



Communities Select Committee

11 July 2013

Regulation of Investigatory Powers Act 2000 (RIPA) Review 2012/13

Purpose of the report: Scrutiny of the use of the Regulation of Investigatory Powers Act 2000 (RIPA) by the Council and to further report on changes implemented by the Protection of Freedoms Act 2012.

Introduction

1. A corporate policy on the use of RIPA was agreed by Cabinet in November 2009. The policy included a new scrutiny role for the Safer and Stronger Communities Select Committee, now the Communities Select Committee, to oversee the use of RIPA by the authority. An updated policy will need to be agreed by cabinet to reflect the changes that impact on it by virtue of the Protection of Freedoms Act 2012 and the restructure of the Trading Standards Service.
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. It also summarises the changes made under the Protection of Freedoms Act 2012. (Please see Section 24)

Background

3. For many years enforcement bodies such as the local authority Trading Standards Service have conducted a wide range of criminal investigations. This brings criminals to justice and protects the public, local communities and legitimate business from crime and the impact of crime.
4. The Human Rights Act 1998 came into force in October 2000, and this enshrined the principle that everyone has the 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 it may be necessary to carry out surveillance activity covertly, or to trace the subscriber of a telephone number that has been used in connection with a crime.
6. The Regulation of Investigatory Powers Act 2000 allows such activities to continue and properly regulates such investigative activity
7. The use of the Regulation of Investigatory Powers Act (RIPA) is clearly identified 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** – usually relating to obtaining subscriber information, sometimes will include information on numbers dialed. This **does not** include the ability to “bug” or otherwise monitor calls and their content or open emails.

- **Directed Surveillance** - covert surveillance that is likely to result in obtaining private information about a person. For example the use of covert recording equipment and/or undercover observation when carrying out test purchasing exercise on age restricted products.

RIPA **does not** allow the local authority to authorise surveillance activity in or into anyone's private home or vehicle (this is called 'intrusive surveillance' and can only be undertaken by agencies such as the Police and Security Services)

- **Covert Human Intelligence Sources (CHIS)**, using or tasking individuals who establish or maintain a relationship with another person for a covert purpose. For example the use of Trading Standards Officers to pose as a customer where a relationship may develop with a trader. Using a profile on social media for the purpose of posing as a potential customer to investigate the sale of counterfeit goods over the internet is an example where a relationship has to be established.

9. In all cases the activity authorised must be necessary and proportionate to the nature of the criminal offence under investigation. Alternative approaches must always be considered first. All authorisations must be fully recorded and are subject to regular oversight. There are two external inspecting bodies and both report to Parliament, who also conduct audit visits and require annual returns of use. In addition, the Cabinet Member for Communities also receives a quarterly report which provides greater detail of all of the individual RIPA authorisations granted in the period, whilst ensuring that individual operations cannot be identified and compromised.

- **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.

Review of the local authority use of RIPA 2012/13
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Results of external inspections:

10. The last inspection from the Office of Surveillance Commissioners took place on 11th July 2011 by His Honour Norman Jones QC. In summary HH Jones was pleased that his recommendations of three years ago had been implemented and that good quality policy and procedure documents were in place. Steve Ruddy (Community Protection Manager) was especially commended for his knowledge and commitment to RIPA issues. For the size of Surrey County Council our use of RIPA was described as moderate. Both RIPA applications and authorisations were described as a high standard.

Authorisations granted

11. During 2012/13 a total of 9 RIPA authorisations were granted. For comparison purposes the figures for three previous years are also given.

	2009/10	2010/11	2011/12	2012/13
Communications Data Authorisations	26	14	11	7
Directed Surveillance Authorisations	9	39	10	1
CHIS authorisations	1	0	0	1

Details of Communications Checks

12. Communications data checks were the most frequently used. We make such checks via the National Anti-Fraud Network (NAFN) who approach the telecoms and web domain providers on our behalf to access the relevant data. NAFN help ensure that there is appropriate third party scrutiny of every application before it is actioned.

