

---

**REGULATION OF INVESTIGATORY POWERS**

---

**Responsible Cabinet Member - Councillor Stephen Harker**  
**Efficiency and Resources Portfolio**

**Responsible Director – Paul Wildsmith, Director of Resources**

---

**SUMMARY REPORT**

**Purpose of the Report**

1. The purpose of this report is to inform and update Members about issues relevant to the use of the Regulation of Investigatory Powers Act 2000 and developments that have taken place since the last report to Cabinet in June 2011.

**Summary**

2. The Regulation of Investigatory Powers Act 2000 (RIPA) enables Local Authorities to carry out certain types of surveillance activity, provided that specified procedures are followed. Following compliance with RIPA the Local Authority is able to rely upon information obtained as a result in Court proceedings.
3. The Interception of Communication Commissioners Office (IOCCO) provides regulatory oversight for a specific area of RIPA, that of accessing communications data (such as identifying the name and address persons from phone numbers and internet accounts). The Council was inspected by the IOCCO in March 2011. The inspection report was not available at the time when the last Cabinet report was written and further details are given in the report.
4. One of the issues identified by the IOCCO inspection was the suggestion that the Council should use the services offered by National Anti Fraud Network (NAFN) to help with the processing of communications data applications. This report gives details of the progress that has been made to make use of NAFN to help with the efficient processing of applications.
5. Information about the passage through Parliament of the Protection of Freedoms Bill, which sets out proposals to limit the use of RIPA by local authorities, is also set out in the report.
6. This report gives details of RIPA applications that have been authorised and updates the tabulated information of RIPA applications.

## Recommendation

7. It is recommended that Members :
- (a) Note the developments that have taken place since June 2011.
  - (b) Receive further quarterly reports on the use of RIPA and associated issues.

## Reasons

8. The recommendations are supported by the following reasons:
- (a) To ensure appropriate use of powers contained within relevant legislation.
  - (b) To ensure compliance with the Codes of Practice and Guidance.

**Paul Wildsmith**  
**Director of Resources**

## Background Papers

No Background papers were used in the preparation of this report.

Luke Swinhoe: Extension 2055

S17 Crime and Disorder	The appropriate use of and oversight of RIPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime.
Health and Well Being	There are no specific implications for Health and Well Being
Carbon Impact	There are no issues which this report needs to address
Diversity	The policy treats all groups equally.
Wards Affected	All wards
Groups Affected	All groups equally
Budget and Policy Framework	This does not represent a change to the Council's budget and policy framework.
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	The appropriate use of powers is a legislative requirement.
Efficiency	The proposed legislative changes requiring approval from magistrates before surveillance exercises can start is likely to result in additional work to utilise RIPA powers. The use of NAFN will assist in processing Communications Data applications.

## **MAIN REPORT**

### **Information and Analysis**

#### **Inspection**

9. In the last Cabinet report we advised that the Council was inspected by an inspector appointed by the Interception of Communication Commissioners Office (IOCCO) on the 7 March 2011. At the time the last Cabinet report was written the formal written report from the inspection was unavailable. The report is now available and details are set out in paragraph 12.
10. By way of background information this inspection related to a particular aspect of RIPA which concerns the interception of communications data. The information most commonly that is required is the name and address of a person responsible for telephone number or internet site. The authorisation process differs from ordinary RIPA authorisations in that there is a Single Point of Contact (SPoC), in this Council the SPoC is the Principal Lawyer (People), who acts as a link person with the applicants and the Communication Service Providers (typically the phone companies or relevant internet service providers). Authorisations are subject to a similar process of justification based on necessity, proportionality and collateral intrusion (i.e. the impact on third parties) and must be approved by a designated person in this authority.
11. Only infrequent and limited use has been made of applications to seek communications data. In 2010 only three applications were made. Information relating to the identity of individuals has been sought from phone details that have been found with fly tipped waste to for the purpose of commencing criminal prosecutions.
12. The inspection was conducted by Mr Dick Mead at the Council. Mr Mead met with relevant staff and reviewed the applications made and the way that the SPoC and the Senior Responsible Officer (the SRO is the Assistant Director (Resources)) carried out their roles. In his report summary the Inspector said that 'Darlington Borough Council emerged well from the inspection and the Inspector was satisfied that the Council is acquiring communications data lawfully and for a correct statutory purpose. Importantly the Inspector found no evidence that the Council's powers under Part I Chapter II of RIPA had been used to investigate trivial offences'.

