



Communities Select Committee

23 July 2014

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Regulation of Investigatory Powers Act 2000 (RIPA) Review 2013/14

Purpose of the report: Scrutiny of the use of the Regulation of Investigatory Powers Act 2000 (RIPA) by the Council

Introduction

1. An updated corporate policy on the use of RIPA was agreed by Cabinet in November 2013. The policy includes a scrutiny role for the Communities Select Committee, to oversee the use of RIPA by the Authority.
2. This report provides a summary of how RIPA has been utilised over the previous financial year in order to tackle crime and protect local residents from harm.

Background

3. Local authority Trading Standards Service conduct criminal investigations into a wide range of activities, bringing criminals to justice whilst protecting local communities and legitimate business.
4. The Human Rights Act (HRA) 1998 came into force in October 2000, enshrining the principle of the right to respect of private and family life, and that there should be no interference by a public authority except in accordance with the law.
5. During criminal investigations it is sometimes necessary to interfere with an individual's right to privacy eg carry out surveillance activity covertly, or trace the subscriber of a telephone number used in connection with a crime.
6. The Regulation of Investigatory Powers Act 2000 (RIPA) allows such activities to continue and properly regulates such investigative activity.
7. The use of RIPA is included within existing Corporate Governance Policies and the Policy Custodian is Yvonne Rees, the Strategic Director for Customers and Communities. Over the last five years the Trading Standards Service has been the only council service that has utilised the legislation.

What types of activity can be authorised?

8. Three different types of activity can be authorised known as:

- **Communication Data Checks** – used to obtain subscriber and billing details. This **does not** include the ability to “bug” or otherwise monitor calls and their content or open emails.

- **Directed Surveillance** - covert targeted monitoring of an individual. Used in situations such as age restricted test purchase exercises. This **does not** include ‘intrusive surveillance’ ie an individual’s private residence or vehicle.

- **Covert Human Intelligence Sources (CHIS)**, using or tasking individuals who establish or maintain a relationship with another person for a covert purpose eg using a profile on social media for the purpose of posing as a potential customer to investigate the sale of illicit goods over the internet.

9. In all cases, after less intrusive approaches have been considered, the activity authorised must be necessary and proportionate to the nature of the criminal offence under investigation. The offences under investigation must also either;

- meet the ‘serious crime threshold’ being offences that attract a maximum custodial sentence of 6 months (or more) or,
- be those that relate to underage sales of alcohol or tobacco for directed surveillance only.

10. All applications for authorisations are initially scrutinised by the accredited RIPA Single Point of Contact (SPoC) or in-house Senior Legal Officers, then the National Anti-Fraud Network (NAFN) in the case of communications data, before being passed to the Community Protection Manager or Policy and Operations Manager to authorise. The authorised application is then presented in private to a Justice of the Peace by a Senior Legal Officer.

11. The Protection of Freedoms Act 2012 came into force on 31 October 2013. This requires RIPA authorisations to undergo a judicial review with a magistrate approving a RIPA application only if satisfied that it:

- Is necessary for the prevention and detection of crime or prevention of disorder.
- Is proportionate in human rights terms to what it seeks to achieve.
- Has been authorised by a person in the authority at the level designated in RIPA.
- Meets any other restriction imposed by order (e.g. serious crime threshold).
- In the case of a CHIS sets out that the relevant procedures and supporting officers are in place to protect the welfare and safety of the CHIS.

12. All authorisations must be fully recorded and are subject to regular external oversight. There are two external inspecting bodies and both report to Parliament, who also conduct audit visits and require annual returns of use.

- **The Office of Surveillance Commissioners (OSC)** - looks at how public authorities make use of authorisations in relation to Directed Surveillance and Covert Human Intelligence Sources.
- **Interception of Communications Commissioner's Office (IOCCO)** - looks at how public authorities make use of authorisations to seek communications data.
- **Cabinet Member for Community Safety** – receives quarterly and annual reports on use of RIPA.

Review of the local authority use of RIPA 2013/14

Authorisations granted

13. During 2013/14 a total of five RIPA authorisations were granted. For comparison purposes the figures for three previous years are also given. This trend of reduced usage of RIPA reflects the Service's move to a genuinely intelligence lead service and an adherence to the principals enshrined with the HRA of using RIPA only where absolutely necessary.

	2010/11	2011/12	2012/13	2013/14
Communications Data Authorisations	14	11	7	1
Directed Surveillance Authorisations	39	10	1	4
CHIS authorisations	0	0	1	0

Details of Communications Checks

14. A single Communications data check was made during 2013/14 relating to an intellectual property investigation where counterfeit products were offered for sale and a suspected alias used to avoid detection by HMRC who had intercepted previous imports by the suspect.
15. The case to which this authorisation relates is currently being prosecuted through the courts with the criminal benefit figure attributable to this case calculated in excess of £400,000.

Details of Directed Surveillance Activity

16. The four Directed Surveillance authorisations made during 2013/14 related to test purchasing of age restricted products (alcohol & tobacco). In each case statutory compliance was confirmed without the need for formal action.
17. Guidance from central government has changed on a number of occasions over recent years. In January 2013 the Better Regulation Delivery Office published a Code of Practice on regulatory delivery of age restricted sales which strongly suggested that authorisations should be sought. Following consultation with other local Trading Standards Services we have now taken

the view to seek authorisation for all future intelligence based test purchasing exercises.

Details of Covert Human Intelligence Source (CHIS) authorisations.

18. There were no Covert Human Intelligence Source authorisations made during 2013/2014.
19. All five RIPA authorisations were authorised by the Policy and Operations Manager, Ian Treacher who is fully trained in his responsibilities as an authorising officer.
20. A quarterly summary of RIPA activity is provided to the Cabinet Member for Community Safety. This summary provides greater detail of all of the individual RIPA authorisations granted in the period in sanitised form.

Conclusions

21. The only use of RIPA by the Council over the past year has been by Trading Standards.
22. The use of RIPA enables the local authority to detect and prevent crime and protect Surrey communities and businesses.
23. Authorisations have been made and considered appropriately and all have received judicial approval.

Financial and value for money implications

24. The use of RIPA in the ways outlined above provides protection from any legal claims in relation to alleged breaches of the Human Rights Act.

Equalities implications

25. Many rogue traders deliberately target elderly and vulnerable people. The investigative techniques covered by RIPA are very often used in such crimes to help identify and locate such criminals. Therefore the Trading Standards service can continue to effectively protect the most vulnerable people in our communities. Any decision to use techniques covered by RIPA are made against standard criteria and not influenced by ethnicity, race or other factors. The process also requires consideration to be given to any local community influences or sensitivities.

Risk management implications

26. The use of RIPA in the ways outlined above provides protection from any legal claims in relation to alleged breaches of the Human Rights Act.

Implications for the Council's Priorities or Community Strategy/Local Area Agreement Targets

27. The use of RIPA enables the Council to undertake criminal investigations which help protect vulnerable people, local communities and legitimate business.

Recommendations

28. The Committee is asked to scrutinise the above summary of the council's use of RIPA.

Next steps

29. Quarterly reports on RIPA use will continue to be provided to the Cabinet Member for Community Safety.
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Sources/background papers: None

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