant at particular operational commands or relevant local area command. The law enforcement officer responsible for the warrant is responsible for recording the use, communication or publication of protected information obtained under their warrant.

During this inspection we identified a failure to comply with normal NSW police procedures for the printing and placement of various documents on the physical file. The hard copy file is the official record and it is the hard copy files (not the electronic files) which are made available to us for inspection. As outlined below, we identified 29 files where the warrant application was not contained within the hard copy warrant file, and a further 276 files which did not contain a copy of the s.44 report. More critically, for all 276 files, s.44 of the Act was not complied with as the reports were not provided to the Attorney General or the relevant Eligible Judge. While NSW Police generally complied with other provisions of the Act, there was significant noncompliance with s.44. As noted below police commenced remedying the noncompliance issues as soon as it was brought to their attention.

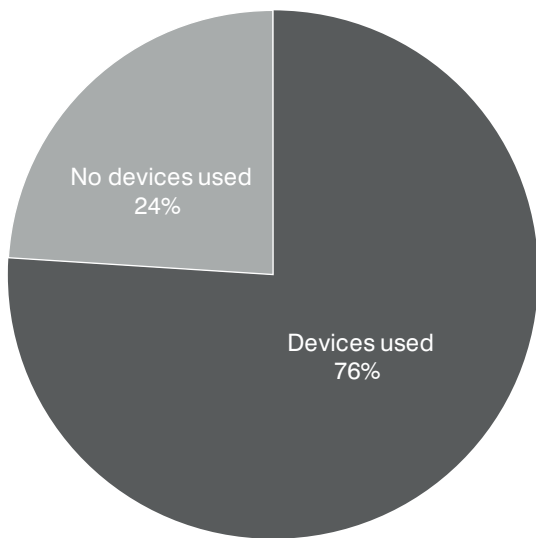
General information about the use of surveillance devices

The following three figures set out information about police use of surveillance devices during the period January – December 2012 (note: all other figures referred to elsewhere in this report are for a six month period only). Figure 1 shows the types of offences targeted, Figure 2 shows that 76 percent of warrants granted resulted in surveillance devices being used, and Figure 3 shows that relevant information was obtained through the use of surveillance devices in 57 percent of warrants granted.

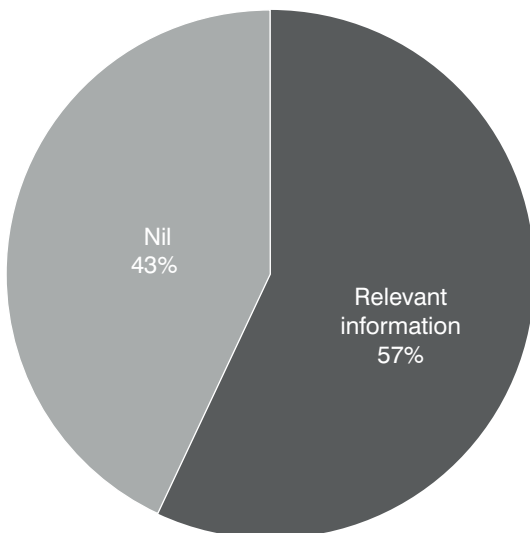
Figure 1. Types of Offences Targeted



Note: The above is based on 750 warrants granted (January – December 2012) by the type of criminal activity targeted by the warrant. This data is drawn from the s.51 Notices provided to the Attorney General prior to the issue of the warrant.

Figure 2. Use of surveillance devices on warrants granted

Note: Twenty-four percent of warrants did not have devices installed for a range of operational reasons

Figure 3. Relevant information obtained when surveillance devices use

Warrant requirements

Section 17 Applications for a surveillance device warrant

All applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only.

While many of the records associated with warrant files are stored electronically, it is the hard copy warrant file that is the official record and it is the hard copy files (not the electronic files) which are provided to us when performing our inspection functions. During our last inspection we found 29 warrant files (listed below) did not contain a copy of the warrant application for us to inspect. Police advised us the warrant applications were held electronically and arranged for the missing warrant applications to be printed and placed on the hard copy warrant files, enabling them to then be inspected.

SD12/0415	SD12/0617	SD12/0762	SD12/0802	SD12/0836
SD12/0416	SD12/0625	SD12/0764	SD12/0811	SD12/0840
SD12/0590	SD12/0638	SD12/0780	SD12/0815	SD12/0846
SD12/0593	SD12/0708	SD12/0787	SD12/0816	SD12/0848
SD12/0595	SD12/0740	SD12/0788	SD12/0817	SD12/0853
SD12/0608	SD12/0754	SD12/0793	SD12/0833	

Section 18 Remote Application

There were nine remote applications made.

All applications were notified to the Attorney General and affidavits were provided to the issuing judicial officer within the legislative time frame.

Section 22 Extension and variation of surveillance device warrant

Twenty three warrants were varied and/or extended during the reporting period.

Section 23 Revocation of surveillance device warrant

There were 64 revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Section 24 (2)(a) requires that a surveillance device which is no longer needed is to be discontinued as soon as practicable. NSW Police Force uses a 'Notification of Discontinuance' form to record such action. Section 24 (2)(b) further requires that when an application for discontinuance is made, an application is also made for the revocation of the warrant under s.23.

