

**CABINET
10 SEPTEMBER 2019**

REGULATION OF INVESTIGATORY POWERS

**Responsible Cabinet Member - Councillor Charles Johnson
Efficiency and 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 February 2019.

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. This report gives details of RIPA directed surveillance applications and communications data applications that have been authorised since the last report to Cabinet.
4. The Investigatory Powers Act 2016 ("IPA") came into force for local authorities on 11 June 2019. This is now the main legislation governing the acquisition of communications data. The changes introduced by this legislation are detailed in this report.

Recommendation

5. It is recommended that Members:-
 - (a) Note the developments that have taken place since February 2019.
 - (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

The Investigatory Powers Act 2016

Amy Wennington : Extension 5466

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 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 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

Investigatory Powers Act 2016

7. The IPA is now in force for local authorities. It changes the way powers are used for the acquisition of communications data. It aims to better protect both the public and those using the powers and also increase public confidence in how public authorities use the powers available to them.
8. Communications data is information about communications: the 'who', 'where', 'when', 'how' and 'with whom' of a communication but not the content i.e. not what was actually written or said. Generally it is data that may be acquired from a Telecommunication Operator. By way of example, we may seek to establish, as part of a Council investigation into criminal activity, who a particular mobile telephone number or a specific website is registered to. This information would be communications data.
9. The IPA introduces new offences for unlawful acquisition and disclosure of communications data as well as introducing opportunities to improve decision-making and streamline processes. It also introduces a new, more robust oversight regime, which means that there will be greater external scrutiny of the use of these powers.

New offences

10. The new offence most relevant to the Council is that of unlawfully obtaining communications data, as this offence applies to anyone within a public authority. To be an offence, unlawfully obtaining or providing communications data must be either done knowingly (i.e. acting voluntarily or intentionally) or recklessly (e.g. with obvious/foreseeable consequences). Making an honest mistake is not an offence.

Statutory Purposes

11. The statutory purposes under the IPA are largely the same as under RIPA albeit with some minor alterations. The available IPA statutory purposes are as follows:
 - In the interests of national security;
 - For the applicable crime purpose;
 - In the interests of the economic wellbeing of the United Kingdom so far as those interests are also relevant to the interests of national security;
 - In the interests of public safety;
 - For the purpose of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health;
 - To assist investigations into alleged miscarriage of justice; and
 - Where a person ("P") has died or is unable to identify themselves because of a physical or mental condition to assist in identifying P, or to obtain information about P's next of kin or other persons connected with P or about the reason for P's death or condition.

Authorisation of communications data applications

12. The introduction of the Office for Communications Data Authorisations (“OCDA”) means the acquisition of communications data by local authority officers is no longer subject to judicial approval by a magistrate. There is however a requirement for a local authority making an application to ensure that someone of at least the rank of Service Manager is aware that the application is being made before it is submitted to OCDA. An authorising officer in OCDA can authorise any lawful request for any of the specified purposes from any listed public authority.

Investigatory Powers Tribunal

13. For the purpose of highlighting why it is important that we all understand and make use of RIPA and IPA, Members’ attention is brought to the case of Gary Davies v British Transport Police.
14. British Transport Police (“BTP”) carried out unauthorised surveillance on Mr Davies. As a result of this surveillance, BTP made a public arrest and subsequently issued a press release publicising the alleged offences, of which Mr Davies was subsequently acquitted by a jury. BTP, whose relevant officers had no proper understanding of the legal requirements for such surveillance, ought to have obtained prior authorisation and as a result the Tribunal ruled that the surveillance was unlawful.
15. In relation to compensation, BTP asserted that the breach was technical, as authorisation could and would have been obtained. The Tribunal rejected this argument because of the scantiness of the case against Mr Davies, and the obvious need for further inquiries before authorisation would become possible. The Tribunal therefore awarded to Mr Davies his unrecouped costs of the criminal trial, on the basis that, but for the unlawful surveillance, the trial would never have taken place. In addition, the Tribunal awarded the significant sum of £25,000 to reflect the gravity of the breach, real injury to feelings, damage to reputation and probable loss of promotion prospects suffered by the Claimant brought about by the arrest, the accompanying publicity and the trial.

Training - Update

16. Training sessions are to be held during August and September 2019 for staff in service areas that use or may need to consider using RIPA. The training is to be delivered by the Principal Lawyer (Litigation).
17. In addition, all of the designated Authorising Officers and members of the Chief Officers Executive and Chief Officers Board are to receive refresher RIPA training. This training will be delivered by the Assistant Director, Law and Governance.

Bi-Annual Report

Directed Surveillance Authorisations

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

Communications Data Authorisations

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