

Internal Scrutiny Committee

Meeting to be held on Friday, 21 July 2017

Electoral Division affected: (All Divisions);
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Regulation of Investigatory Powers Act 2000

Appendix 'A' refers

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Executive Summary

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework for certain public bodies, including local authorities, to use "covert surveillance" to gather information about individuals without their knowledge for the purposes of undertaking statutory functions in connection with the prevention or detection of crime. The use of RIPA by a public authority provides protection against a claim of infringement of the right to respect for a private and family life, home and correspondence.

Members are required to review the use of RIPA and Cabinet set the policy at least once a year. Elected members cannot be involved in decisions on specific authorisations, but have oversight of the process via the reporting requirement to the Internal Scrutiny Committee.

Recommendation

The Committee is asked to note the content of this report.

Background and Advice

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework for certain public bodies, including local authorities, to use "covert surveillance" to gather information about individuals without their knowledge for the purposes of undertaking statutory functions in connection with the prevention or detection of crime.

RIPA is permissive legislation, that is to say that it is not mandatory for a local authority to authorise covert surveillance under RIPA, but if it does so then RIPA provides the local authority with a defence if the individual brings a claim against the local authority alleging that the surveillance breaches their Human Rights, specifically Article 8, the right to respect for private and family life, home and correspondence.

Where an officer believes that covert surveillance is necessary and proportionate to an investigation, they must seek authorisation from an authorising officer using the statutory forms provided by the Home Office. There are currently four senior managers in Trading Standards designated as authorising officers along with the Director of Legal and Democratic Services.

Once authorised, the application must also then be presented to a magistrate's court for approval, before surveillance can be undertaken.

RIPA covers directed surveillance, the use of a Covert Human Intelligence Source (CHIS), and the acquisition, disclosure and retention of communications data. However, the acquisition of communications data takes place under a formal regime established with communications providers and is therefore not required to be the subject of review by Members.

Directed surveillance is covert where the subject is unaware of the surveillance and is undertaken:

- a) For the purpose of a specific investigation/operation,
- b) Is likely to result in the obtaining private information about a person (whether or not one is specifically identified for the purposes of the investigation or operation), and
- c) Is not by way of an immediate response to events or circumstances where it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

A CHIS is a person who establishes or maintains a personal or other relationship with another person for the covert purpose of:

- (a) Using such a relationship to obtain information or to provide access to information to another person, or
- (b) Disclosing information obtained by the use of such a relationship or as a consequence of such a relationship.

RIPA activity and authorisations are governed by Codes of Practice and Guidance issued by the Office for Surveillance Commissioners (OSC) and the Home Office.

Within the County Council covert surveillance authorised pursuant to RIPA is used very infrequently and primarily in connection with Trading Standards activities, typically against rogue traders, counterfeiters or individuals engaged in selling tobacco or alcohol products to children. This is because local authorities are only able to have recourse to the protection that RIPA provides where the activities undertaken relate to the prevention or detection of crime for offences carrying a penalty of at least six months imprisonment, or offences relating to the sale of alcohol and tobacco to children.

It is used in cases where it is important to obtain information to support potential criminal proceedings, and only where that information cannot be obtained by any other means.

The Council is required to designate a Senior Responsible Officer (SRO), who is the Director of Governance, Finance and Public Services. All authorisations are held centrally and the SRO's role is to review them on a regular (at least quarterly) basis.

Local authorities are subject to triennial inspections undertaken by OSC, the most recent OSC inspection having taken place on 28 February 2017. The resulting report was positive and was considered in June 2017 by Cabinet. A redacted copy of the report is at Appendix A. The redactions have been made to protect the integrity of specific investigations.

RIPA Directed surveillance and CHIS activity

Since February 2016 there have been 6 authorisations for the use of covert surveillance. Four of these were for the use of a CHIS in connection with the supply of counterfeit goods over the internet, and two were for directed surveillance, one in connection with unsafe furniture and one into motor vehicle fraud. No prosecutions resulted from the social media investigations, but all sellers have ceased their activity. A warrant was executed in relation to the motor vehicle fraud and the case will be reported for prosecution in the near future. In the product safety case a Limited company and one of its directors were convicted of two offences in connection with the supply of furniture which failed to comply with fire safety regulations. The prosecution would not have been possible without the surveillance which had been authorised to monitor activity at a premise to identify the owner of the business.

Non-RIPA Surveillance

Although RIPA authorisations can only be granted in connection with the prevention or detection of crime, this does not mean that surveillance cannot be authorised in other circumstances, only that the Council cannot obtain the protection that RIPA provides.

There are therefore circumstances in which officers may need to undertake covert surveillance for other important purposes, for example in serious disciplinary matters involving employee misconduct, or for investigations into child protection matters, or abuse of vulnerable individuals, or for investigations into criminal offences where the penalty of six months imprisonment does not apply.

In such cases, based on advice provided by OSC, the Council adopts the same procedures that apply to RIPA on a "shadow" basis, where the Director of Legal and Democratic Services is the authorising officer. There is however no requirement in such cases to obtain approval from the Magistrates Court.

One such authorisation has been granted, in September 2016, in relation to covert surveillance carried out by the Trading Standards Service, for the purposes of conducting a social experiment in relation to public attitudes to the proxy sales of alcohol.

A social experiment of this nature is a real field experimentation of how people/society react to situations both real and hypothetical. The most prolific supply

channels of alcohol to under 18s in Lancashire is via parents. The Alcohol and Tobacco team from Trading Standards conducted a social experiment at a store in Clitheroe. Professional actors were used to play lead roles, comprehensive risk assessments and a 'shadow' RIPA authorisation were put in place. The experiment was covertly recorded on film by a specialist production company.

An actor played the role of father in a store, accompanied by an actress who played the role of his 15 year old daughter. The father exaggeratedly stated his intention, to other customers, to purchase a large amount of alcohol for her 16th birthday party and in another scenario the daughter put immense pressure on her father to buy her a bottle of vodka for a party she was attending that evening. The store was a partner in the controlled experiment and fully aware of the circumstances. The team were on site from 08:30 to 18:30.

There were 12 significant reactions to the social experiment. Some agreed that it was ok for the 16 year old to have the alcohol, whilst others had much stronger views to the contrary. 12 members of the public were approached by the team outside the store and all were supportive when the experiment was fully explained to them. They all signed consents for Trading Standards to use the footage for our campaign

The resulting film will be professionally edited and used in a social media campaign to educate parents and others of the risks and the law.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

Failure to maintain a robust and clear corporate approach to RIPA principles could expose the Council to the risk of action by individuals who claim that their human rights have been infringed. This could lead to reputational damage, and potential damage to criminal proceedings with the financial implications (costs/compensation) that this could present also being a key factor.

Reason for inclusion in Part II, if appropriate

N/A