While the Act requires that a surveillance device be discontinued as soon as practical after the chief officer of the law enforcement agency is satisfied the use of the device is no longer necessary, there is no time limit specified for making an application for revocation of the warrant. As an administrative practicality, we have taken the view it is not unreasonable that an application for revocation not be made for any warrant which will in any case expire within 5 days of the use of the surveillance device being discontinued.

Section 25 Application for retrieval warrant

There were no applications for a retrieval warrant.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were revoked.

Emergency authorisation requirements

Section 31 Emergency use of surveillance devices – threat of serious personal violence or substantial property damage

There was no emergency use of surveillance device warrants.

Section 32 Emergency authorisation - continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

There were no applications made.

The law enforcement officer responsible for the warrant is responsible for recording the use, communication or publication of protected information obtained under their warrant.

Compliance and monitoring requirements

Section 40 Prohibition on use, communication or publication of protected information

During this reporting period no inspections were carried out at regional or remote locations. These inspections will continue next reporting period.

Section 41 Dealing with records obtained by use of surveillance devices

During this reporting period no inspections were carried out at regional or remote locations. These inspections will continue next reporting period.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General

Section 44 of the Act requires a report to be furnished by 'a person to whom a surveillance device warrant is issued' to the eligible Judge or eligible Magistrate, as the case may be, and to the Attorney General within the time frame specified in the warrant. To facilitate compliance with this provision across the Police Force they have adopted procedures whereby any officer responsible for a warrant provides the report in the first instance to the Covert Applications Unit, from where they are then provided to the Judge or Magistrate, and Attorney General.

The maximum penalty for failure to comply with ss.44 (1), (2) and (6) is 20 penalty units or imprisonment for a term of 12 months, or both.

During the reporting period our inspectors found several areas where reports had not been dealt with according to the requirements of this section of the Act.

1. In 28 of the warrant files inspected (see below), the s.44 report had been forwarded to the Covert Applications Section by the officer responsible for the warrant. The report was on the warrant file, but had not been reported to the eligible Judge and the Attorney General *within the specified number of days following the expiry or revocation of the warrant as required*. The standard for reporting is 60 days.

Warrant Number	Issued	Expiry	Notice to AG	Days
SD12/0576	05-Sep-12	04-Dec-12	12-Feb-13	70
SD12/0087	08-Feb-12	07-May-12	18-Jul-12	72
SD12/0093	22-Feb-12	21-May-12	02-Aug-12	73
SD12/0149	02-Mar-12	31-Mar-12	13-Jun-12	74
SD12/0436	06-Jul-12	04-Oct-12	19-Dec-12	76
SD12/0145	01-Mar-12	31-Mar-12	19-Jun-12	80
SD12/0702	18-Oct-12	17-Nov-12	05-Feb-13	80
SD12/0160	06-Mar-12	03-Jun-12	23-Aug-12	81
SD12/0112	20-Feb-12	23-Mar-12	13-Jun-12	82
SD12/0041	17-Jan-12	07-Feb-12	02-May-12	85

Warrant Number	Issued	Expiry	Notice to AG	Days
SD12/0552	24-Aug-12	23-Sep-12	20-Dec-12	88
SD12/0072	02-Feb-12	01-May-12	01-Aug-12	92
SD12/0684	12-Oct-12	25-Nov-12	26-Feb-13	93
SD12/0150	02-Mar-12	15-Apr-12	18-Jul-12	94
SD12/0506	15-Aug-12	14-Sep-12	19-Dec-12	96
SD12/0521	16-Aug-12	15-Sep-12	20-Dec-12	96
SD12/0507	14-Aug-12	11-Nov-12	20-Feb-13	101
SD12/0075	21-Feb-12	19-May-12	29-Aug-12	102
SD12/0033	11-Jan-12	10-Feb-12	23-May-12	103
SD12/0450	06-Aug-12	04-Nov-12	19-Feb-13	107
SD12/0687	12-Oct-12	10-Nov-12	26-Feb-13	108
SD12/0496	06-Aug-12	05-Sep-12	28-Dec-12	114
SD12/0600	18-Sep-12	01-Nov-12	26-Feb-13	117
SD12/0508	14-Aug-12	13-Oct-12	20-Feb-13	130
SD12/0108	15-Feb-12	14-Apr-12	28-Aug-12	136
SD12/0084	13-Mar-12	08-Jun-12	01-Nov-12	146
SD12/0359	08-Jun-12	06-Sep-12	18-Feb-13	165
SD12/0091	09-Mar-12	05-Jun-12	20-Nov-12	168

2. In 57 warrant files inspected (see below), the s.44 report had been provided to the Attorney General, but not to the relevant eligible Judge, as is required.

Warrant Number	Issued	Expiry	Notice to AG
SD12/0079	03-Feb-12	02-May-12	28-Jun-12
SD12/0108	15-Feb-12	14-Apr-12	28-Aug-12
SD12/0153	09-Mar-12	06-Jun-12	07-Aug-12
SD12/0181	16-Mar-12	12-Jun-12	28-Jun-12
SD12/0187	23-Mar-12	20-Jun-12	28-Jun-12
SD12/0225	11-Apr-12	09-Jul-12	23-Aug-12
SD12/0233	12-Apr-12	11-Jul-12	27-Jun-12
SD12/0299	18-May-12	17-Jun-12	15-Aug-12
SD12/0356	06-Jun-12	05-Jul-12	27-Jun-12
SD12/0359	08-Jun-12	06-Sep-12	18-Feb-13
SD12/0365	12-Jun-12	10-Sep-12	28-Jun-12
SD12/0382	22-Jun-12	20-Sep-12	07-Aug-12
SD12/0450	06-Aug-12	04-Nov-12	19-Feb-13
SD12/0494	10-Aug-12	07-Nov-12	19-Sep-12
SD12/0507	14-Aug-12	11-Nov-12	20-Feb-13
SD12/0508	14-Aug-12	13-Oct-12	20-Feb-13
SD12/0541	28-Aug-12	26-Nov-12	29-Jan-13
SD12/0548	24-Aug-12	21-Nov-12	23-Jan-13

