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Police spying: secret tapes that put CPS on the spot

New evidence suggests undercover officer Mark Kennedy's recordings were known to prosecutors two years ago



📷 Mark Kennedy working undercover as an environmental activist. Photograph: Guardian

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The tapes were recorded on a £7,000, specially modified Casio G-Shock watch, strapped to the wrist of the now-infamous undercover police officer **Mark Kennedy**.

It was April 2009 and Kennedy, who had spent six years living a double life as an environmental campaigner, was in the middle of his most audacious mission to date. His job was to disrupt and gather evidence on more than 100 activists who were considering whether to break into Ratcliffe-on-Soar coal-fired power station and shut it for a week.

Kennedy had become an invaluable agent. He took the alias of Mark Stone, developed a long-term relationship with a female activist and gained the trust of others by participating in - and helping to pay for - major protests.

Kennedy joined climate change campaigners at the Iona primary school a few miles from the power station.

The atmosphere was calm but tense. At the school, an activist, Spencer Cook, told campaigners about the plans. It was clear from the recorded conversations that while some activists had been working on the plan for months, others had yet to make up their mind whether to take part.

Kennedy's tapes were secret evidence that could have exonerated six activists, known as the "deniers" because they claimed not to have agreed to join the protest. The activists were among those prosecuted and due to stand trial in January 2011.

"During that briefing Spencer was very clear that this was a volunteer-only operation and it was down to the individual to decide what role they wanted to play," Kennedy said subsequently. "There was no pressure on anybody to take part in anything they didn't want to do.

"The truth of the matter is that the tapes clearly show that the six defendants who were due to go on trial had not joined any conspiracy. The tapes I made meant that the police couldn't prove their case. I have no idea why the police withheld these tapes."

But evidence gathered by the Guardian now suggests it was the Crown Prosecution Service rather than the police that withheld the tapes.

The new evidence is contained in confidential documents including recent correspondence between Chris Eyre, Nottinghamshire's deputy chief constable, and Judith Walker, the chief crown prosecutor in the east Midlands.

The documents suggest police handed over the transcripts of Kennedy's tapes as far back as May 2009. Senior officials also held a number of high-level meetings with police about the undercover officer's potential impact on the trial. The documents also reveal that the CPS may also have misled Nottingham crown court into thinking prosecutors only became aware of the Kennedy tapes in January this year.

Prosecutors were aware of Kennedy's role in the operation from the outset, according to the documents. The key figure responsible for preparing the case was Ian Cunningham, a senior prosecutor at the CPS. On 15 May 2009, just a month after the activists were arrested, Cunningham met two Nottinghamshire detectives in charge of the investigation.

They handed him a copy of the transcript of Kennedy's Casio watch recordings, according to an internal police report. That report, completed by a senior police officer in March this year, states that police complied with their obligations under the Criminal Procedures Investigations Act (CPIA), which governs disclosure of information in trials.

In June 2009 Cunningham exchanged a series of emails with Nick Paul, a more senior CPS prosecutor based in London, according to the documents. At that early stage Paul was also aware of a "participating informant" and "sensitive disclosure issues" relating to Kennedy's evidence.

In November 2009 Cunningham met a Nottinghamshire police detective who checked he "was aware" of the intelligence obtained by Kennedy in his

undercover role, the documents say. Cunningham replied that he was, and asked for the paperwork detailing Kennedy's deployment to be disclosed to him "as normal". This was done the following month, according to the documents.

The Kennedy files were clearly marked among the 1,246 pages of material that police handed over to the CPS between 17 November 2009 and 20 October last year.

Kennedy's draft witness statement was apparently not handed to prosecutors, but instead placed in a Nottinghamshire police safe. But, according to the documents, the material did include DVDs with intelligence listed as "a list of telephone calls" and the crucial "transcript of the recording" made on his watch, referred to by the code "130409/MARK".

Last October a message was posted on the Indymedia website by activists who had concluded the man known as Mark Stone was in fact a police infiltrator.

On 9 November last year, Cunningham met Nottinghamshire detectives and a detective chief inspector from the National Public Order Intelligence Unit, the body responsible for running a network of undercover police officers living in the protest movement, the documents say. They discussed Kennedy and the material he had recorded while undercover. Cunningham declined a request from the officers to brief the barrister hired by the CPS to argue the case. As Kennedy, who had seemingly gone rogue, began talking to activists, details of his classified operation were seeping out. Mike Schwarz, the lawyer for the defendants, lodged a formal request for disclosure of material gathered by Kennedy.

In December, Cunningham assured Schwarz: "There is nothing in the possession of the crown that has CPIA potential so far as this individual is concerned."

The prosecutor's letter added "for the avoidance of doubt" that the material he reviewed was not relevant "vis a vis your defence" or "in general CPIA terms".

It was not until January this year, days before the activists were due to stand trial, that the case began to fall apart. Failing in his attempts to have the Kennedy material disclosed, Schwarz lodged an "abuse of process" application with the court, saying his clients could not receive a fair trial.

Reviewing the case, Felicity Gerry, the barrister hired by the CPS, reached a damning view about the evidence "obtained by covert means", according to the police report. It states the prosecutor "felt it was information which could assist the defence or undermine the prosecution" and the case was abandoned "following discussions with the CPS".

Two days later, the CPS said it was abandoning the trial because of "previously unavailable information" that undermined the prosecution's case. The supposedly new information - which the CPS claimed "came to

light" that week - was the same Kennedy tapes police say were handed to prosecutors 18 months earlier.

The CPS said on Tuesday: "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 confirmed it had opened an internal inquiry into "allegations about the failure to disclose material".

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