
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 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. RIPA is used for covert surveillance and is not relevant to surveillance which the authority carries out where the surveillance is openly advertised such as CCTV.
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. Details of the inspection are set out in the report.
4. One of the issues identified by the IOCCO inspection was the possibility of using the services offered by National Anti Fraud Network (NAFN) to help with the processing of communications data applications. Given that we only infrequently make applications of this nature we intend to make use of this facility in future as it will assist in the efficient processing of applications.
5. Details 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 March 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. On the 7 March 2011 the Council was inspected by an inspector appointed by the Interception of Communication Commissioners Office (IOCCO). This inspection relates to a particular aspect of RIPA which concerns the interception of communications data. Members should note that this differs from ordinary RIPA authorisations¹ and relates exclusively to the acquisition 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.
10. 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.
11. No major problems were identified during the inspection. The Inspector was satisfied that the Council was acquiring communications data lawfully and for a correct statutory purpose. He was satisfied that the Council did not use the powers for trivial offences and that there was a good audit trail of the authorisation process.

NAFN

12. 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.
13. 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 makes it easier to process applications while still retaining the oversight process via the local authority designated person approval. 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

¹ Note - the Council's ordinary RIPA usage was subject to an inspection by the Office of the Surveillance Commissioner on 22 November 2010, after which we received positive. Details about this inspection are set out in the December 2010 Cabinet Report

are dependent on the availability of one person to carry out this role. Only persons who have attended Home Office accredited training can act as a SPoC and it is uneconomic to train up a second SPoC given that the training cost is approximately £1,500.

14. 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.
15. We are in the process of applying to NAFN to enable them to carry out the SPoC role.

Protection of Freedoms Bill

16. 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.
17. The Protection of Freedoms Bill was presented to Parliament on 11 February 2011. The Bill has now completed its first, second reading and the committee stages in the House of Commons. The Public Bill Committee has considered the Bill in detail and the report stage of this draft legislation in the House of Commons was completed on 17 May 2011. No significant amendments have been made relating to the proposed changes to RIPA. The next stage will be the third reading in the House of Commons after which the Bill moves on to the House of Lords for consideration. Further information will be given to Cabinet about the Parliamentary progress of this legislation in future Cabinet reports.

Quarterly Report

18. 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.

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
Totals	50	41	24	9	0	124

19. Members will appreciate that there has been a reduction in the usage of RIPA by this Council, year on year and also in 2010. One of the issues highlighted by the Inspection in April 2010 was that there was a difference of practice in the use of RIPA when noise recording equipment was being installed. Environmental Health advised the target resident that they were installing surveillance equipment, but did not get a RIPA authority because the surveillance was overt rather than covert. Housing Services also advised the target tenant that they were installing surveillance equipment but also completed a RIPA authorisation process. The inspector said that this was not necessary. Accordingly Housing Services no longer use RIPA for this type of surveillance, so whilst the activity on the ground remains the same the statistics show a reduction in the use of RIPA.

Outcome of Consultation

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