



CORPORATE GOVERNANCE COMMITTEE

25 NOVEMBER 2013

REPORT OF THE COUNTY SOLICITOR

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

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 2012 to 30 September 2013;
 - (ii) to advise the Committee of the outcome of an inspection by the Office of Surveillance Commissioners (OSC) conducted on 13 August 2013;
 - (iii) to ask the Committee to review the Policy Statement relating to RIPA; and
 - (iv) to ask the Committee to make recommendations to the Cabinet on the approval of a revised Policy Statement.

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 on a quarterly basis 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. The Cabinet agreed a Policy Statement at its meeting on 3 June 2005 and gave the County Solicitor delegated powers to designate officers as

Authorising Officers. The Cabinet subsequently agreed revisions to this Statement at its meeting on 16 November 2010.

5. This Committee at its meeting on 29 June 2012 noted that the Policy Statement remained fit for purpose, but that it would be necessary for this decision to be reviewed in the light of the imminent legislative changes on the use of RIPA.

Background

6. 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. The Trading Standards Service is the primary user of RIPA within the County Council. 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 and on 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 this does not include the contents of the communication itself.

Legislative Changes

8. With effect from 1 November 2012 changes were implemented governing how local authorities use RIPA. The amendments are contained within the Protection of Freedoms Act 2012. Essentially, the changes have implemented an additional layer of scrutiny. Local authority authorisations under RIPA for the use of these particular covert techniques can only be given effect once an order approving the authorisation or notice has been granted by a Magistrates 'Court.
9. Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, adds further restrictions on the use of RIPA. A local authority can now 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

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. 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 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 County Council in RIPA hearings.

11. The Corporate Governance Committee continues to be the appropriate body to receive quarterly reports and to review the RIPA Policy Statement annually, with a view to reporting to the Cabinet on an annual basis on both the use of RIPA powers and whether the policy remains fit for purpose.
12. New procedures and the published Home Office guidance for local authorities are available to all employees via the County Council's intranet.

Use of RIPA

13. For the period from 1 October 2012 to 30 September 2013 the following authorisations have been given:
 - 7 directed surveillance;
 - 3 CHIS;
14. All authorisations granted within this period related to covert surveillance activities undertaken by the Trading Standards Service. These criminal investigations related to the sale and repair of vehicles, the supply of counterfeit products, unfair trading practices conducted via the internet and the sale of alcohol or tobacco to children
15. To date, all RIPA applications submitted by the Council 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.

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

16. On 13 August 2013 the OSC conducted an inspection of the County Council. In his report, Assistant Surveillance Commissioner His Honour Judge Hodson concluded:

"This was a very satisfactory inspection. Whilst I have made a number of recommendations they are relatively minor in nature and are designed to improve still further on what is a very efficient RIPA process. I was impressed with the enthusiasm and dedication of all those who have responsibility for organising and directing RIPA matters. They deserve congratulation and commendation for all they have achieved"

“I was struck by the enthusiasm and interest everyone shared in the RIPA process and I was hugely impressed at the steps this Council... had introduced to improve their RIPA efficiency.”

17. The Commissioner's report is complimentary about the electronic process used to ensure compliance with legislative requirements, appropriate authorisation and completion of required forms.
18. The Commissioner made four principal recommendations as follows:
 - (i) that the Policy Statement be re-written to reflect the recent legislative changes;
 - (ii) that the County Solicitor as the Senior Responsible Officer shall cease to be an Authorising Officer;
 - (iii) that the Council maintain a schedule of all those officers that have received RIPA training;
 - (iv) that appropriate refresher training is provided for all those officers who are already registered on the electronic RIPAR system.
19. The Committee are asked to note that all the recommendations have been addressed and the revised Policy Statement is set out in the Appendix to this report for consideration.
20. During the course of the inspection, discussions took place with the Assistant Surveillance Commissioner about the use of covert investigatory techniques for the prevention and detection of illegal sales of the following age restricted products: butane and knives and fireworks. It was the view of the Commissioner that these techniques could be used in appropriate cases even though they do not fall within the rules applicable under RIPA, provided that due consideration was given to human rights legislation. It is the view of officers that the potential harm that could be caused by the sale of such products is such that there are strong reasons for extending the use of those techniques to those cases and the policy in the Appendix has been amended to that effect.

Recommendations

21. That the Committee:
 - a) Agree the proposed changes made to the Policy Statement to reflect the legislative changes and recommendations made by the Commissioner and agree to recommend to the Cabinet that the revised Policy Statement be approved.
 - b) Continue to receive quarterly reports 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 in order to fulfil the statutory obligations placed on the County Council.

Background Papers

Report to the Cabinet on 3 June 2005

Report to the Cabinet on 16 November 2010

Report to the Corporate Governance Committee on 24 November 2012

Circulation under the Local Issues Alert Procedure

None

Equal Opportunities Implications

None

Officers to Contact

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Appendices

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

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