



CORPORATE GOVERNANCE COMMITTEE

24 NOVEMBER 2014

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 from 1 October 2013 to 30 September 2014;
 - (ii) to ask the Committee to agree that the Policy Statement relating to RIPA does not require any amendment.

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 its officers who are undertaking covert surveillance governed by RIPA.
4. On 25 November 2013 this 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.

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.
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, add 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. 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 2013 to 30 September 2014 the following authorisations have been given:
 - 17 directed surveillance;
 - 11 CHIS;
 - 2 relating to the acquisition of communications data.
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 or unsafe products; unfair trading practices conducted via the internet or on the doorstep; 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 be 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

16. 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. The Council has implemented a procedure to ensure that it continues to comply with its obligations under the ECHR (Article 8), 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.
17. For the period from 1 October 2013 to 30 September 2014 authorisations were granted to undertake four covert test purchase attempts relating to butane or knives, two of which resulted in sale to a 15 year old volunteer.

The Policy Statement

18. In light of the actions taken, officers have considered whether there is any need to review the current policy statement and have concluded that this is not necessary.

Recommendations

19. That the Committee:

- a) Agrees that the Policy Statement remains fit for purpose, and
- b) Continues 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 Corporate Governance Committee on 25 November 2013 'Regulation of Investigatory Powers Act 2000 - Annual Report'.

Report to the Cabinet on 13 December 2013 'Regulation of Investigatory Powers Act 2000'.

Covert Surveillance and the Acquisition of "Communications Data" Policy Statement

Circulation under the Local Issues Alert Procedure

20. None.

Equality and Human Rights Implications

21. None arising from this report.

Officers to Contact

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Appendix

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