Warrant Number	Issued	Expiry	Notice to AG
SD12/0563	12-Sep-12	10-Dec-12	12-Feb-13
SD12/0576	05-Sep-12	04-Dec-12	12-Feb-13
SD12/0580	05-Sep-12	04-Dec-12	05-Feb-13
SD12/0582	10-Sep-12	09-Dec-12	06-Feb-13
SD12/0585	11-Sep-12	10-Dec-12	23-Jan-13
SD12/0586	11-Oct-12	20-Dec-12	31-Jan-13
SD12/0598	21-Sep-12	18-Dec-12	07-Feb-13
SD12/0600	18-Sep-12	01-Nov-12	26-Feb-13
SD12/0606	18-Sep-12	15-Dec-12	06-Feb-13
SD12/0609	27-Sep-12	20-Dec-12	31-Jan-13
SD12/0610	20-Sep-12	17-Dec-12	29-Jan-13
SD12/0626	28-Sep-12	20-Dec-12	06-Feb-13
SD12/0643	16-Oct-12	12-Jan-13	06-Feb-13
SD12/0649	08-Oct-12	20-Dec-12	13-Feb-13
SD12/0651	03-Oct-12	20-Dec-12	07-Feb-13
SD12/0657	04-Oct-12	02-Jan-13	12-Feb-13
SD12/0658	06-Nov-12	04-Feb-13	07-Feb-13
SD12/0673	11-Oct-12	07-Jan-13	06-Feb-13
SD12/0684	12-Oct-12	25-Nov-12	26-Feb-13
SD12/0687	12-Oct-12	10-Nov-12	26-Feb-13
SD12/0691	18-Oct-12	17-Dec-12	05-Feb-13
SD12/0692	17-Oct-12	12-Jan-13	13-Jan-13
SD12/0694	16-Oct-12	13-Jan-13	07-Feb-13
SD12/0699	18-Oct-12	16-Jan-13	13-Jan-13
SD12/0702	18-Oct-12	17-Nov-12	05-Feb-13
SD12/0718	06-Nov-12	05-Jan-13	26-Feb-13
SD12/0728	29-Oct-12	27-Nov-12	31-Jan-13
SD12/0747	09-Nov-12	07-Feb-13	13-Feb-13
SD12/0753	27-Nov-12	26-Jan-13	29-Jan-13
SD12/0756	07-Nov-12	05-Feb-13	12-Feb-13
SD12/0759	07-Nov-12	05-Feb-13	21-Feb-13
SD12/0761	21-Nov-12	19-Feb-13	26-Feb-13
SD12/0767	12-Nov-12	06-Feb-13	13-Feb-13
SD12/0768	19-Nov-12	14-Feb-13	21-Feb-13
SD12/0769	14-Nov-12	12-Feb-13	07-Feb-13
SD12/0771	23-Nov-12	07-Jan-13	06-Feb-13
SD12/0798	27-Nov-12	11-Jan-13	05-Feb-13
SD12/0827	04-Dec-12	25-Dec-12	12-Feb-13
SD12/0839	17-Dec-12	16-Jan-13	07-Feb-13

3. As outlined at the beginning of this section, inspecting officers found there were 276 warrant files for which the s.44 reports had been received at Covert Applications Unit from the officers responsible for the warrants but had not been forwarded to the Attorney-General or the Eligible Judge as required by the Act. This was the result of a systemic failure in procedure in a period where regular staff members were not working in the area at the relevant times.

After we advised staff at the Covert Applications Unit of this finding from our inspection, inspecting officers were immediately given electronic access to the reports initially thought to be outstanding. The Covert Applications Unit also arranged for each one to be delivered to both the Attorney General and the relevant Eligible Judge.

The 276 warrants covered by this exception to the requirements for reporting are listed in Appendix A.

Section 47 Register of warrants and emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars. The NSWPF register contained the required particulars.

Evidentiary Certificates

Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney General

The following warrant files did not contain copies of the s.51 notification to the Attorney General although, as with applications and s.44 reports mentioned earlier, these notifications were found to be stored electronically but not printed for the hard copy file and so were subsequently made available for inspection:

- **SD12/503, SD12/0504, SD12/0662 and SD12/0835**

The receipt from the Attorney General in relation to the s.51 notice was not on the following warrant file:

- **SD12/0729**

Typographical or administrative errors were found on the following s.51 notifications and were drawn to the attention of relevant staff during our inspections.

