

CABINET
13 OCTOBER 2020

REGULATION OF INVESTIGATORY POWERS

Responsible Cabinet Member - Councillor Charles Johnson
Resources Portfolio

Responsible Director - Paul Wildsmith, Managing Director

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 2020.

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 Investigatory Powers Act 2016 ("IPA") is the main legislation governing the acquisition of communications data. The information obtained as a result of these acquisitions can also be relied upon in court proceedings providing IPA is complied with.
4. This report updates members on issues relevant to this area of work and gives details of RIPA directed surveillance applications and IPA communications data applications that have been authorised since the last report to Cabinet.

Recommendation

5. It is recommended that Members:-
 - (a) Note the developments that have taken place since March 2020.
 - (b) Receive further reports on the Council's use of RIPA and IPA and other associated issues.

Reasons

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

Paul Wildsmith
Managing Director

Background Papers

No background papers were used in the preparation of this report

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| S17 Crime and Disorder | The appropriate use of and oversight of RIPA and IPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime. |
| Health and Wellbeing | There are no specific implications for Health and Wellbeing |
| Carbon Impact and Climate Change | 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 and IPA will help in the efficient use of the powers. |
| Impact on Looked After Children and Care Leavers | This report has no impact on Looked After Children or Care Leavers |

MAIN REPORT

Information and Analysis

Inspection by the Investigatory Powers Commissioner's Office

7. The Investigatory Powers Commissioner's Office has statutory responsibility for oversight of the use of surveillance powers by the intelligence agencies, police forces and local authorities. Carrying out independent inspections of the use of surveillance by public bodies is an important aspect of this work.
8. On the 14 August 2020 this Council had its first inspection by the IPCO (our last inspection having taken place in October 2016 by the Office of Surveillance Commissioner – the predecessor organisation to the IPCO). Because of the coronavirus pandemic the inspection was carried out remotely. It included a review of the RIPA Policy and all relevant documentation (which had been supplied in advance of the inspection).
9. No significant issues of concern were identified. The Inspector subsequently advised that 'In conclusion, whilst there has been little use of the powers of late, your Council has the requisite policies, training and internal governance arrangements in place and overseen by an experienced Senior Responsible Officer and RIPA Coordinating Officer, to suggest that if they are used in future, the levels of compliance should be of a continuing good standard.'
10. A number of comments and observations were made by the Inspector. These included:
 - (a) RIPA Policy – this should be adopted annually – even if there is no change to the policy. This will help in demonstrating that it is regularly reviewed.
 - (b) Comments on the current RIPA Policy (adopted in January 2019):
 - (i) Provide clarification about what is meant by collateral intrusion (note – this is where surveillance could capture information about a third party who is not the target).
 - (ii) Delete reference to urgent actions.
 - (iii) Put in more detail about retention, review and delegation.
 - (iv) Review and expand the information about social media and surveillance.
 - (v) Update the section on lawful business practice.
 - (vi) Review the section on non RIPA surveillance and authorisation forms.
 - (vii) Include the Director of Children and Adult Services as an Authorising Officer
 - (viii) Include information and guidance about what is done with the product (i.e. photos, recordings, logs) of any surveillance exercise. This should cover storage, access and destruction issues.

- (c) The RIPA authorisation forms – these have not been updated by the Home Office for some time. The forms predate the Protection of Freedoms Act and reference earlier Codes of Practice. It was suggested that we could update our forms rather than await and Home Office updates. Expiry dates to be included, with retention at least until the following RIPA inspection.
 - (d) The Inspector was pleased with the work done on staff training and on highlighting issues concerning RIPA. It was observed that bi annual reports to Cabinet (the current practice) was sufficient.
11. We will be addressing the issues raised and a further report to Cabinet will come forward in the new year including a revised RIPA Policy for members to consider, as well as an indication of how we have addressed the other matters raised during the inspection.
 12. We were advised that the next periodic inspection by the Investigatory Powers Commissioner's Office will take place in 3 years.

Training - Update

13. Mandatory training sessions were held on 22 September and 8 October 2020 for staff in service areas that use or may need to consider using RIPA. The training was delivered by the Principal Lawyer (Litigation).
14. In addition, training sessions were held for all of the designated Authorising Officers on the 18 September 2020 and members of the Chief Officers Executive and Chief Officers Board received refresher RIPA training on 24 September 2020. This training was delivered by the Assistant Director, Law and Governance.

Bi-Annual Report

Directed Surveillance Authorisations

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

Communications Data Authorisations

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