
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 March 2012.

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. On 1 May 2012 the Protection of Freedoms Act 2012 received Royal Assent. This legislation will require local authorities to obtain judicial approval before they can use RIPA. The Act will also enable the Secretary of State to draft secondary legislation to require additional conditions to be complied with by local authorities before they can use RIPA. This is likely to be used to limit the use of RIPA to offences that have a custodial sentence of 6 months or more. Further details are set out in the report.
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) for the Council. In April 2012 the Interception of Communications Commissioners Office undertook a 3 day inspection of the NAFN in respect the RIPA services that they offer all authorities (some 80 or so councils). After the inspection NAFN received a favourable debrief from the inspector and no problems were highlighted in relation to applications that were made by this Council.
5. This report gives details of RIPA directed surveillance applications that have been authorised and updates the tabulated information as appropriate.

Recommendation

6. It is recommended that Members :

- (a) Note the developments that have taken place since March 2012.
- (b) Receive further reports on the use of RIPA and associated issues.

Reasons

- 7. The recommendations are supported by the following reasons:
 - (a) To ensure appropriate use of powers contained within relevant legislation.
 - (b) To raise awareness and to ensure compliance when RIPA powers are used.

Paul Wildsmith
Director of Resources

Background Papers

The Protection of Freedoms Act 2012

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 Protection of Freedoms Act which requires judicial approval before surveillance can start is likely to result in additional work to utilise RIPA powers.

MAIN REPORT

Information and Analysis

Protection of Freedoms Act 2012

8. The Protection of Freedoms Bill was presented to Parliament on 11 February 2011 and has now completed its passage through Parliament. It received Royal Assent on the 1 May 2012. The provisions of the Act relating to RIPA are not yet law as they will require the Secretary of State set an appointed day by making a commencement order. As matters currently stand this is anticipated to be in September 2012.
9. The Protection of Freedoms Act includes a provision that will require all applications for RIPA authorisations to be approved by a judicial authority. This will apply to all local authority RIPA usage and will cover communications data, directed surveillance and covert human intelligence sources.
10. The same internal authorisation process will be followed (in the case of communications data applications, with the help of the National Anti Fraud Network – NAFN). This is essentially an application form and then approval by a designated person. What is new is that after this has been done an application will need to be made for judicial approval at the magistrates court. The hearing will not include the person who is the subject of the application or their legal representative and the magistrate will have the power to approve or to quash the authorisation. In considering whether to approve the use of RIPA the magistrate will need to be satisfied that there are reasonable grounds for believing that the requirements for the use of RIPA are met.
11. The magistrate must also be satisfied that any other conditions that are provided by the Secretary of State are met. The Act allows the Secretary of State to introduce further conditions by secondary legislation. It is anticipated that this power will be used to restrict the use of RIPA by local authorities to serious crimes (those punishable by a maximum custodial sentence of 6 months or more). Secondary legislation has yet to be laid before Parliament.
12. The requirement to seek judicial approval will inevitably lead to additional work for officers and also potentially could slow down the authorisation process. The range of matters that RIPA can be used for is also likely to be more restricted. Local authorities will still be able to use the powers for more serious criminal investigations, such as housing benefit fraud, licensing offences, waste dumping cases, Gambling Act offences and product safety offences, but in areas where the sentence is less than 6 months it will not be able to be used (such as surveillance undertaken for under age sales of tobacco and alcohol, which is punishable only by a fine).
13. When details are available about the commencement date and the regulations have been laid before Parliament a further report will be taken to Cabinet. This

will include a revised policy on RIPA that will address the relevant changes. At the same time the intranet will be refreshed and key staff advised of the changes.

Accessing Communications Data

14. Since the summer of 2011 the National Anti Fraud Network (NAFN) has been helping with the processing of communications data applications by acting as the single point of contact (SPoC).
15. In April 2012 the Interception of Communications Commissioners Office undertook a 3 day inspection of NAFN at their UK North Office at Tameside Metropolitan Borough Council. This concerned the RIPA services that they offer all authorities (some 80 or so councils) in processing communications data applications. The inspector could have contacted the designated person at Darlington to follow up on any particular issue relating to one of our applications, but this did not occur. It was helpful that NAFN hosted the inspection and this did not involve any cost to this Council or additional staff time.
16. After the inspection NAFN received a favourable debrief from the inspector and no problems were highlighted in relation to applications that were made by this Council.

Quarterly Report

Directed Surveillance

17. 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 under age children. Since then there have been no there have been no new authorisations.
18. 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						
	2007	2008	2009	2010	2011	2012	Total
Statutory noise nuisance	17	21	12	0	0	0	50
Trading standards	2	1	1	0	0	0	4
Underage sales	20	4	2	4	0	0	30
Illegal storage/sale of fireworks	0	1	0	0	0	0	1
Trespassing	1	0	0	0	0	0	1
Anti-social behaviour	6	14	6	0	0	0	26
Benefits investigation	1	0	0	0	0	0	1
Theft	2	0	0	0	0	0	2
Failure to educate	1	0	0	0	0	0	1
Criminal damage	0	0	2	4	0	0	6
Illegal waste disposal	0	0	0	1	0	0	1
Duplicate Car Park Passes	0	0	1	0	0	0	1
Totals	50	41	24	9	0	0	124

19. Members will appreciate that there has been a reduction in the usage of RIPA by this Council, year on year and quite significantly since 2010. 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 in the past of local authorities' use of RIPA.
- (d) The Protection of Freedoms Act is proposing a more restrictive approach to the use of RIPA by local authorities.
- (e) Staff have been dealing with investigations without seeking to deploy surveillance methods

20. While there have been no RIPA authorisations since September 2010 legal advice has been given on a number of occasions about the availability of RIPA in appropriate circumstances.

Outcome of Consultation

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