- The notice for **SD12/0523** indicated that 12 surveillance devices were to be applied for and the application was for 14 surveillance devices.
- The notice for **SD12/0724** indicated that 30 surveillance devices were to be applied for and the application was for 40 surveillance devices.
- The notice for **SD12/0852** stated that a listening device would be used on an Undercover Officer. However, the warrant was for two devices in a motor vehicle, which is made clear later in the s.51 notice. This appeared to be a typographical error. Also the notice indicated that no previous warrant had been sought or issued in connection with the same relevant offence but it appeared that **SD12/0818** had been issued in relation to the same relevant offence.
- The notice for **SD12/0848** stated that no previous warrant had been sought or issued in relation to the same relevant offence. However, it appeared that **SD12/0834** was previously issued in relation to the same relevant offence. Warrant **SD12/0824** was issued to correct the previous warrant wrongly identifying the relevant vehicle.

The Attorney General was provided with particulars of all warrants sought by NSW Police Force.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding Comments

We previously reported our concerns about the high level of non-compliance in the NSW Police Force in relation to the significant delays by law enforcement officers in providing s.44 reports to the Covert Applications Unit for transmission to eligible Judges, Magistrates and the Attorney General. Our last report identified several hundred warrant files which failed to comply in this regard and were long outstanding.

Following recommendations made in our last report, the Deputy Ombudsman (Police and Compliance) had discussions with the Commander of Police Prosecutions about strategies to deal with this issue. To address this area of non-compliance, the NSWPF introduced procedures to increase the awareness of individual officers about their responsibilities for reporting on surveillance devices to the eligible Judge and the Attorney General. Our inspections found the level of compliance of law enforcement officers sending s.44 reports to the Covert Applications Unit within timeframes has improved in relation to previously delayed reports.

However, as is noted throughout this section, while there was a notable improvement in the provision of reports by law enforcement officers during the reporting period, there were other significant exceptions identified during inspection. These exceptions relate to the failure to properly deal with s.44 reports once they were provided to Covert Applications Unit by the law enforcement officers, and are outlined in detail in this chapter. The NSW Police Force has in place a procedure whereby the law enforcement officer sends the s.44 report to the Covert Applications Unit. That Unit is then responsible for ensuring the s.44 report is forwarded to the Attorney General and Judge/Magistrate within the timeframe specified in the warrant. However, during the period covered by this report we were advised the procedures were not followed due to the absence of the officer who usually has responsibility for printing and dispersing s.44 reports. It is imperative that business continuity arrangements are put in place by the NSW Police Force to ensure compliance with this Act is not detrimentally affected should staff of the relevant unit be absent or on leave as was the case during this reporting period.

Recommendations

- i. The Commissioner of Police provide written advice outlining changes in procedures or processes which have been adopted to ensure the exceptions outlined in this chapter do not reoccur when regular staff are absent or on leave.**

NSW Crime Commission

During the reporting period 92 surveillance device files were inspected, 90 applications for warrants were issued. Two applications were not proceeded with and 154 warrant reports were received.

We were satisfied that the NSW Crime Commission had generally complied with its obligations under the Act, with one exception discussed below.

Warrant requirements

A detailed description of the events leading up to the death of Mr Laudisio-Curti and the declaration of a critical incident is provided below. The facts are taken from the evidence gathered during the critical incident investigation.

Section 17 Applications for a surveillance device warrant

All 90 applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only.

Section 18 Remote Application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

During the period 29 warrants were varied or extended.

Section 23 Revocation of surveillance device warrant

There were nine revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

Section 24 of the Act requires the use of a surveillance device to be discontinued as soon as practicable after the chief officer of the law enforcement agency is satisfied that the use of the device is no longer necessary.

All warrants which had been used were discontinued in a timely manner. Some warrants were never used and were subsequently revoked.

Section 25 Application for retrieval warrant

There were no applications for a retrieval warrant.

Section 26 Remote application

There were no applications for a retrieval warrant.

Section 30 Revocation of retrieval warrant

There were no applications for a retrieval warrant.

Emergency authorisations requirements

Section 31 Emergency use of surveillance devices – threat of serious personal violence or substantial property damage

There was no emergency use of a surveillance device during the reporting period.

Section 32 Emergency authorisation - continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

There were no applications for approval after use of a surveillance device

Compliance and monitoring requirements

Section 40 Prohibition on use, communication or publication of protected information

While protected information was obtained through the use of surveillance devices during this period, the information may be used in the future and the records of each use, communication and publication will be inspected in the future.

Section 41 Dealing with records obtained by use of surveillance devices

The Commission has established guidelines for dealing with protected information. Protected information is stored in the Commission premises with those officers authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General

Reports were generally provided to the eligible Judge and Attorney General within the time specified in the warrant and the reports contained all the required information.

However, we identified an exception with warrant CC13/0008 which was issued on 25 July 2012 and was due to expire on 22 October 2012. It was intended this warrant would be extended and so an affidavit was prepared by an Intelligence Analyst and submitted to the Intelligence Manager on 9 October 2012. It appears the affidavit was passed to the law enforcement officer responsible for the original warrant. However, the affidavit and application for extension was not passed on to the Solicitor for the Commission in order for the application to proceed. On 25 October 2012, the lack of an application for the extension warrant was noted, which was three days after the warrant had expired.

During this three day period data from one tracking device continued to be obtained by the Commission. We were advised the data from that three day period – being that obtained after the expiry of the warrant - had been copied and then deleted from the Commission's systems. The copied information was quarantined and remains sealed on the warrant file. We have been advised the sealed information contains a direction for it to only be opened on the Commissioner's instruction, or released by order of the court.

We noted the original s.44 report to the Eligible Judge and the Attorney General dated 5 November 2012 did not provide any information in the body of the report about data being obtained after the expiration of the warrant. A letter which accompanied the report, however, referred to this issue.

