
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 April 2015.

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. Following the departure of the .Assistant Chief Executive it is proposed that the Director of Neighbourhood Services and Resources should become the Senior Responsible Officer for communications data applications.
4. Revised guidance has been issued about the role of Designated Persons (DP's) in authorising communications data requests. This requires the DP to have a greater separation from any involvement in strategic or tactical considerations about an investigation. We currently only have one DP, as a result of the guidance it would be better if he no longer acted as a DP for investigations that arise from his service area. We therefore need to appoint additional DP's from other service areas. It is proposed that the Assistant Director, Community Services and the Head of Legal Services are appointed as additional DP's.
5. Further details are set out in the main body of the report.
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) Approve the appointment of the Director of Neighbourhood Services and Resources as the Senior Responsible Officer for Communications data applications.
 - (b) Approve the appointment of the Assistant Director, Community Services and the Head of Legal Services are appointed as additional Designated Persons
 - (c) Note the developments that have taken place since April 2015.
 - (d) Receive further reports on the use of RIPA and associated issues.

Reasons

8. The recommendations are supported by the following reasons :-
- (a) In order to ensure that the Council complies with the legal obligations under RIPA and that its procedures are in accordance with national guidance.
 - (b) To help in giving transparency about the use of RIPA in this Council.

Paul Wildsmith
Director of Neighbourhood Services and Resources

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Background Papers

Acquisition and Disclosure of Communications Data, Code of Practice issued by the Home Office, March 2015

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

MAIN REPORT

Information and Analysis

Roles and responsibilities

9. A distinctive part of RIPA relates to being able to access communications (comms) 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).

Senior Responsible Person (SRO)

10. The Assistant Chief Executive was the Senior Responsible Officer for comms data until the departure of the post holder. The role of the SRO is to take responsibility for the integrity of the process, deal with issues that arise and liaise with the appropriate external oversight body.
11. It is proposed that the Director of Neighbourhood Services and Resources should take over this role. He is already the SRO for the surveillance aspects of RIPA and it would be appropriate for the same person to carry out the SRO role for both comms data and surveillance data.

Designated Person (DP)

12. Some changes are needed for the processing of comms data requests in order to comply with recent guidance.
13. We are assisted in dealing with these applications by the National Anti Fraud Network (NAFN) because of the specialist nature of this work and the cheaper cost of using an external single point of contact (SPOC) rather than an in house one.
14. A recently revised Code of Practice issued by the Home Office (the Acquisition and Disclosure of Communications Data) sets out the need for the designated person to be independent of operations and investigations. The DP has the responsibility to consider the proposed application and grounds before authorising the application request to proceed (i.e. for Councils like us, who use NAFN, for NAFN to proceed with the next steps). It should be noted that all comms data applications, like surveillance applications, require approval from a Magistrates Court.
15. In June 2015 a circular was issued to all SRO's from the Interception of Communications Commissioner's Office (the oversight body for RIPA comms data). This circular suggests that a DP should not have strategic or tactical influence and that the role would be better carried out by a more senior officer in the same department or unit from that of the operation or investigation). Because of this we require some additional designated persons (DP's) to help ensure the correct degree of independence.

16. Currently there is only one DP for comms data the Assistant Director, Regulatory Services. It is therefore suggested that the Assistant Director, Community Services and the Head of Legal Services are appointed as additional DP's.

Directed Surveillance

17. So far this year one authorisation has been granted. This was to carry out surveillance at a shop at which it was believed the sale of illicit or counterfeit cigarettes was taking place. Information has been gathered and the investigation is still progressing with a view to possible prosecution.

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	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
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.