#### **NAFN**

13. One of the issues raised during the inspection was the suggestion that we could make use of services offered by National Anti Fraud Network to help with the processing of communications data applications. This is something that is generally recommended by the Interception of Communication Commissioners Office.
14. The National Anti Fraud Network (NAFN) operates an online system for the acquisition of communications data under RIPA. NAFN staff act as 'Single Points of Contact' or SPoC's to ensure that applications meet the necessary standards before the application is approved by the designated person from the authority. Because the SPoC's at NAFN deal with many applications on behalf of a range of authorities they have built up considerable experience both in processing applications and dealing with communication service providers. The use

of the NAFN SPoC will make it easier to process applications. Given the very small number of applications that we deal with at this Council it is likely to be more efficient to outsource the SPoC role to NAFN. Additionally, as we only have one qualified SPoC, we are dependent on the availability of one person to carry out this role.

15. While there is a fee for joining NAFN, as we are already a member (via Revenues and Benefits) there will be no additional fee. Charges will apply if we ask NAFN to act as a SPoC for a particular Communications Data application. The charges are limited to the work done on a particular application and the basic cost is set out as £45 per application.
16. Since the inspection we have transfer the SPoC role to NAFN. On the 14 June 2011 an officer from NAFN came to the Council and met with relevant staff in order to give a presentation and provide information about how the applications would be dealt with by NAFN. So far one application has been dealt with by NAFN.

### **Protection of Freedoms Bill**

17. Members will recall from the March 2011 Cabinet report, that the Government's review of Counter-Terrorism and Security Powers, included the use of RIPA, with proposals to limit the use of RIPA by local authorities to serious crimes (those punishable by a maximum custodial sentence of 6 months or more) and to require applications for authorisations to be made to magistrates. These proposals are set out in the Protection of Freedoms Bill.
18. The Protection of Freedoms Bill was presented to Parliament on 11 February 2011. The Bill has now completed its first and second reading and the Committee stage of the House of Common on 17 May 2011. No significant amendments have been made relating to the proposed changes to RIPA. The next stage in the House of Commons will be the Report stage and a date for this has yet to be announced. Further information will be given to Cabinet about the Parliamentary progress of this legislation in further Cabinet reports.

### **Quarterly Report**

19. The table below provides details of RIPA authorisations that have been made by this Council in the calendar years since 2007. The last time that RIPA was used was in September 2010, in relation to an exercise conducted by Trading Standards into the sale of Tobacco to underage children. Since then there have been no there have been no new authorisations.

<b>Type of investigation</b>	<b>Year</b>					
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Total</b>
Statutory noise nuisance	17	21	12	0	0	<b>50</b>
Trading standards	2	1	1	0	0	<b>4</b>
Underage sales	20	4	2	4	0	<b>30</b>
Illegal storage/sale of fireworks	0	1	0	0	0	<b>1</b>
Trespassing	1	0	0	0	0	<b>1</b>
Anti-social behaviour	6	14	6	0	0	<b>26</b>
Benefits investigation	1	0	0	0	0	<b>1</b>
Theft	2	0	0	0	0	<b>2</b>
Failure to educate	1	0	0	0	0	<b>1</b>
Criminal damage	0	0	2	4	0	<b>6</b>
Illegal waste disposal	0	0	0	1	0	<b>1</b>

<b>Type of investigation</b>	<b>Year</b>					
Duplicate Car Park Passes	0	0	1	0	0	1
<b>Totals</b>	<b>50</b>	<b>41</b>	<b>24</b>	<b>9</b>	<b>0</b>	<b>124</b>

20. Members will appreciate that there has been a reduction in the usage of RIPA by this Council, year on year and quite significantly during 2010 and 2011. There are a number of factors that could explain this:
- (a) One of the issues highlighted by the Inspection in April 2010 was the difference of practice in the use of RIPA when noise recording equipment was being installed. When Environmental Health installed surveillance equipment they did not get a RIPA authority because the surveillance was considered overt (the suspect was advised before installation) rather than covert. Housing Services also advised the suspect tenant that they were installing surveillance equipment but also completed a RIPA authorisation. The inspector said that this was not necessary and as a result Housing Services have stopped using RIPA for this type of surveillance.
  - (b) The April 2010 inspection highlighted some issues relating to the sufficiency of details provided in some of the application forms. As a result training was provided of relevant officers and a more rigorous approach has been taken regarding the use of RIPA.
  - (c) The national context has some relevance and Members will be aware of media criticism of local authorities' use of RIPA. Members may recall the case reported last year of *Jenny Patton v Poole Borough Council*, decided by the Investigatory Powers Tribunal concerning the inappropriate use of RIPA in connection with an investigation undertaken by a local authority into the correct parental residence for school admission purposes.
  - (d) The Freedoms Bill is proposing a more restrictive approach to the use of RIPA by local authorities.
21. While there have been no RIPA authorisations since September 2010. Officers providing Legal Advice have advised colleagues on a number of occasions about the availability of RIPA in appropriate circumstances.

### **Outcome of Consultation**

22. There has been no consultation on the contents of this report.