

CABINET - 12 JANUARY 2016

REPORT OF THE COUNTY SOLICITOR

**REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) -
REVISED POLICY STATEMENT**

PART A

Purpose of the Report

1. The purpose of this report is to advise the Cabinet on the Council's use of the Regulation of Investigatory Powers Act 2000 (RIPA) for the period from 1 October 2014 to 30 September 2015, and to recommend the adoption of a revised Policy Statement to reflect legislative changes that have taken place.

Recommendations

2. It is recommended that -
 - (a) The Council's use of the Regulation of Investigatory Powers Act 2000 for the period from 1 October 2014 to 30 September 2015 be noted;
 - (b) That the County Council's Policy Statement on the use of RIPA powers (appended to this report) be agreed;
 - (c) That the Cabinet continues to receive annual reports from the Corporate Governance Committee on the use of RIPA powers and whether the Policy remains fit for purpose.

Reasons for Recommendations

3. The Policy Statement requires updating to reflect legislative changes regarding the supply of nicotine inhaling products that have taken place since its previous consideration by the Cabinet in December 2013.

Timetable for Decisions (including Scrutiny)

4. A revised Policy Statement will be implemented following approval by the Cabinet.

Policy Framework and Previous Decisions

5. Since October 2000 the County Council has had statutory responsibilities under RIPA to ensure there is appropriate oversight for the authorisation of its officers who are undertaking covert surveillance governed by the Act.
6. The RIPA Codes of Practice 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 RIPA 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.
7. In November 2013 the Council's Corporate Governance Committee agreed changes to the Policy Statement to reflect legislative changes and the recommendations made following an inspection undertaken by the Office of Surveillance Commissioners. The Cabinet subsequently agreed the Policy Statement on 13 December 2013.
8. On 20 February 2015 the Corporate Governance Committee agreed that it would receive annual reports on the use of RIPA.

Resources Implications

9. There are no resources implications arising from this report.

Circulation under the Local Issues Alert Procedure

10. None.

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PART B

Background

11. The Trading Standards Service is the primary user of RIPA within the County Council. The three activities primarily used by the County Council are "Directed Surveillance", the conduct and use of "Covert Human Intelligence Sources" (CHIS), and authorisations to acquire certain types of "communications data". These are the RIPA 'powers' referred to in this report.
12. **Directed surveillance** is the pre-planned covert surveillance of individuals, sometimes involving the use of hidden visual and audio equipment.
13. **CHIS** includes the use of County Council officers, who pretend to be acting as consumers to purchase goods and services, e.g. in person, by telephone or via the internet.
14. **Communications data** relates to information obtained from communication service providers, for example, subscriber details relating to an internet account, mobile phone or fixed line numbers, but does not include the contents of the communication itself.
15. Legislative changes in November 2012 implemented an additional layer of scrutiny which means that local authority authorisations under RIPA can only take effect if an order approving the authorisation or notice has been granted by a Magistrates' Court.
16. Subsequent amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 brought about further restrictions on the use of RIPA. A local authority can only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminality. These are criminal offences and only those offences which on conviction are punishable by a maximum term of imprisonment of six months or more, or offences relating to the sale of alcohol or tobacco to children.

The Process

17. An application by the Authority for a RIPA authorisation or notice is considered at a hearing in the Magistrates' Court. The hearing is conducted in private and heard by a Magistrate or District Judge who will read and consider the RIPA authorisation or notice applied for.
18. Home Office guidance recommends the County Council Monitoring Officer should designate certain officers for the purpose of presenting RIPA cases to the Magistrates' Court. Delegated powers agreed by the Cabinet enable the County Solicitor to "authorise staff to prosecute, defend or appear in proceedings before Magistrates' Courts on behalf of the County Council". A pool of suitable officers within Regulatory Services (in the Chief Executive's Department) are designated for this purpose. The existing delegated power will allow for further designations to be made by the County Solicitor should it

become necessary and appropriate for officers from other service areas to be able to represent the Council in RIPA hearings.

19. The Corporate Governance Committee continues to be the appropriate body to review the RIPA Policy Statement annually, with a view to reporting to the Cabinet on both the use of RIPA powers and whether the policy remains fit for purpose.
20. Procedures and all published Home Office guidance for local authorities are available to all employees via the County Council's intranet.

Use of RIPA by the County Council

21. For the period from 1 October 2014 to 30 September 2015 the following authorisations were approved:
 - a) 7 directed surveillance
 - b) 4 CHIS
 - c) 17 relating to the acquisition of communications data.
22. All RIPA authorisations granted within this period were associated with covert surveillance activities undertaken by the Trading Standards Service. These criminal investigations related to the supply of counterfeit or unsafe products; unfair trading practices conducted via the internet or on the doorstep; the sale of alcohol or tobacco to children; the illegal importation of canines and the supply of psychoactive substances.
23. All the above RIPA applications were approved by a District Judge or a Magistrate sitting at Leicester Magistrates' Court. On each occasion an application was put before the Court, the County Council was able to demonstrate that appropriate consideration had been given to the necessity and proportionality of the surveillance to be undertaken and that it was being sought for a legitimate purpose.

Illegal Sales of Butane, Knives and Fireworks

24. In December 2013 the Cabinet agreed 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 butane, knives, and fireworks, which are age-restricted products. 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.
25. The Council has implemented a procedure to ensure that it continues to comply with its obligations under Article 8 of the European Convention on Human Rights, 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.

26. In the period from 1 October 2014 to 30 September 2015 an authorisation was granted to undertake a series of covert test purchases relating to fireworks, butane, and knives. No sales were made.

Legislative Changes

27. With effect from 1 October 2015 the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 made it an offence to sell nicotine inhaling products to persons under the age of eighteen. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2015 provides the necessary gateway to enable a local authority to apply for judicial approval to use covert surveillance when investigating the supply of this type of age-restricted product.
28. The Council's Policy Statement therefore requires an amendment at Section 3 to reflect these legislative changes and agree that the Council may, subject to judicial approval, use covert surveillance to investigate the supply of nicotine inhaling products to persons under the age of eighteen.

Background Papers

Report to the Cabinet on 13 December 2013 "The Regulation of Investigatory Powers Act 2000 Policy Statement December 2013" and minutes of that meeting.

<http://ow.ly/W4cTP>

<http://ow.ly/W4cWZ>

Report to the Corporate Governance Committee on 17 November 2015 "Regulation of Investigatory Powers Act 2000 (RIPA) - Annual Report" and minutes of that meeting.

<http://ow.ly/W4d3g>

<http://ow.ly/W4d6G>

Equality and Human Rights Implications

29. None arising from this report.

Appendix

The Regulation of Investigatory Powers Act 2000 (RIPA) draft Policy Statement