

**SURREY**

## Communities Select Committee

**DATE: Tuesday 7 November**

### **TITLE: Regulation of Investigatory Powers Act 2000 (RIPA) Update 2017/18**

#### **Purpose of report:**

To review the County Council's use of the Regulation of Investigatory Powers Act 2000 (RIPA) and to outline proposed updates to the existing corporate RIPA policy. The proposed updates include a section on social media and the use of online selling platforms as well as a change to Surrey County Council's Senior Responsible Officer (SRO) for RIPA.

#### **Introduction:**

1. Surrey County Council's (SCC) Corporate Policy on the use of RIPA, as agreed by Cabinet, includes a scrutiny role for the Communities Select Committee which oversees 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. The report also outlines updates which have been made to SCC's Corporate Policy on the use of RIPA in particular to reflect the growing use of social media as a sales platform.
3. RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities. RIPA does not provide powers to carry out covert activities. If such activities are conducted by Council officers then RIPA regulates them in a manner that is compatible with the European Convention on Human Rights, particularly Article 8-the right to respect for private and family life. Central Government guidance about RIPA for Local Authorities can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118173/local-authority-england-wales.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118173/local-authority-england-wales.pdf)
4. Use of RIPA techniques (detailed below) have to be agreed internally by an authorising officer or a designated person within the Council. They can only be used where it is considered necessary and proportionate and any authorisation must be approved at court by a Justice of the Peace.

## Background:

5. Local Authority Trading Standards Services conduct criminal investigations into a wide range of activities bringing criminals to justice whilst protecting local communities and legitimate businesses.
6. The Human Rights Act (HRA) 1998 came into force in October 2000, enshrining the principle of the rights in respect of private and family life, and that there should be no interference by a public authority except in accordance with the law.
7. During criminal investigations it is sometimes necessary to interfere with an individual's right to privacy, for example, by carrying out surveillance activity covertly or by tracing the subscriber of a telephone number used in connection with a crime.
8. RIPA allows such activities to continue and properly regulates such investigative activity.
9. The use of RIPA is included within existing Corporate Governance Policies and the Policy Custodian on behalf of SCC is Trevor Pugh, Strategic Director for Environment and Infrastructure. Trevor Pugh is the newly appointed Senior Responsible Officer.

### What types of activities can be authorised?

10. Three different types of activity can be authorised. These are:
  - **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’ i.e. 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.
11. 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 six months (or more) or,

- be those that relate to underage sales of alcohol or tobacco for directed surveillance only.
12. 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.
13. 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); and
  - 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.
14. 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 Communities** – receives quarterly and annual reports on use of RIPA.

<b>Review of local authority use of RIPA 2016/17</b>
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15. During 2016/17 a total of three RIPA authorisations were granted. For comparison purposes, the figures for three previous years are also given. These figures demonstrate that the usage of RIPA is relatively low reflecting the Service's move to a genuinely intelligence led service and an adherence to the principles enshrined in the HRA of using RIPA only where absolutely necessary.

	2013/14	2014/15	2015/16	2016/17
<b>Communications Data Authorisations</b>	1	0	1	3
<b>Directed Surveillance Authorisations</b>	4	3	5	0
<b>CHIS Authorisations</b>	0	0	0	0

**Details of communications authorisations:**

16. The first communication check was used to ascertain the identity of persons responsible for companies acting fraudulently in the advertisement of conservatory work. The number was identified as a pay as you go number (PAYG) and no further lines of enquiry were required and the authorisation was therefore cancelled.
17. The second communication check was used to ascertain the identity of cold caller/person responsible for the company which acted fraudulently in the advertisement and conducting of roofing work. PAYG information was received and no further lines of enquiry were required and therefore the authorisation was cancelled.
18. The third communication check was used to ascertain the identity of a person responsible for possible Consumer Protection from Unfair Trading Regulatory offences and money laundering offences for gardening work and criminal damage. Information was received that the number was registered to an individual who had already been identified and interviewed as a suspect. The investigation was subsequently closed and the authorisation cancelled.

<p><b>Updating the Policy - Social Media and Online Selling Platforms and new Senior Responsible Officer</b></p>
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19. In this changing marketplace, Trading Standards are often investigating offences where the traders and individuals have used online media as sales platforms. To bring the Corporate Policy up to date officers have included reference to the use of social media. It also includes reference to the new SRO, Trevor Pugh.
20. Attached to this report as Annex 1 is the proposed new version of the Corporate Policy with the addition in paragraph 12 that provides guidance about how RIPA applies to the surveillance of social media and online selling platforms.

<p><b>Conclusions:</b></p>
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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 often used in these crimes to help identify and locate such criminals. Therefore the Trading Standards Service can continue to effectively protect the most vulnerable people in Surrey's communities. Any decision to use techniques covered by RIPA are made against standard criteria and are not influenced by ethnicity, race or other factors. The process also requires that consideration 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:**

It is recommended that the Communities Select Committee:

- i. considers the use of RIPA by Surrey County Council during 2016 -17 by scrutinising the above summary; and
- ii. supports the proposed additions to the Corporate Policy.

#### **Next steps:**

The views of the Select Committee will be used to inform Cabinet when it considers the final sign off for the updated Corporate Policy in November 2017.

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**Annexes:**

Annex 1 – Social Media and Online Platform RIPA policy

**Sources/background papers:**

None