

Scrutiny Committee: 11 December 2015

Report of the Director of Governance, Finance and Public Services

Electoral Division affected: None

Regulation of Investigatory Powers Act 2000 Report
(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.

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

Local authorities are also subject to regular inspections from the OSC.

Members are required to review the use of RIPA and set the policy at least once a year.

Recommendation

That the Scrutiny Committee note the use of RIPA referred to in 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.

The Regulation of Investigatory Powers Act covers directed surveillance, use of a Covert Human Intelligence Source (CHIS) and the acquisition, disclosure and retention of communications data.

Within the County Council, covert surveillance authorised pursuant to RIPA is used very infrequently and only in connection with Trading Standards activities, typically against rogue traders, counterfeiters or individuals engaged in selling tobacco or alcohol products 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.

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

Local authorities are subject to regular inspections undertaken by OSC, the most recent Lancashire County Council inspection having taken place on 3 February 2014. The resulting report was considered in June 2014 by Cabinet following the inspection and a number of changes to procedure were subsequently adopted, including an update to the RIPA Corporate Policy; designation of the Head of Trading Standards and two Trading Standards Managers to authorise RIPA applications; and agreement to a response to the OSC in relation to the authorisation of directed surveillance of underage sales test purchasing activities.

In December 2014 some key changes were made to the Code of Practice for Covert Surveillance and Property Interference, and the Covert Human Intelligence Sources Code of Practice, the main revisions being:

- To take account of the requirement under the Protection of Freedoms Act that local authorities should seek approval for authorisations from a magistrate,
- To extend the length of time for which records must be kept in the central record to 5 years,
- To clarify the need for consideration of relevant authorisation for the use of third party individuals or organisations (for example private investigators and internet researchers)
- Making it clear that the need for authorisation for directed surveillance or CHIS should be considered prior to the use of the internet in investigations, and that such use should be both necessary and proportionate.
- To clarify the information required to be provided on a review of an authorisation.

Where necessary these revisions have been incorporated into the revised policy, attached at Appendix A.

Directed surveillance and CHIS activity 1 April 2014 – 26 November 2015

Directed surveillance is covert but not intrusive, (local authorities cannot be authorised to carry out intrusive 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 specifically identified for the purposes of the investigation or operation)
- c) Otherwise than by way of an immediate response to events or circumstances and it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

A **CHIS (Covert Human Intelligence Source)** 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.

There have been three authorisations for the use of a CHIS and no Directed Surveillance authorisations during this period. All applications under RIPA are authorised by one of the three officers in Trading Standards to whom this function has been delegated, and then approved at magistrate's court. In practice approval is now routinely carried out by a District Judge.

Authorisation 1: The case involved the investigation of the supply of counterfeit goods via social media in contravention of the Trade Marks Act 1994.

As the investigation was drawing to a close it came to our knowledge that another investigation was taking place in parallel with the LCC Trading Standards case, and the defendants were all successfully prosecuted by this third party, with goods seized by Lancashire being signed over for disposal.

The first defendant was sentenced to 8 weeks imprisonment, suspended for 12 months with 60 hours unpaid work. A curfew was imposed from 6pm to 7am for 12 weeks, the second defendant was sentenced to 8 weeks imprisonment, suspended for 12 months. A curfew was imposed from 6pm to 7am for 12 weeks. The third defendant was sentenced to a community order with supervision for 6 months.

Authorisation 2: The case involved investigations into the supply of counterfeit goods via social media in contravention of the Trade Marks Act 1994. The authorisation was given, approval received from the District Judge in Preston, and investigations are ongoing.

Authorisation 3: The case involved investigations into the supply of counterfeit goods via social media in contravention of the Trade Marks Act 1994. Authorisation and approval from the District Judge has only just been obtained so investigations are at a very early stage. A review is scheduled for mid-January 2016.

All of the above authorisations are in connection with investigations into contraventions of the **Trade Marks Act 1994**.

These are serious offences with a maximum penalty of 10 years imprisonment at crown court.

- Counterfeiting Costs Industry £9 Billion Per Annum in UK
- