



CORPORATE GOVERNANCE COMMITTEE

17 NOVEMBER 2017

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 2016 to 30 September 2017;and
 - b) to ask the Committee to review the Policy Statement relating to RIPA;

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 25 November 2016 this Committee agreed changes to the Policy Statement to reflect best practice and recommendations of the Office of Surveillance Commissioners (OSC). The Cabinet subsequently agreed the Policy Statement on 13 December 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 2016 to 30 September 2017 the following authorisations were approved :
 - 2 directed surveillance;
 - 1 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 and fraudulent trading practices conducted on the doorstep.
17. A total of 4 RIPA applications were submitted for judicial approval between October 2016 and September 2017 and considered by a District Judge or a Magistrate sitting at Leicester Magistrates’ Court. On 3 occasions the County Council was able to demonstrate that appropriate consideration had been given to the necessity and proportionality of the covert activity to be undertaken and that it was being sought for a legitimate purpose.
18. The Council’s own electronic RIPAR system was implemented before the legislative changes required local authorities to seek judicial approval. However, the court process continues to require original documentation to be produced in proceedings. Taking these factors into consideration together with recent OSC guidance around the use of standardised forms the County Council has discontinued using RIPAR and reverted back to a standardised manual system.

Recommendations

19. 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 2016 to 30 September 2017;
- b) recommends to Cabinet that the County Council's Policy Statement on the use of RIPA powers remains fit for purpose.
- 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 13 December 2016. <http://bit.ly/2zqqlvv>

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) Policy Statement