On 14 December 2012 the Commissioner sent another letter to the Eligible Judge and the Attorney General advising that while the accompanying letter to the report of 5 November 2012 referred to information being obtained after the expiry of the warrant, the report did not make specific reference to this fact. This was because the information relevant to the post-expiry data collection on warrant C13/0008 had inadvertently been included in the Section 44 report for another warrant, being warrant CC12/0237 due to an administrative error. Warrant CC12/0237 had previously been issued in relation to the investigation of the same offences as warrant CC13/0008. The Commission's letter of 14 December enclosed a replacement s.44 report for warrant C13/0008 containing all of the relevant information for the Eligible Judge and the Attorney General.

Following our inspection we sought advice from the Commissioner about action taken to ensure a similar situation does not arise in future. The Commissioner outlined improved administrative and IT processes which should work to prevent this occurring again.

Section 47 Register of warrants and emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants at the NSWCC contained all the particulars required and was accurate.

Evidentiary Certificates

Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney General

Section 51 notifications were provided in relation to all warrant applications. The notifications contained the relevant information required.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding Comments

With the one exception outlined in this report, the NSW Crime Commission was generally compliant with the Act.

Recommendations

No specific recommendations are made.

Independent Commission Against Corruption

During the reporting period two surveillance device warrants were applied for and granted.

We were satisfied that the Independent Commission Against Corruption had complied with its obligations under the Act.

Warrant requirements

Section 17 Applications for a surveillance device warrant

Both applications were made to eligible Judges. Both warrants were issued.

Section 18 Remote Application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

There were no variations or extensions to the warrants issued.

Section 23 Revocation of surveillance device warrant

There were no revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

There were no situations where the use of any surveillance device was discontinued during the reporting period and therefore no requirement to seek revocations of any warrants.

Section 25 Application for retrieval warrant

No applications were made for retrieval warrants.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were issued and consequently none were revoked.

Emergency authorisations requirements

Section 31 Emergency use of surveillance devices – threat of serious personal violence or substantial property damage

There were no emergency uses of surveillance devices.

Section 32 Emergency authorisation - continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

There were no emergency uses of surveillance devices.

Compliance and monitoring requirements

Section 40 Prohibition on use, communication or publication of protected information

While protected information was obtained through the use of surveillance devices, records of each use, communication and publication were recorded appropriately.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information. The protected information is stored on the Commission premises and restricted to those authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General

All reports were provided to the eligible Judge and Attorney General within the required time frame and all reports contained the required information.

Section 47 Register of warrants and emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants contained all the particulars required and was accurate.

Evidentiary Certificates

Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney General

All notifications were provided to the Attorney General in relation to each application and contained all the required particulars.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding Comments

For the reporting period the Independent Commission Against Corruption was compliant with the Act.

Recommendations

No specific recommendations are made.

Police Integrity Commission

During the reporting period three new surveillance device warrants were applied for and granted.

We were satisfied that the Police Integrity Commission had complied with its obligations under the Act.

Warrants requirements

Section 17 Applications for a surveillance device warrant

All applications were made to eligible Judges. No applications were made to eligible Magistrates in the case of applications for a surveillance device authorising the use of a tracking device only.

Section 18 Remote Application

There were no remote applications made.

Section 22 Extension and variation of surveillance device warrant

None of the warrants issued during this reporting period were extended. One of the warrants was varied.

Section 23 Revocation of surveillance device warrant

There were no revocations during the reporting period.

Section 24 Discontinuance of use of surveillance device under warrant

There were no situations where the use of any surveillance device was discontinued during the reporting period and therefore no requirement to seek revocations of any warrants.

Section 25 Application for retrieval warrant

No applications were made for retrieval warrants.

Section 26 Remote application

No remote applications were made for retrieval warrants.

Section 30 Revocation of retrieval warrant

No retrieval warrants were issued and consequently none were revoked.

Emergency authorisations requirements

Section 31 Emergency use of surveillance devices – threat of serious personal violence or substantial property damage

There were no emergency uses of surveillance devices.

Section 32 Emergency authorisation - continued use of surveillance devices in participating jurisdiction

There was no emergency use of surveillance device warrants in participating jurisdictions.

Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

There were no emergency uses of surveillance devices.

Compliance and monitoring requirements

Section 40 Prohibition on use, communication or publication of protected information

While protected information was obtained through the use of surveillance devices, the records of each use, communication and publication are contained in a register for this purpose.

Section 41 Dealing with records obtained by use of surveillance devices

The Commissioner has established guidelines for dealing with protected information. The protected information is stored on the Commission premises and restricted to those authorised to deal with it.

There were no destructions carried out of protected information at the time of these inspections.

Section 44 Reports to eligible Judge or eligible Magistrate and Attorney General

All reports were provided to the eligible Judge and Attorney General within the required time frame and all reports contained the required information.

Section 47 Register of warrants and emergency authorisations

The Act requires the chief officer of the law enforcement agency to keep a register of warrants and emergency authorisations. The register is required to specify certain particulars.

The register of warrants contained all the particulars required and was accurate.

Evidentiary Certificates

Section 50 Provision for the issue of evidentiary certificates

No evidentiary certificates were issued during this reporting period.

Notifications to the Attorney General

Section 51 Particulars of warrants sought under Part 3 to be notified to the Attorney General

All notifications were provided to the Attorney General in relation to each application and contained all the required particulars.

