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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 Neighbourhood Services and 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 October 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. Information is set out in the report about two revised Codes of Practice that were published by the Home Office on 10 December 2014. These are the Code of Practice, on Covert Surveillance and Property Interference and there is also a revised Code of Practice on Human Intelligence Sources.
4. Details are given of the annual return that has been submitted to the Interception of Communications Commission Office (IOCCO). This gives details about the number of communications data applications made in 2014.
5. This report also 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 October 2014.
  - (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 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**

Luke Swinhoe : Extension 2055

## Background Papers

Home Office Codes of Practice:

Covert Surveillance and Property Interference, TSO 2014, ISBN 9780113413737  
Covert Human Intelligence Sources, TSO 2014, ISBN 978 0 11 3413744

Available from <https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>

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

#### Revised Codes of Practice

8. On the 10 December 2014 the Home Office published two updated Codes of Practice, on Covert Surveillance and Property Interference and also a revised Code of Practice on Human Intelligence Sources.
9. The Codes include the following changes:
  - (a) That local authorities who have obtained judicial authority for RIPA should keep on the authority's central record 'details of attendances at of that decision', and 'a copy of the order approving or otherwise the grant or renewal of an authorisation from a Justice of the Peace'.
  - (b) Explaining that any 'RIPA activities' conducted by an individual, or a non-governmental organisation acting under direction of a public authority, should be considered for authorisation
  - (c) Clarification that a recording, whether overt or covert, of an interview with a member of the public – where it is made clear that the interview is entirely voluntary and that the interviewer is a member of a public authority – is not likely to be regarded as 'surveillance' (see *Re: a complaint of surveillance* (Case No: IPT/A1/2013))
  - (d) Both codes include a paragraph on covert online activity which, along with the views expressed in the Chief Surveillance Officer's 2013-2014 report – that the repeat viewing of individual 'open source' sites for the purpose of intelligence gathering and data collation should be considered as an activity that requires a RIPA authorisation.
10. The revised Codes of Practice are available from the Gov.uk website:  
<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>

#### Communications Data

11. 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).
12. As this is a very specialist area and the Council, like many others use NAFN (National Anti-Fraud Network) to act as the Councils single point of contact. As with all RIPA usage by local authorities judicial approval that is necessary for all coms data applications.
13. The Interception of Communications Commissionaires Office (IOCCO) is the oversight body for the coms data side of RIPA. We are required to file an annual return on coms data us. The return that we submitted in January 2015 shows that four coms data applications were made in 2014. All of these were judicially approved. Three of them related to fly tipping (seeking mobile phone companies to

provide details the identity of customers registered to use particular mobile telephone numbers). The other one concerned the sale of counterfeit goods/trademark offences from a Facebook page (seeking the owners of Facebook to provide details the identity of the person registered to use the particular Facebook page).

## Directed Surveillance

14. In 2014, RIPA was used for directed surveillance on one occasion. This related to the unlawful sale of counterfeit and contraband tobacco from a car park. As a result evidence was obtained that enabled to seller to be identified with the tobacco being seized and the seller receiving a formal caution. In early 2015 authorisation was granted to carry out surveillance at a shop at which it was believed the sale of non-duty paid cigarettes was taking place. The investigation has recently been completed but decisions are still to be taken on the steps that are appropriate.
15. 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	2015	Total
Statutory noise nuisance	17	21	12	0	0	0	0	0		50
Trading standards	2	1	1	0	0	0	0	1	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
<b>Totals</b>	<b>50</b>	<b>41</b>	<b>24</b>	<b>9</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>1</b>		<b>127</b>

16. 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**

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

### **Outcome of Consultation**

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