

# Mark Kennedy case: CPS accused of suppressing key evidence

CPS opens inquiry after claims prosecutors withheld undercover police officer's surveillance tapes from defence lawyers



📷 Former police officer Mark Kennedy working undercover with environmental activists. Photograph: Guardian

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Prosecutors have been accused of suppressing surveillance tapes covertly recorded by the undercover police officer [Mark Kennedy](#), the Guardian can reveal.

Leaked documents indicate the Crown Prosecution Service may also have misled the public and even the courts when the trial of six environmental campaigners accused of planning to break into Ratcliffe-on-Soar power station in Nottinghamshire collapsed earlier this year.

Two days before it was due to commence, the trial was abandoned by the CPS, which told the court that "previously unavailable information" had come to light that undermined its case against the activists.

However, the supposedly new evidence - the Kennedy tapes - had in fact been in the possession of the CPS for more than a year.

Prosecutors had taken part in a number of high-level meetings with police about Kennedy's potentially explosive surveillance tapes, but withheld them from defence lawyers.

Confidential correspondence between senior police and prosecutors suggests officers told the CPS about Kennedy's deployment from the outset. The police say they handed over a transcript of his secret recording to Ian Cunningham, a senior CPS prosecutor, within weeks of the raid.

The CPS confirmed on Tuesday it had opened a "full and formal" inquiry, led by deputy chief crown prosecutor, Chris Enzor, into allegations made by senior police officers who have concerns about how prosecutors managed the case.

"All the public statements made by the Crown Prosecution Service about this case have been made based on the information that was available at the time.

"It would be wrong to anticipate the outcome of Mr Enzor's formal inquiry. The original police investigation took at least two years and generated thousands of pages of evidence. Mr Enzor has no previous knowledge of this case and his thorough review of the evidence is, therefore, likely to take some time."

Enzor's inquiry was described by Cunningham as a potential "disciplinary" investigation.

It is the fifth formal investigations launched in response to the Guardian's ongoing investigation into the multimillion-pound operation to plant police spies in the protest movement.

Senior police officers have privately accused the CPS of failing to cooperate with at least one other inquiry into the Kennedy affair, which is being conducted by the Independent [Police](#) Complaints Commission (IPCC).

The six activists were among more than a hundred spied on by Kennedy, a Metropolitan police officer who had been living deep undercover in the protest movement.

Kennedy was gathering evidence to be used to prosecute the activists, who police suspected of planning to break into Ratcliffe-on-Soar power station two years ago.

However, the deployment backfired when conversations covertly recorded by Kennedy provided evidence likely to exonerate rather than incriminate the six activists.

Kennedy speculated earlier this year that the tapes may have been withheld by his handlers at the National Public Order Intelligence Unit (NPOIU). The new evidence suggests it was down to the CPS.

Most of the activists were released without charge, but the CPS brought proceedings against 26 campaigners on charges of conspiracy to commit aggravated trespass.

Twenty defendants, known as the "justifiers" because they conceded they planned to break into the plant but said their actions were defensible to avert climate change, were convicted in December last year.

But the six so-called "deniers" who said they did not agree to join the protest, faced a trial in January 2010. That trial collapsed after defence lawyers discovered independently the protesters had been infiltrated by Kennedy.

The "justifiers" are now seeking to overturn their guilty verdicts at the court of appeal, after the director of public prosecutions, Keir Starmer, said evidence relating to Kennedy's deployment that was not disclosed at their trial may mean their convictions were unsafe.

Mike Schwarz, of Bindmans, the lawyer for all 26 activists, said he hoped the court of appeal case would examine any failure to disclose the Kennedy tapes. "These allegations open up a new and very serious concern which goes to the heart of the criminal justice system," he said.

"None of these allegations appear even to be the subject of any of the [previous] inquiries ... It is therefore imperative that the court of appeal rigorously and openly examines these serious developments."

Activists targeted in the spying operation are demanding a public inquiry, arguing that none of the investigations, which include inquiries by Her Majesty's Inspectorate of Constabulary and the Serious and Organised Crime Agency, are sufficiently independent.

In addition to Kennedy, police officers known as Lynn Watson, Mark Jacobs and Jim Boyling were given new identities to live for several years among activists.

Kennedy and Jacobs are both accused of having sexual relations with activists; Boyling married an activist he met while living undercover.

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