Section 52 Requirement to inform subject of surveillance

No orders were made requiring the subject of the surveillance to be informed.

Concluding Comments

For the reporting period the Police Integrity Commission was compliant with the Act.

Recommendations

No specific recommendations are made.

Appendix A: Details of warrants non-compliant with section 44 of the Act.

Warrant Number	Issued	Expiry	Warrant Number	Issued	Expiry
SD12/0001	02-Jan-12	26-Jun-12	SD12/0185	19-Mar-12	05-Jun-12
SD12/0005	25-Jan-12	23-Apr-12	SD12/0190	20-Apr-12	17-Jul-12
SD12/0017	25-Jan-12	23-Apr-12	SD12/0191	22-Mar-12	14-Sep-12
SD12/0018	19-Jan-12	17-Apr-12	SD12/0192	22-Mar-12	17-Jun-12
SD12/0022	13-Jan-12	10-Apr-12	SD12/0193	04-May-12	03-Jul-12
SD12/0030	12-Jan-12	12-Mar-12	SD12/0196	27-Mar-12	24-Jun-12
SD12/0038	18-Jan-12	16-Apr-12	SD12/0198	23-Mar-12	20-Jun-12
SD12/0045	19-Jan-12	15-Apr-12	SD12/0200	27-Mar-12	24-Jun-12
SD12/0051	30-Jan-12	28-Apr-12	SD12/0203	02-Apr-12	29-Jun-12
SD12/0062	03-Feb-12	02-May-12	SD12/0206	30-May-12	25-Aug-12
SD12/0088	26-Apr-12	23-Jul-12	SD12/0208	30-Mar-12	27-Jun-12
SD12/0092	09-Feb-12	06-May-12	SD12/0209	20-Apr-12	13-Oct-12
SD12/0099	12-Feb-12	11-May-12	SD12/0211	30-Mar-12	27-Jun-12
SD12/0103	20-Feb-12	19-May-12	SD12/0212	04-Jun-12	31-Aug-12
SD12/0113	15-Feb-12	14-May-12	SD12/0215	08-May-12	06-Aug-12
SD12/0116	15-Feb-12	14-May-12	SD12/0216	02-Apr-12	01-Jul-12
SD12/0117	15-Feb-12	14-May-12	SD12/0217	02-Apr-12	01-Jul-12
SD12/0120	22-Feb-12	17-Aug-12	SD12/0218	30-Mar-12	29-May-12
SD12/0124	22-Feb-12	20-May-12	SD12/0219	20-Apr-12	17-Jul-12
SD12/0125	21-Feb-12	05-Apr-12	SD12/0224	05-Apr-12	04-Jun-12
SD12/0131	27-Feb-12	26-May-12	SD12/0226	05-Apr-12	03-Jul-12
SD12/0133	23-Feb-12	22-May-12	SD12/0227	11-Apr-12	10-May-12
SD12/0138	22-Mar-12	19-Jun-12	SD12/0230	05-Apr-12	02-Jul-12
SD12/0140	29-Feb-12	28-May-12	SD12/0234	12-Apr-12	11-Jul-12
SD12/0143	06-Mar-12	03-Jun-12	SD12/0236	10-May-12	05-Aug-12
SD12/0147	02-Mar-12	30-Apr-12	SD12/0240	12-Apr-12	09-Jul-12
SD12/0152	09-Mar-12	05-Jun-12	SD12/0241	26-Jun-12	10-Aug-12
SD12/0156	28-Mar-12	25-Jun-12	SD12/0242	14-May-12	10-Aug-12
SD12/0157	05-Apr-12	04-Jul-12	SD12/0245	17-Apr-12	16-Jul-12
SD12/0158	13-Mar-12	08-Jun-12	SD12/0246	12-Apr-12	11-Jul-12
SD12/0164	11-Apr-12	08-Jul-12	SD12/0250	13-Apr-12	09-Jul-12
SD12/0167	09-Mar-12	06-Jun-12	SD12/0255	20-Apr-12	19-Jul-12
SD12/0169	19-Mar-12	14-Jun-12	SD12/0256	04-Jun-12	01-Sep-12
SD12/0171	23-Mar-12	18-Jun-12	SD12/0257	03-May-12	31-Jul-12
SD12/0173	12-Mar-12	10-Apr-12	SD12/0259	26-Apr-12	23-Jul-12
SD12/0174	13-Mar-12	10-Jun-12	SD12/0260	20-Apr-12	18-Jul-12
SD12/0176	12-Apr-12	09-Jul-12	SD12/0263	11-May-12	06-Aug-12
SD12/0182	16-Mar-12	12-Jun-12	SD12/0264	20-Apr-12	17-Jul-12


