



CORPORATE GOVERNANCE COMMITTEE
20 FEBRUARY 2015

REPORT OF THE COUNTY SOLICITOR

**COVERT SURVEILLANCE AND REGULATION OF INVESTIGATORY
POWERS ACT 2000**

Purpose of Report

1. The purpose of this report is:
 - (i) to advise the Committee on the Authority's use of the Regulation of Investigatory Powers Act 2000 (RIPA) for the period of 1 October to 31 December 2014;
 - (ii) to ask the Committee to agree to receive annual reports on the use of RIPA, replacing the current quarterly reporting arrangements;
 - (iii) to ask the Committee to continue to review the RIPA Policy Statement on an annual basis to ensure it remains fit for purpose.

Policy Framework and Previous Decisions

2. The Codes of Practice made under RIPA require elected members of a local authority to review the authority's use of RIPA and set the policy at least once a year. They should also consider internal reports on the use of surveillance to ensure that it is being applied consistently with the local authority's policy and that the policy remains fit for purpose. Elected members should not, however, be involved in making decisions on specific authorisations.
3. Since October 2000 the County Council has had statutory responsibilities under RIPA to ensure there is appropriate oversight for the authorisation of County Council officers who are undertaking covert surveillance governed by RIPA.
4. This Committee at its meeting on 24 November 2014 agreed that the Policy Statement endorsed by Cabinet on 13 December 2013 remained fit for purpose.

Use of RIPA

5. For the period from 1 October to 31 December 2014, authorising officers in the Chief Executive's Department received the following:

- One application for directed surveillance;
 - Two applications to use a covert human intelligence source;
 - One application to obtain communications data.
6. Magistrates approved all of the above authorisations and were satisfied that the County Council's submissions met all the necessity and proportionately requirements.
 7. These surveillance authorisations were required to enable the Trading Standards Service to:
 - Undertake age restricted test purchases of alcohol and tobacco products from retailers within the County;
 - Investigate the supply of counterfeit goods including illicit tobacco.

Illegal Sales of Butane, knives and fireworks

8. The Cabinet agreed at its meeting on 13 December 2013 to revise the Policy Statement to enable the Council to undertake covert investigatory techniques, in respect to the prevention and detection of illegal sales of the following age restricted products: Butane, Knives and Fireworks, even though these products do not meet the criteria specified in the Protection of Freedoms Act 2012 and therefore do not attract the protections of RIPA, in respect to these covert investigatory techniques. The Council has implemented a procedure to ensure that it continues to comply with its obligations under the European Convention of Human Right (ECHR) (Article 8), requiring its Trading Standards Service to adhere to the same authorisation procedures for RIPA authorisations and/or notices, except for the requirement to seek the approval of a Magistrates' Court.
9. For the period from 1 October 2014 to 30 September 2014 an authorisation was granted to undertake nine covert test purchase attempts relating to fireworks, butane or knives, none of which resulted in a sale.

New Guidance.

10. On 10 December 2014 revised versions of the two codes of practice under part 2 of the Regulation of Investigatory Powers Act 2000 (RIPA) came into force. This is a result of two statutory instruments made on the 19 November 2014, namely the Regulation of Investigatory Powers (Covert Surveillance and Property Inference: Code of Practice) Order 2014 and the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Code of Practice) Order 2014.
11. The revised codes take into account changes which took effect on 1st November 2012; namely magistrates' approval for council surveillance and a new six-month custody threshold test for directed surveillance. As a consequence of the implementation of an additional layer of judicial approval the revised codes remove the requirement for elected members to receive

quarterly reports on the use of RIPA and propose reporting should be on a *regular* basis.

12. The revised codes do retain the requirement for elected members of a local authority to review the RIPA policy at least once a year to ensure it remains fit for purpose.
13. In December 2014 The Office of Surveillance Commissioners (OSC) also published new guidance concerning the use of RIPA. Authorising officers within Regulatory Services have reviewed the OSC guidance and the revised codes of practice, all of which are now available to all employees via the County Council intranet. The authorising officers are satisfied that the County Council procedures are in accord with current best practice.

Recommendation

That the Committee:

- a) Notes the contents of this report and the use of RIPA powers for the period 1 October to 31 December 2014;
- b) Agrees to replace the current quarterly reporting structure with an annual report on the use of RIPA which will also include the annual review of the RIPA Policy Statement.

Equal Opportunities Implications

14. None.

Background papers

Report to the Corporate Governance Committee on 24 November 2014 – Regulation of Investigatory Powers Act 2000 Annual Report

Covert Surveillance and the Acquisition of “Communications Data” Policy Statement

Circulation under the local issues alert procedure

15. None.

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