



CORPORATE GOVERNANCE COMMITTEE

25 NOVEMBER 2016

REPORT OF THE DIRECTOR OF LAW AND GOVERNANCE

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

Purpose of Report

1. The purpose of this report is:
 - a) to advise the Committee on the Authority's use of the Regulation of Investigatory Powers Act 2000 (RIPA) for the period from 1 October 2015 to 30 September 2016;
 - b) to advise the Committee of the outcome of an inspection by the Office of Surveillance Commissioners (OSC) conducted on 10 August 2016;
 - c) to ask the Committee to review the Policy Statement relating to RIPA; and
 - d) to ask the Committee to make recommendations to the Cabinet on the approval of a revised Policy Statement.

Policy Framework and Previous Decisions

2. Since October 2000 the County Council has had statutory responsibilities to ensure there is appropriate oversight for the authorisation of its officers who are undertaking covert surveillance governed by RIPA.
3. 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 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.
4. On 17 November 2015 this Committee agreed changes to the Policy Statement to reflect legislative changes. The Cabinet subsequently agreed the Policy Statement on 12 January 2016.
5. On 20 February 2015 this Committee agreed to receive an annual report on the use of RIPA.

Background

6. 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 paper.
7. **Directed surveillance** is the pre-planned covert surveillance of individuals, sometimes involving the use of hidden visual and audio equipment. **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.
8. **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.
9. Legislative changes in November 2012 implemented an additional layer of scrutiny. Local authority authorisations under RIPA can only take effect if an order approving the authorisation or notice has been granted by the Magistrates' Court.
10. 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.
11. 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.

The Process

12. 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. Home Office guidance recommends the County Council Monitoring Officer (the Director of Law and Governance in this Authority) should designate certain officers for the purpose of presenting RIPA cases to the Magistrates' Court. Delegated powers agreed by the Cabinet

enable the Director of Law and Governance 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 are designated for this purpose. The existing delegated power will allow for further designations to be made by the Director of Law and Governance should it become necessary and appropriate for officers from other service areas to be able to represent the County Council in RIPA hearings.

13. 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.
14. Procedures and all published Home Office guidance for local authorities are available to all employees via the County Council’s intranet.

Use of RIPA

15. For the period from 1 October 2015 to 30 September 2016 the following authorisations were approved :
 - a) – 4 directed surveillance;
 - b) - 4 CHIS;
 - c) - 5 relating to the acquisition of communications data.
16. 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, and the sale of age restricted products to children.
17. All RIPA applications submitted between October 2015 and September 2016 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 be given to the necessity and proportionality of the surveillance to be undertaken and that it was being sought for a legitimate purpose.

Unlawful Sales of Butane, Knives and Fireworks

18. 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.

19. 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.
20. For the period from 1 October 2015 to 30 September 2016 an authorisation was granted to undertake a series of covert test purchases relating to fireworks, butane and knives. No sales were made

Inspection of the County Council by the Office of Surveillance Commissioners (OSC)

21. On 10 August 2016 the OSC conducted an inspection of the County Council. In his report, Assistant Surveillance Commissioner His Honour Sir David Clarke QC concludes:

“LCC has a generally sound RIPA structure, policy and procedures, and committed senior management. Mr Connors has long experience in RIPA matters and is well placed to guide the process in the more senior role he now occupies. The RIPAR electronic system is excellent in principle, but requires significant revision in relation to the CHIS authorisation process.”

22. The Commissioner's report is complimentary on the intranet RIPA application process (RIPAR), an online system designed and implemented by the Council's ICT Services. However, the OSC recommends revisions to ensure the paper copy of a CHIS application produced for the judicial process reflects all the relevant information recorded in RIPAR system, whilst at the same protecting the true identity of any confidential source.
23. The Commissioner made four principal recommendations:
- a) the Policy Statement is revised to incorporate advice on the relevance of RIPA when dealing with information received from members of the public and the use made by investigators of the internet, in particular, the monitoring of 'open source' social network sites;
 - b) the risk assessments undertaken for CHIS authorisations are prepared on an individual basis;
 - c) CHIS authorisations are set out in such a way that the information is fully reproduced in the paper copy for the purposes of seeking the judicial approval;
 - d) That the cancellation process incorporates additional directions by the authorising officer as set out in the current OSC 2016 guidance.

All of the above recommendations have been implemented and the Commissioner has been advised accordingly.

Recommendations

24. That the Committee:

- a) notes the report on the Authority's use of the Regulation of Investigatory Powers Act 2000 for the period from 1 October 2015 to 30 September 2016;
- b) recommends to the Cabinet to agree to amend the County Council's Policy Statement on the use of RIPA powers to reflect the recommendations of the OSC;
- c) agrees to continue to receive an annual report on the use of RIPA powers and to report to the Cabinet on an annual basis on both the use of RIPA powers and whether the Policy remains fit for purpose.

Background Papers

Report to the Cabinet on 12 January 2016.

The Regulation of Investigatory Powers Act 2000 Policy Statement December 2016

Circulation under the Local Issues Alert Procedure

None.

Equality and Human Rights Implications

None arising from this report.

Officers to Contact

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Appendix

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

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