
REGULATION OF INVESTIGATORY POWERS

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

**Responsible Director -
Paul Wildsmith, Director of Neighbourhood Services and 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 January 2014.

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 Office of the Surveillance Commissioner (OSC) provides regulatory oversight of the way in which law enforcement agencies and public authorities use RIPA. Details are set out below of the OSC Annual Report for the year 2013-14 and a number of highlighted issues are explored.
4. Details are given of the Data Retention and Investigatory Powers Act 2014. This legislation was fast tracked by Government in July in order to address a potential problem of telephone network operators and internet service providers deleting records as a result of a decision of the European Court of Justice.
5. Information is given in the report of training on RIPA that is being rolled out to officers in the Council.
6. This report also gives details of RIPA directed surveillance applications that have been authorised and updates the tabulated information as appropriate.

Recommendation

7. It is recommended that Members :-

- (a) Note the developments that have taken place since January 2014.
- (b) Receive further reports on the use of RIPA and associated issues.

Reasons

8. The recommendations are supported by the following reasons :-

- (a) To ensure the appropriate use of powers contained in the relevant legislation.
- (b) To help in giving transparency about the use of RIPA in this Council.

Paul Wildsmith
Director of Neighbourhood Services and Resources

Background Papers

Office of Surveillance Commissioners, Annual Report of the Chief Surveillance Commissioner, 2013 -2014.

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	Clear about the lawful use of RIPA will help in the efficient use of the powers.

MAIN REPORT

Information and Analysis

The Office of Surveillance Commissioners Annual Report

9. The Annual Report of the Office of Surveillance Commissioners, dated 4 September 2014, has now been published.
10. The report written by the Chief Surveillance Commissioner, The Rt. Hon. Sir Christopher Rose, reviews the period from 1 April 2014 to 31 March 2014. The report covers the police as well as local authorities, and has some interesting information and analysis that is of relevance to local authorities.
11. Some highlights drawn from the report are set out below :
 - (a) The impact of Protection of Freedoms Act 2012 (this legislating introduced the requirement for local authorities to meet the serious crime test and obtain magistrates approval when seeking to use RIPA) is considered. The report notes concerns over delays and the lack of experience of some magistrates in dealing with authorisations. Over the period under review 517 applications were presented to magistrates for approval, of those 26 were rejected.
 - (b) The report mentions the continuing downward trend of local authority directed surveillance applications and notes that some local authorities have decided not to engage in covert surveillance as a matter of policy. Possibilities suggested for this trend include, the diminution of funding for surveillance operations and the use made of more overt methods such as neighbourhood wardens. The report includes a number of tables illustrating the change in overall RIPA usage. The figures for directed surveillance applications by public authorities (excluding law enforcement agencies) shows a year on year fall from a peak of just over 12,000 applications in 2006-2007 to 4,412 applications in 2013-14.
 - (c) The use of social networks is mentioned. The report restates the view expressed by the Commissioners, that repeated use of open source sites for the viewing of an individual's information should be considered to fall in the in the context of RIPA.
 - (d) The report reinforces the need for the OSC inspection regime to continue notwithstanding good overall compliance or non RIPA usage, in order to maintain standards and public reassurance
12. The annual report is available from the website of the Office of the Information Commissioner <https://osc.independent.gov.uk/>

Communications Data

13. A distinctive part of RIPA relates to being able to access communications data (most commonly to obtain the name and address of a person who is suspected of criminal behaviour, from a phone number or email address).
14. A ruling of the European Court of Justice in April 2014 called into question the legality of European legislation relating to data retention. As a result of this case the Government fast tracked legislation (the Data Retention and Investigatory Powers Act 2014) in July in order to prevent telephone network operators and internet service providers from deleting records.
15. This will enable the Council to continue to request access to communications data in appropriate cases. Safeguards are in place via the internal authorisation process, the use of NAFN (National Anti-Fraud Network – who act as the Councils single point of contact) and the judicial approval that is necessary for all local authority RIPA applications.

Training

16. A number of training sessions have been arranged for authorising officers and staff in Teams that use or may need to consider using RIPA. These are being delivered by the Head of Legal Services. As well as providing an overview and update about RIPA the sessions will focus on particular service related issues and the need for staff to keep in mind how they gather information and the need to consider whether RIPA (including the use of CHIS – covert human intelligence sources) applies.

Directed Surveillance

17. In 2014, so far, RIPA has been used once. This concerns a trademark and counterfeiting investigation about the sale of tobacco products. The authorisation was approved by a magistrate on the 11 September 2014. As yet it is premature to give more details about the operation or the outcomes.
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	2007	2008	2009	2010	2011	2012	2013	2014	Total
Statutory noise nuisance	17	21	12	0	0	0	0	0	50
Trading standards	2	1	1	0	0	0	0	1	4
Underage sales	20	4	2	4	0	0	0	0	31
Illegal storage/sale of fireworks	0	1	0	0	0	0	0	0	1
Trespassing	1	0	0	0	0	0	0	0	1
Anti-social behaviour	6	14	6	0	0	0	0	0	26
Benefits investigation	1	0	0	0	0	0	0	0	1
Theft	2	0	0	0	0	0	0	0	2
Failure to educate	1	0	0	0	0	0	0	0	1
Criminal damage	0	0	2	4	0	0	0	0	6
Illegal waste disposal	0	0	0	1	0	1	2	0	4
Duplicate Car Park Passes	0	0	1	0	0	0	0	0	1
Totals	50	41	24	9	0	1	2	1	127

19. Members will recognise 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. In essence the practice is now overt and no longer subject to RIPA
- (b) The national context has some relevance and Members will be aware of media criticism in the past of local authorities' use of RIPA.
- (c) The Protection of Freedoms Act imposes limitations to the use of RIPA by local authorities.
- (d) There have been a reduction in staffing levels and some staff have been carrying out investigations without seeking to use surveillance methods

Legal Implications

20. There are no specific legal implications other than those raised in the report.

Outcome of Consultation

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