Warrant Number	Issued	Expiry
SD12/0265	22-Apr-12	20-Jun-12
SD12/0266	26-Apr-12	23-Jun-12
SD12/0267	26-Apr-12	25-Jul-12
SD12/0268	23-Apr-12	06-Jun-12
SD12/0269	11-May-12	07-Aug-12
SD12/0271	01-May-12	27-Jul-12
SD12/0272	01-May-12	30-Jul-12
SD12/0273	01-May-12	30-Jul-12
SD12/0274	21-May-12	17-Aug-12
SD12/0275	11-May-12	07-Aug-12
SD12/0276	10-May-12	05-Aug-12
SD12/0277	04-May-12	31-Jul-12
SD12/0278	07-May-12	04-Aug-12
SD12/0280	03-May-12	01-Aug-12
SD12/0281	11-May-12	09-Aug-12
SD12/0282	08-May-12	04-Aug-12
SD12/0283	04-Jun-12	01-Sep-12
SD12/0284	06-Jun-12	02-Sep-12
SD12/0285	08-May-12	06-Aug-12
SD12/0286	11-May-12	09-Aug-12
SD12/0287	21-May-12	19-Aug-12
SD12/0288	16-May-12	16-Jun-12
SD12/0291	06-Jul-12	02-Oct-12
SD12/0292	08-May-12	06-Aug-12
SD12/0294	10-May-12	08-Jun-12
SD12/0295	09-May-12	08-Jun-12
SD12/0297	12-Jun-12	10-Sep-12
SD12/0298	28-Aug-12	22-Nov-12
SD12/0300	16-May-12	14-Aug-12
SD12/0302	24-May-12	12-Aug-12
SD12/0303	16-May-12	03-Aug-12
SD12/0304	16-May-12	03-Aug-12
SD12/0305	28-May-12	01-Aug-12
SD12/0306	17-May-12	12-Aug-12
SD12/0308	16-May-12	14-Aug-12
SD12/0309	18-May-12	10-Aug-12
SD12/0311	06-Jul-12	02-Oct-12
SD12/0312	15-May-12	13-Aug-12
SD12/0313	22-May-12	20-Aug-12
SD12/0314	27-Jun-12	23-Sep-12

Warrant Number	Issued	Expiry
SD12/0315	17-May-12	15-Aug-12
SD12/0317	17-May-12	15-Aug-12
SD12/0318	23-May-12	20-Aug-12
SD12/0319	20-May-12	04-Jul-12
SD12/0322	23-May-12	10-Aug-12
SD12/0323	01-Jun-12	29-Aug-12
SD12/0326	24-May-12	22-Aug-12
SD12/0327	04-Jun-12	31-Aug-12
SD12/0328	23-May-12	23-Jun-12
SD12/0329	25-May-12	22-Jul-12
SD12/0330	01-Jun-12	28-Aug-12
SD12/0331	28-May-12	24-Aug-12
SD12/0332	25-May-12	23-Aug-12
SD12/0333	25-May-12	23-Aug-12
SD12/0334	25-May-12	23-Aug-12
SD12/0335	25-May-12	24-Aug-12
SD12/0336	28-May-12	26-Aug-12
SD12/0338	29-May-12	25-Aug-12
SD12/0339	01-Jun-12	28-Aug-12
SD12/0341	08-Jun-12	06-Sep-12
SD12/0342	29-May-12	27-Jun-12
SD12/0343	06-Jun-12	30-Aug-12
SD12/0344	01-Jun-12	29-Aug-12
SD12/0345	30-May-12	13-Jun-12
SD12/0346	01-Jun-12	27-Aug-12
SD12/0347	25-Jun-12	21-Sep-12
SD12/0348	01-Jun-12	31-Jul-12
SD12/0349	06-Jun-12	30-Aug-12
SD12/0350	06-Jun-12	02-Sep-12
SD12/0351	13-Jun-12	09-Sep-12
SD12/0352	08-Jun-12	03-Sep-12
SD12/0353	06-Jun-12	30-Aug-12
SD12/0354	08-Jun-12	06-Sep-12
SD12/0355	05-Jul-12	01-Oct-12
SD12/0357	04-Jul-12	30-Sep-12
SD12/0358	07-Jun-12	22-Jul-12
SD12/0360	14-Jun-12	10-Sep-12
SD12/0361	14-Jun-12	11-Sep-12
SD12/0362	13-Jun-12	11-Sep-12
SD12/0363	08-Jun-12	30-Aug-12

Warrant Number	Issued	Expiry
SD12/0364	08-Jun-12	06-Sep-12
SD12/0366	12-Jun-12	30-Aug-12
SD12/0367	15-Jun-12	11-Sep-12
SD12/0368	18-Jun-12	14-Sep-12
SD12/0369	13-Jun-12	10-Sep-12
SD12/0370	12-Jun-12	10-Sep-12
SD12/0371	14-Jun-12	12-Sep-12
SD12/0372	28-Jun-12	24-Sep-12
SD12/0373	11-Jun-12	06-Sep-12
SD12/0374	13-Jun-12	11-Sep-12
SD12/0375	15-Jun-12	10-Sep-12
SD12/0377	19-Jun-12	16-Jul-12
SD12/0378	14-Jun-12	09-Sep-12
SD12/0379	25-Jun-12	19-Sep-12
SD12/0380	20-Jun-12	18-Sep-12
SD12/0381	18-Jun-12	16-Sep-12
SD12/0384	16-Jun-12	10-Sep-12
SD12/0386	22-Jun-12	19-Sep-12
SD12/0387	17-Jul-12	13-Oct-12
SD12/0389	26-Jun-12	21-Sep-12
SD12/0392	28-Jun-12	24-Sep-12
SD12/0395	26-Jun-12	24-Sep-12
SD12/0396	22-Jun-12	20-Sep-12
SD12/0397	27-Jun-12	25-Sep-12
SD12/0398	26-Jun-12	22-Sep-12
SD12/0399	29-Jun-12	25-Sep-12
SD12/0400	10-Jul-12	05-Oct-12
SD12/0401	27-Jun-12	22-Sep-12
SD12/0402	29-Jun-12	27-Sep-12
SD12/0403	28-Jun-12	24-Sep-12
SD12/0404	26-Jun-12	22-Sep-12
SD12/0405	27-Jun-12	24-Sep-12
SD12/0406	25-Jul-12	19-Oct-12
SD12/0407	03-Jul-12	30-Sep-12
SD12/0408	28-Jun-12	04-Jul-12
SD12/0409	29-Jun-12	24-Sep-12
SD12/0412	29-Jun-12	22-Sep-12
SD12/0423	03-Jul-12	29-Sep-12
SD12/0429	10-Jul-12	06-Oct-12
SD12/0442	29-Aug-12	26-Nov-12

