



Resident Experience Board

21 July 2015

Regulation of Investigatory Powers Act 2000 (RIPA) Review 2014/15

Purpose of the report: Scrutiny of the use of the Regulation of Investigatory Powers Act 2000 (RIPA) by Surrey County 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, now Resident Experience Board, 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 Services 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 1998 came into force in October 2000, enshrining the principle of right to respect for their 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. For example carrying out surveillance activity covertly, or tracing 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 Senior Responsible Officer is Yvonne Rees, the Strategic Director for Customers and Communities. The Policy Custodian is Steve Ruddy, the Head of Service for Buckinghamshire & Surrey Trading Standards. Over the last five years the Trading Standards Service has been the only council service that has utilised the legislation.
8. In late December 2014 the Office of Surveillance Commissioners released an updated version of their 'Procedures and Guidance' document for local authorities. This document has been considered and no alterations to our current policies and procedures are necessary.

What types of activity can be authorised?

9. 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’ in 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. For example 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.
10. 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.
11. All applications by an officer for authorisation are initially scrutinised by our in-house Senior Legal Officers. In the case of communications data, these are also scrutinised by an accredited Single Point of Contact (SPoC) and the National Anti Fraud Network (NAFN). In all cases they are passed to the Head of Service or Policy and Operations Manager to authorise. The authorised application is then presented in private to a Justice of the Peace in accordance with the Protection of Freedoms Act 2012.
12. All authorisations are fully recorded and 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 (now titled) Localities and Community Wellbeing** – receives quarterly and annual reports on the use of RIPA. This summary provides greater detail of all of individual RIPA authorisations granted in the period in a sanitised form.

Review of the local authority use of RIPA 2014/15

Authorisations granted

13. During 2014/15 a total of three RIPA authorisations were granted. For comparison purposes the figures for three previous years are also given.

	2011/12	2012/13	2013/14	2014/15
Communications Data Authorisations	11	7	1	0
Directed Surveillance Authorisations	10	1	4	3
CHIS authorisations	0	1	0	0

Details of Communications Data Checks

14. There were no communications data authorisations made during 2014/15.

Details of Directed Surveillance Activity

15. The three Directed Surveillance authorisations made during 2014/15 related to test purchasing of age restricted products (alcohol).

16. One store sold alcohol to a child and a follow up operation was undertaken to establish whether this was a systematic issue. There was no sale on the second occasion; the seller received a fixed penalty notice for that first incident. In the other case compliance was confirmed without the need for formal action.

17. All three Directed Surveillance authorisations were authorised by the Policy and Operations Manager, Ian Treacher.

Details of Covert Human Intelligence Source (CHIS) authorisations.

18. There were no Covert Human Intelligence Source authorisations made during 2014/2015.

Emerging Issues

19. The use of the internet and particularly social media is an area of vast growth over the past few years, many people actively using social media to trade and communicate. With this increase in popularity and use there is also an increase in reports of criminal activity carried out using social media (e.g. sale of counterfeit/unsafe goods). There is also a significant amount of intelligence that may be gathered from social media and open source internet searches. This has been recognised by the Office of the Surveillance Commissioner in their latest annual report published in September 2014.
20. The report recognises that the gathering of information, freely available on the internet or social media, may be considered to be surveillance in certain circumstances. Particular regard must be given to the expectations of individuals from the gathering, monitoring or recording of information from these sources. Awareness and training of this issue has already taken place and the current policies and guidance are sufficiently comprehensive and robust to deal with any proposal to gather or monitor information obtained from this source.
21. On 27 April 2015 the newly created joint Trading Standards Service with Buckinghamshire County Council attended a refresher session on RIPA, taking account of the above emerging issues. This was delivered by an external recognised expert in this area of law. Training for Senior Executives and Managers from both Buckinghamshire County Council and Surrey County Council is due to take place on 17 August 2015.

Inspection by the Office of the Surveillance Commissioner (OSC)

22. On 10 November 2014 Surrey County Council and Surrey Fire and Rescue Service were inspected by Assistant Surveillance Commissioner HH David Hodson.
23. Following this inspection it was noted by the Surveillance Commissioner, RT Hon Christopher Rose, in a letter to David McNulty on 3 December 2014 that Surrey County Council's resort to RIPA has dramatically reduced since the last inspection 3 years before. He also said that we have a '*comprehensive, robust and efficient RIPA regime with a dedicated team of enthusiastic knowledgeable and experienced officers*'. All recommendations from the previous inspection had been discharged.
24. The County Policy was considered to be an '*admirable, accurate, concise and readable guide to RIPA principles and process*'. There was a recommendation that section 7 of the Policy could be deleted. This section relates to urgent requests and has limited applicability to local authorities but was present for completeness. The suggested alteration to the County Policy will be brought to Cabinet later this year.

Conclusions

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

Financial and value for money implications

28. 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

29. Many rogue traders deliberately target elderly and vulnerable people and expose the young to the risk of harm. The investigative techniques covered by RIPA are used 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

30. 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

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

Recommendations

32. The Board is asked to scrutinise the above summary of the council's use of RIPA.

Next steps

33. Quarterly reports on RIPA use will continue to be provided to the Cabinet Member for Localities and Community Wellbeing.

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Sources/background papers: None