



CORPORATE GOVERNANCE COMMITTEE - 24 OCTOBER 2018

REPORT OF THE DIRECTOR OF LAW AND GOVERNANCE

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) – ANNUAL REPORT

Purpose of Report

1. The purpose of this report is to advise the Committee on the Authority's use of the Regulation of Investigatory Powers Act 2000 (RIPA) for the period from 1 October 2017 to 30 September 2018 and to confirm that the County Council's current Policy Statement relating to RIPA remains fit for purpose.

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 it is being applied consistently with the 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 20 February 2015 this Committee agreed to receive an annual report on the use of RIPA.
5. 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 approved the revised Policy Statement at its meeting on 13 December 2016.

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 and are explained below.

- **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.
 - **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.
7. Legislative changes in November 2012 implemented an additional layer of scrutiny which means local authority authorisations under RIPA can only take effect if an order approving the authorisation or notice has been granted by the Magistrates' Court.
 8. 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 in that a local authority can only grant an authorisation under RIPA for the use of 'directed surveillance' where it is investigating particular types of criminality (i.e. criminal offences, 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).
 9. In addition, 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 was therefore introduced to provide the necessary gateway to enable local authorities to apply for judicial approval to use covert surveillance when investigating the supply of this type of age restricted product.

The Process for the use of RIPA

10. 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.
11. Home Office guidance recommends the County Council Monitoring Officer (the Director of Law and Governance in this Authority) 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 do this and a pool of suitable officers within Regulatory Services are designated for this purpose. The existing delegated power will also allow for further designations to be made by the Director should it become necessary and appropriate for officers from other service areas to represent the Council in RIPA hearings.

12. 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.
13. Procedures and all published Home Office guidance for local authorities are available to all employees via the County Council's intranet.
14. In August 2018, two revised codes of practice came into force pursuant to The Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018. The revised codes concern Covert Surveillance and Property Interference and Covert Human Intelligence Sources (CHIS). These have been considered and the existing County Council RIPA Policy Statement reviewed to determine if any changes are required. The current Policy Statement which is attached as an appendix to this report does not require amendment and therefore remains fit for purpose.
15. The Investigatory Powers Act 2016 (IPA) will, when fully implemented, introduce new procedures for local authorities that seek to acquire communications data. Judicial oversight for communications data authorisations will transfer from Magistrates' courts to a new national authorisation body which is yet to be established. Once details of these arrangements have been confirmed (expected in Spring 2019), a further review of the Council's RIPA Policy will be required. It is expected that changes will be necessary..
16. In accordance with good practice, the RIPA Policy Statement once considered by this Committee is usually referred to the Cabinet for approval on an annual basis. However, it is not proposed that the Policy be so referred at this time given that at present no changes have been made and that a further mid-year review will be necessary when the impact of the Investigatory Powers Act 2016 on local authorities has been made clear. The Council's Policy once reviewed and amended to take account of the new legislation will be brought back to this Committee before being presented to the Cabinet for approval.

Use of RIPA

17. For the period from 1 October 2017 to 30 September 2018 the following authorisations were approved:
 - 1 directed surveillance;
 - 4 relating to the use of covert intelligence sources.
18. 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 alleged supply of age restricted products to children or the supply of illicit tobacco products.
19. All applications were submitted for judicial approval between October 2017 and September 2018 and considered by a District Judge or a Magistrate sitting at Leicester Magistrates' Court. The County Council was able to demonstrate that appropriate consideration had been applied as to the necessity and

proportionality of the covert activity to be undertaken and that it was being sought for a legitimate purpose.

Recommendations

20. The Committee is recommended to:

- a) note the report on the Authority's use of the Regulation of Investigatory Powers Act 2000 for the period from 1 October 2017 to 30 September 2018;
- b) note that no changes have been required to be made to the County Council's current Policy Statement on the use of RIPA (attached as an appendix to this report) and that this remains fit for purpose;
- c) note that the County Council's Policy Statement on the use of RIPA will be reviewed and amended once details of the Investigatory Powers Act 2016 have been made clear and the revised Policy brought back to this Committee for consideration and thereafter presented to the Cabinet for approval.

Background Papers

Report to Corporate Governance Committee on 20th February 2015 and 25th November 2016 – RIPA 2000 – Annual Report

Report to the Cabinet on 13 December 2016 – RIPA – Annual Report

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