



Audit Advisory Committee

20 March 2018

Report from the Director of Legal and HR Services

Review of the Use of the Regulation of Investigatory Powers Act (RIPA) Powers in 2017

Wards Affected:	All
Key or Non-Key Decision:	Not applicable
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	One
Background Papers:	Two: <ul style="list-style-type: none">• Letter from the OSC to the Council dated 6 December 2016• OSC inspection report dated 21 November 2016
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1.0 Purpose of the Report

- 1.1 This report explains the Council's use and conduct of covert surveillance techniques when investigating serious criminal offences relying on the powers made available to local authorities in Part II of the Regulation of Investigatory Powers Act 2000 (RIPA).
- 1.2 It was decided last year that the Council's oversight arrangements for the use of these statutory powers would be extended to cover a high level annual review by the Audit Advisory Committee. This report sets out the first of these reviews.

2.0 Recommendation

- 2.1 That the Committee note the contents of this report.

3.0 Detail

Background

- 3.1 Appended to this report is the Council's Policy and Procedures on RIPA (excluding the separate appendices referred to in that document). The document explains the Council's use and conduct of covert surveillance techniques when investigating serious criminal offences relying on the powers made available to local authorities in Part II of RIPA. RIPA makes surveillance authorised in accordance with the statutory framework it establishes lawful and thereby protects the Council from legal claims and complaints and ensures that the evidence it relies upon in prosecutions is admissible.
- 3.2 Covert surveillance techniques include static surveillance (e.g. taking up an observer post to monitor the activities and movements of those suspected of having committed criminal offences); mobile surveillance (e.g. following someone to see where they are going without their knowledge); using hidden CCTV at a crime hotspot. RIPA refers to these techniques as 'directed surveillance'. It also extends to the use of undercover officers and informants. RIPA refers to these as 'covert human intelligence sources' (more commonly referred to as CHISs).
- 3.3 The policy document also refers to accessing communications data such as out-going phone calls and websites visited held by telephone and internet service providers. However, only limited information about who sent the communication, when and how can be accessed but not the content i.e. what was said or written. This form of surveillance is regulated by a different part of RIPA and different procedures apply i.e. authorisations are granted by a national body which acts on behalf of local authorities.
- 3.4 As well as the current legislation, the Council's policies and procedures are informed by statutory codes of practice issued by the Home Office in December 2014. Namely, the Covert Surveillance etc. Code of Practice and Covert Human Intelligence Sources Code of Practice. In November of last year draft revised codes of practice were issued by the Home Office for consultation which aim to reflect legislative updates and ensure the application of best practice. Neither the Government's response nor the finalised versions of the codes of practice have been published yet.
- 3.5 The use of RIPA powers by local authorities is tightly controlled. Initially, directed surveillance or the use of a CHIS has to be assessed in detail and authorised in writing internally by a senior officer only if necessary and proportionate. Subsequently, it has to be approved by a magistrate before the authorisation takes effect.

Oversight

- 3.6 The Council's use and conduct of covert surveillance techniques is overseen internally by the Council's Monitoring Officer, who also acts as the Council's Senior Responsible Officer (SRO) for the purposes of the Home Office codes of practice. The Monitoring Officer also keeps the Council's RIPA policy and procedures document under review and updates it as and when necessary. This ensures compliance with the most current legislation, statutory codes of practice, technical guidance and best practice. It is also necessary to keep the list of authorising officers up to date and for administrative, technical and presentational changes to be made from time to time to ensure the document acts as a helpful source of instruction and guidance to all officers of the Council.
- 3.7 The Council's use of its RIPA powers is also overseen externally by the newly established Investigatory Powers Commissioner (formerly the Office of Surveillance Commissioners (OSC)).
- 3.8 The office of the Investigatory Powers Commissioner has also taken over the inspection role of the OSC. Inspections are periodic and focus on RIPA policies, procedures and practices.
- 3.9 Following the Council's most recent inspection on 8 November 2016, the Chief Surveillance Commissioner wrote to the Council's Chief Executive acknowledging that the inspector considered the Council's policy and procedure document to be "excellent". Describing the Council's standards as "impressive" and noting that "the attitude of the Council to the need for training and awareness is sensible and far sighted". No formal recommendations were made but "some suggestions were offered for 'fine tuning'".
- 3.10 Two other main issues were raised. First, the need for the Council to review its CCTV protocol so that before the police and other law enforcement bodies are allowed to use its public CCTV systems for directed surveillance purposes, the Council is reassured that a RIPA authorisation has been obtained. Second, the Council was advised to raise Council-wide awareness about the use of social media and the internet to obtain information about others and the likely privacy and RIPA implications. Both of these suggestions have been implemented and are kept under review.
- 3.11 According to the Home Office codes of practice, Members should also review the Council's use of its RIPA powers. This is why it was decided that this Committee should conduct a high level annual review. Any significant policy changes recommended by the Committee arising from its review will be reported to Cabinet for decision.

The Council's use of its RIPA powers

- 3.12 The Council's use of its directed surveillance and CHIS RIPA powers has significantly diminished in recent years. In the financial years 2007/08 and

2008/09 54 and 56 authorisations respectively were granted. In 2013/14 and 2014/15 only 4 and 9 authorisations respectively were granted. More recently, in 2015/16 no authorisations were granted and in 2016/17 a single authorisation was granted which was the subject of detailed review during the last inspection and since then no further authorisations have been applied for or granted.

- 3.13 RIPA powers are now predominantly used to enforce trading standards controls and, in particular, to conduct test purchases of age restricted products such as alcohol. It is also occasionally used in the context of serious fraud investigations.

4.0 Financial Implications

- 4.1 None.

5.0 Legal Implications

- 5.1 These are contained in the report.

6.0 Equality Implications

- 6.1 Under section 149 of the Equality Act 2010, the council has a duty when exercising its functions to have 'due regard' to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 6.2 Due regard is the regard that is appropriate in all the circumstances. There are no equalities implications arising from this report.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 None.

<u>Report sign off:</u>
DEBRA NORMAN
Director of Legal and HR Services