



Resident Experience Board

20 July 2016

Regulation of Investigatory Powers Act 2000 (RIPA) Review 2015/2016

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 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 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 e.g. 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 Communities.

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 we do not receive any call data i.e. the content, call lists 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’ i.e. hidden cameras 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 e.g. 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 both 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 in the case of communications data it is passed to the National Anti-Fraud Network (NAFN) for approval, before being passed to the Head, or Assistant Head of Trading Standards 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 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 Localities and Community Welbeing** – receives quarterly and annual reports on use of RIPA.
- **Strategic Director**, Yvonne Rees, is the Senior Responsible Officer for RIPA

13. Our most recent external inspection (from the OSC) took place in November 2014 and the feedback was very positive. In the feedback report the Chief Surveillance Commissioner Sir Christopher Rose stated "**you have in place a comprehensive, robust, and efficient regime with a dedicated team of enthusiastic knowledgeable and experienced officers.**"

Review of the local authority use of RIPA 2015/16
--

Authorisations granted

14. During 2015/2016 a total of six RIPA authorisations were granted. For comparison purposes the figures for three previous years are also given.

	2012/13	2013/14	2014/2015	2015/2016
Communications Data Authorisations	7	1	0	1
Directed Surveillance Authorisations	1	4	3	5
CHIS authorisations	1	0	0	0

Details of Communications Checks

15. A single Communications data check was made during 2015/2016 relating to an investigation into a cold-caller conducting a fraudulent business by offering overpriced, unnecessary and substandard gardening services to three elderly and vulnerable victims. The victims were pressurised into agreeing to work and one was charged £4,290, another £2,500, and another £3,800 for just a few hours of unnecessary and shoddy work. The addresses used by the traders were not correct and the communications check was used in an attempt to identify and trace the fraudsters involved. Unfortunately in this case the information obtained has not led to the identification of the trader in this case.

Details of Directed Surveillance Activity

16. The five Directed Surveillance authorisations made during 2015/2016 related to test purchasing of age restricted products (alcohol & tobacco). The authorisation for test purchasing is sought after intelligence indicates that illegal under age sales are being made. However in each of these cases the business refused to sell the product to our under-age test purchaser demonstrating compliance with the legislation.

Details of Covert Human Intelligence Source (CHIS) authorisations.

18. There were no Covert Human Intelligence Source authorisations made during 2015/2016.
19. All six RIPA authorisations were authorised by then Policy and Operations Manager, Ian Treacher who was fully trained in his responsibilities as an authorising officer.
20. A quarterly summary of RIPA activity is provided to the Cabinet Member for Localities and Community Wellbeing. 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 sometimes needed to investigate such crimes to help identify and locate such criminals. A telephone number may well be the only line of enquiry and possible link to the offender. Utilising RIPA can therefore help the Trading Standards service to 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.

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 Board is asked to note the above summary of the council's use of RIPA.

Next steps

29. It will be necessary to make amendments to the corporate policy when the Investigatory Powers Bill comes into force.

30. The Bill currently aims to:-

- a) Consolidate all legislation that enables acquisition of communications data/interception/warrants into one place
- b) Replace the various oversight agencies (including IOCCO, OSC) into one agency to be headed by the 'Investigatory Powers Commissioner'
- c) Attempt to make sure that investigatory powers are fit for the digital age

31. Modernising the legislative framework is welcomed, as is the simplification of the external scrutiny regime.

Report contact:

Steve Ruddy – Head of Trading Standards

Contact details:

01372 371730

steve.ruddy@bucksandsurreytradingstandards.gov.uk

Lee Ormandy – Legal and Investigations Manager

Contact Details

01372 832997

lee.ormandy@bucksandsurreytradingstandards.gov.uk

Sources/background papers: none

This page is intentionally left blank