
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 July 2016. Members are asked to approve an updated RIPA Policy and agree changes to the officers authorised to approve RIPA applications.

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 public authorities use RIPA. The OSC carries out periodic inspections of local authorities, police forces and other bodies that use RIPA. The Council was inspected by the OSC on 10 October 2016. The Council received positive feedback. Observations and recommendations were also given and these are set out in further detail within this report.
4. As a result of the Inspection, the RIPA Policy has been reviewed and where necessary amended or updated. Further details of these revisions are included in this report. A copy of this document is attached at **Appendix 1**.
5. Upon the OSC Inspector's advice, the Assistant Director, Law and Governance has been removed from the list of Designated Authorising Officers and replaced by the Director of Neighbourhood Services and Resources. This is in accordance with the Home Office Code of Practice for Covert Surveillance and Property Interference.

6. This report also gives details of RIPA directed surveillance applications and communications data applications that have been authorised since the last report to Cabinet.

Recommendation

7. It is recommended that Members:-
- (a) Note the developments that have taken place since July 2016.
 - (b) Approve the appointment of the Director of Neighbourhood Services and Resources as a designated Authorising Officer for RIPA directed surveillance applications.
 - (c) Approve the RIPA Policy attached at Appendix 1.
 - (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 national guidance.
 - (b) To update RIPA policy and procedures following the RIPA inspection
 - (c) To help in giving transparency about the use of RIPA in this Council.

Paul Wildsmith
Director of Neighbourhood Services and Resources

Background Papers

Home Office Code of Practice for Covert Surveillance and Property Interference

Amy Wennington : Extension 5466

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	The appropriate use of powers is a legislative

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

MAIN REPORT

Information and Analysis

RIPA Inspection

9. On 10 October 2016 the use of RIPA by the Council was subject to an inspection by His Honour Judge Norman Jones QC, an Assistant Surveillance Commissioner. This was as part of the normal cycle of periodic inspections that the OSC conducts of local authorities, police forces and other bodies that use RIPA.
10. The Council received positive feedback about the enthusiasm demonstrated by its officers to remain compliant with the legislation. Observations and recommendations were also given and these are set out in further detail below.

Roles and responsibilities

11. The OSC Inspector recommended that a number of changes are made to the designated as Authorising Officers for RIPA applications, as are set out in the RIPA Policy.
12. The current version of the RIPA Policy was approved by Cabinet on 12 July 2016. It includes details of four officers who are designated as Authorising Officers for RIPA applications. These four officers are:
 - (a) The Assistant Director Community Services;
 - (b) The Assistant Director Regulatory Services;
 - (c) The Assistant Director Housing and Building Services and;
 - (d) The Assistant Director Law and Governance.
13. It was the opinion of the OSC Inspector that because the Assistant Director Law and Governance is also the RIPA Co-Ordinating Officer, it would be preferable that he should not also be a designated Authorising Officer. Furthermore, and in line with the Home Office Code of Practice for Covert Surveillance and Property Interference, the view of the OSC Inspector was that the RIPA Senior Responsible Officer (the Director of Neighbourhood Services and Resources) should also be appointed as a designated Authorising Officer.
14. The appointment of the Director of Neighbourhood Services and Resources and the removal of the Assistant Director Law and Governance therefore would result in the number of Designated Authorising Officers remaining as four.
15. Another matter that was identified by the OSC Inspector concerned the need to clarify who would deputise for the Chief Executive in the event of her absence. Only the Chief Executive, or her deputy, can authorise the employment of a juvenile or vulnerable person as a Covert Human Intelligence Source (CHIS) or for the

acquisition of confidential information. The Policy now makes it clear that in relation to these types of authorisations it is the Director of Children and Adults Services who will deputise for the Chief Executive.

RIPA Policy

16. The Policy has been altered to reflect the aforementioned changes. Additionally, the Policy has been amended to include further improvements that were suggested by the OSC Inspector, namely:
- (a) clarifying that CCTV and ANPR systems not requiring authorisation are those in public places with appropriate signage;
 - (b) clarifying that if surveillance is undertaken that is not covered by RIPA then it cannot be authorised and will therefore not afford the Council the legal protection provided by RIPA. Consequently, such operations should not be undertaken without first taking the advice of Legal Officers;
 - (c) removing references to magistrates' authorisations and replacing these with magistrates' approvals
 - (d) clarifying that all directed surveillance authorisations have a fixed duration of three months and CHIS of 12 months (one month for a juvenile CHIS) from the date of the magistrate's approval and that such periods can only be reduced or increased by the processes of cancellation or renewal;
 - (e) clarifying that all authorisations must be cancelled and not merely permitted to expire;
 - (f) clarifying that the duration of a renewal for a CHIS is 12 months;
 - (g) clarifying that no documents should be destroyed until made available for an OSC inspection;
 - (h) outlining the responsibilities of the RIPA Co-Ordinating Officer;
 - (i) requiring an annual RIPA report and regular periodic reports to be placed before Members; and
 - (j) highlighting that officers must explain, when completing applications and authorisations, why covert surveillance is a necessary activity for the investigation.
17. A copy of the amended Policy is attached as Appendix 1.

Surveillance Camera Commissioner

18. On 16 November 2016, the Surveillance Camera Commissioner (SCC) published his third annual report for the period 2015 to 2016.
19. Section 33(5) of the Protection of Freedoms Act 2012 (PoFA 2012) sets out a list of "relevant authorities" that must have regard to the surveillance camera code of practice when they are using any form of surveillance camera to monitor public space. The SCC focused on local authorities and police forces (relevant authorities for the purposes of PoFA 2012, which operate the majority of camera surveillance) with a view to raising their awareness and understanding of the statutory obligations they are required to meet.

20. The report also sets out the work that has started on developing a national surveillance camera strategy for England and Wales. The strategy is aimed at providing direction and leadership to enable system operators to understand best practice and demonstrate compliance with the principles of the surveillance camera code of practice and associated guidance.

Training - Update

21. Training sessions were held during June and July 2016 for staff in service areas that use or may need to consider using RIPA. A total of 30 officers attended the sessions. The training was delivered by the Lawyer (Litigation).
22. In addition, all of the designated Authorising Officers and members of the Chief Officers Executive and Chief Officers Board received refresher RIPA training. This training was delivered by the Assistant Director, Law and Governance.

Quarterly Report – Directed Surveillance

23. Since the last Cabinet Report on this topic in July 2016 there has been one authorisation granted. This authorisation was to carry out surveillance in relation to an individual believed to be selling illicit or counterfeit cigarettes and legal proceedings in relation to this matter will be considered in due course once all the evidence has been collated.

Communications Data - Update

24. There have been no further authorisations granted since the last Cabinet Report.