13. Over the course of last year these checks were:
- Doorstep crime investigations where residents are targeted and rogue traders have taken steps to conceal their true identity.
 - Product counterfeiting investigations where fake and illegal products are offered for sale without the true identity of the supplier being provided.
 - Product safety investigation where unsafe products were offered for sale online.
 - Advertising and sales of misdescribed cars due to false mileage (clocking), false service history or other misdescriptions
14. The outcome of these authorisations are as follows:-
- 1 ongoing investigation/formal action report pending
 - 1 formal written warning
 - 1 investigation referred to another local authority (2 communications authorisations)
 - 3 unable to trace suspect
15. All 7 communications data requests were authorised by either Steve Ruddy, Community Protection Manager or by Ian Treacher, Policy and Operations Manager. Both officers were fully trained in their responsibilities as authorising officers.

Details of Directed Surveillance Activity

16. The single Directed Surveillance authorisation made during 2012/13 related to test purchasing of age restricted product (tobacco). No sale took place.
17. This is an area where advice from central government has changed on a number of occasions over recent years. Previous advice given in July 2011 during an audit by the Office of Surveillance Commissioners Office was that merely observing during a test purchase operations did not require authorisation and hence the number reduced in 2011/12 and 2012/13.
18. In January 2013 the Better Regulation Delivery Office published a Code of Practice on regulatory delivery of age restricted sales which strongly suggests 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. The number of authorisations in the future will therefore be higher.

19. This Directed Surveillance authorisation was granted by the Policy and Operations Manager, Ian Treacher.

Details of Covert Human Intelligence Source (CHIS) authorisations.

20. The single Covert Human Intelligence Source authorisation made during 2012/2013 related to an investigation into counterfeit goods being sold using a social media website.
21. In this case a covert profile was created and an attempt was made to test purchase counterfeit goods from the suspect via the site. The suspect did not engage with the officer and the activity was later reviewed and cancelled.
22. This Covert Human Intelligence Source authorisation was granted by the Policy and Operations Manager, Ian Treacher.

Protection of Freedoms Act 2012
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23. The Service reported in July 2011 that the Protection of Freedoms Bill was passing through parliament and included the proposal to ban the use of RIPA powers by councils “unless they are signed off by a magistrate and that they are required for stopping serious crime”.
24. As of 1st November 2012 the Protection of Freedoms Act 2012 requires local authorities to obtain judicial approval for the use of the three covert investigatory techniques available to them. It also introduced a threshold for the use of directed surveillance, it can only be used to prevent or detect crime for offences that are punishable by a maximum term of at least 6 months imprisonment or for those offences that relate to the sale of alcohol or tobacco to underage persons.
25. A magistrate may approve a RIPA application 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.
 - Although the magistrates may ask questions relating to the application it must be capable of being authorised solely based on the paperwork submitted to them.

26. The Act also states that in the case of surveillance, any operation shall not commence until the judicial approval has been granted. It also states that when a CHIS operation has been required to be renewed (due to the length of time or other significant factor) then there cannot be further action until another judicial approval has considered all the details of that renewal.
27. There is no requirement to give “notice” to the person (or their legal representative) that is the subject of the judicial approval. This indicates that the judicial process will be in private as for Entry or Search Warrant applications.

What has been effect of the changes?

28. There are already close controls of RIPA authorisations including a written County Council policy, very limited numbers of authorised staff, official external audit and the record of all activity has been published (although not with any specific operational detail).
29. All applications for authorisations for RIPA are initially considered by our in-house Senior Legal Officers, or by NAFN in the case of communications data before being passed to the Policy and Operations Manager to authorise.
30. Once the application has been authorised it is presented in private to a Justice of the Peace by a Senior Legal Officer.

Conclusions

31. The only use of RIPA by the council over the past year has been by Trading Standards.
32. The use of RIPA by the local authority is important in helping to fight crime and protect local communities.
33. Authorisations have been made and considered appropriately.

Financial and value for money implications

34. 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

35. 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 adversely 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

36. 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

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

Recommendations

38. The Committee are asked to scrutinise the above summary of the council's use of RIPA.

Next steps

39. A new RIPA Policy & Protocol will be presented to Cabinet at the next opportunity to include the changes required as a result of the Protection of Freedoms Act 2012 which is now in force and to update the policy following the re-structure of the Trading Standards Service.

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Sources/background papers: None

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