Warrant Number	Issued	Expiry
SD12/0445	12-Jul-12	10-Aug-12
SD12/0457	23-Aug-12	20-Nov-12
SD12/0463	20-Jul-12	20-Dec-12
SD12/0465	23-Jul-12	21-Oct-12
SD12/0474	01-Aug-12	03-Oct-12
SD12/0475	27-Jul-12	23-Oct-12
SD12/0478	24-Aug-12	17-Nov-12
SD12/0479	26-Jul-12	24-Oct-12
SD12/0481	26-Jul-12	24-Oct-12
SD12/0491	16-Aug-12	14-Nov-12
SD12/0495	22-Aug-12	19-Nov-12
SD12/0505	28-Aug-12	21-Nov-12
SD12/0509	12-Sep-12	25-Oct-12
SD12/0515	15-Aug-12	14-Sep-12
SD12/0516	15-Aug-12	14-Sep-12
SD12/0520	16-Aug-12	14-Nov-12
SD12/0522	04-Sep-12	03-Dec-12
SD12/0523	16-Aug-12	07-Nov-12
SD12/0524	14-Sep-12	10-Dec-12
SD12/0526	29-Aug-12	29-Nov-12
SD12/0528	20-Aug-12	18-Nov-12
SD12/0531	22-Aug-12	19-Nov-12
SD12/0533	22-Aug-12	20-Nov-12
SD12/0536	23-Aug-12	21-Sep-12
SD12/0538	29-Aug-12	28-Oct-12
SD12/0539	05-Oct-12	20-Dec-12
SD12/0553	28-Aug-12	26-Nov-12
SD12/0556	27-Aug-12	25-Nov-12
SD12/0562	21-Sep-12	18-Dec-12
SD12/0568	03-Sep-12	02-Dec-12
SD12/0571	11-Sep-12	08-Dec-12
SD12/0577	18-Sep-12	15-Dec-12
SD12/0581	21-Sep-12	18-Dec-12
SD12/0589	02-Oct-12	20-Dec-12
SD12/0591	11-Sep-12	10-Dec-12
SD12/0593	10-Sep-12	04-Dec-12
SD12/0595	14-Sep-12	10-Dec-12
SD12/0597	11-Sep-12	10-Oct-12
SD12/0605	20-Sep-12	19-Dec-12
SD12/0607	20-Sep-12	19-Dec-12

Warrant Number	Issued	Expiry
SD12/0608	04-Oct-12	20-Dec-12
SD12/0611	03-Oct-12	20-Dec-12
SD12/0612	19-Sep-12	18-Dec-12
SD12/0616	24-Sep-12	21-Dec-12
SD12/0617	25-Sep-12	20-Dec-12
SD12/0619	26-Sep-12	20-Dec-12
SD12/0620	25-Sep-12	20-Dec-12
SD12/0621	28-Sep-12	20-Dec-12
SD12/0622	25-Sep-12	22-Dec-12
SD12/0623	25-Sep-12	22-Dec-12
SD12/0625	25-Sep-12	24-Dec-12
SD12/0627	27-Sep-12	20-Dec-12
SD12/0629	26-Sep-12	19-Dec-12
SD12/0630	26-Sep-12	25-Dec-12
SD12/0633	26-Sep-12	20-Dec-12
SD12/0636	27-Sep-12	12-Oct-12
SD12/0638	03-Oct-12	20-Dec-12
SD12/0641	28-Sep-12	20-Dec-12
SD12/0642	28-Sep-12	20-Dec-12
SD12/0648	05-Oct-12	20-Dec-12
SD12/0655	03-Oct-12	01-Nov-12
SD12/0659	05-Oct-12	02-Nov-12
SD12/0672	09-Oct-12	23-Nov-12
SD12/0677	15-Oct-12	29-Nov-12
SD12/0698	22-Nov-12	20-Dec-12
SD12/0701	17-Oct-12	29-Nov-12
SD12/0719	26-Oct-12	10-Dec-12
SD12/0721	05-Nov-12	17-Dec-12
SD12/0726	25-Oct-12	24-Nov-12
SD12/0750	06-Nov-12	21-Dec-12
SD12/0751	07-Nov-12	05-Dec-12
SD12/0754	07-Nov-12	05-Dec-12
SD12/0758	07-Nov-12	07-Nov-12
SD12/0764	22-Nov-12	13-Dec-12
SD12/0774	14-Nov-12	12-Dec-12
SD12/0776	15-Nov-12	15-Dec-12
SD12/0780	20-Nov-12	30-Dec-12
SD12/0812	29-Nov-12	28-Dec-12
SD12/0838	10-Dec-12	31-Dec-12



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