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**REGULATION OF INVESTIGATORY POWERS**

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

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

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**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 September 2011.

**Summary**

2. The Regulation of Investigatory Powers Act 2000 (RIPA) enables Local Authorities to carry out certain types of surveillance activity, as long as specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in Court proceedings providing RIPA is complied with.
3. The report gives details of the annual return that has been submitted the Interception of Communication Commissioners Office (IOCCO). The IOCCO is responsible for regulatory oversight for a specific area of RIPA, that of.
4. Since the summer of 2011 National Anti Fraud Network (NAFN) has been helping with the processing of communications data applications, by acting as the single point of contact (SPoC). This has worked well and further details are in the report.
5. The Office of Surveillance Commissioners (OSC) is responsible for regulatory oversight of RIPA (other than accessing communications data). In December 2011 the OSC updated a guidance document entitled 'Procedures and Guidance'. A copy of this Guidance will be made available on the Council's intranet and officers who deal with RIPA advised.
6. Information about the Parliamentary progress 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.
7. This report gives details of RIPA directed surveillance applications that have been authorised and updates the tabulated information as appropriate.

## Recommendation

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

## Reasons

9. 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

None

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.

## **MAIN REPORT**

### **Information and Analysis**

#### **Accessing Communications Data**

10. By way of background information - accessing communications data is a particular aspect of RIPA which is distinct from directed surveillance. The information most commonly required is the name and address of a person responsible for a telephone number who is suspected of engaging in criminal conduct (for example when phone details have been found with fly tipped waste for the purpose of commencing a criminal prosecution).
11. The Interception of Communication Commissioners Office (IOCCO) requires the Council to provide details annually of the number of applications that have been issued to acquire communications data and subscriber information in the previous year. The annual return to the IOCCO has been submitted and this advises that in 2011 there were 2 applications made.
12. Members will recall that since the summer of 2011 (following national recommendations by the Interception of Communication Commissioners Office) the Single Point of Contact (SPoC) role has been carried out by the National Anti Fraud Network. The SPoC acts as the link person between the applicants and the Communication Service Providers (typically the phone companies or relevant internet service providers). NAFN have dealt with 2 applications since they took over the role and there have been no problems with the service that they have provided.

#### **Revised Guidance from the Office of Surveillance Commissioners**

13. In December 2011 revised 'Procedures and Guidance' was issued by the Office of Surveillance Commissioners (OSC). This updates and replaces a document of the same title issued in September 2010. It is aimed at assisting in providing guidance on a range of matters that have either been raised in questions to the OSC or that have been identified during inspections of public authorities carried out by the OSC.
14. The OSC are keen for the revised Guidance to be made available to members of public authorities and for it to be referred to by officers, in particular authorising officers in dealing with RIPA applications.
15. While a significant proportion of this guidance relates to more serious categories of surveillance activities undertaken by the police there is helpful guidance of a more general nature. To give an idea of content it amongst other matters, and most relevant to this authority, covers the concept of proportionality, the need for authorising officers to fully understand the capability of surveillance equipment used, the importance of avoiding form completion by cut and paste from templates, the importance of wet signatures on authorisations or verification of

electronic signatures, the use of tracking devices, test purchase sales to juveniles and CHIS (covert human intelligence sources), noise monitoring equipment.

16. The guidance is available on the Councils intranet site, which has been updated accordingly and officers who deal with RIPA have been advised.

### **Protection of Freedoms Bill**

17. Members will recall from previous Cabinet reports, that the Protection of Freedoms Bill includes 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.
18. The Protection of Freedoms Bill was presented to Parliament on 11 February 2011. The Bill has now completed its passage through the House of Commons and is currently before the House of Lords. No significant amendments have been made relating to the proposed changes to RIPA. The current timetable is that the Bill is anticipated to receive Royal Assent in the summer of 2012. Further information will be given to Cabinet about the Parliamentary progress of this legislation in future Cabinet reports.
19. In October 2011 the Home Office published a Fact Sheet on the Regulation of Surveillance and the changes proposed by the Freedoms Bill. This is available from <http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/fact-sheet-part2>

### **Quarterly Report**

#### **Directed Surveillance**

20. Since the last Cabinet report no new applications to use directed surveillance have been made. The last time that RIPA was used for directed surveillance was in September 2010. This was 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.
21. The table below provides details of RIPA authorisations that have been made by this Council in the calendar years since 2007.

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

22. 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.

23. 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**

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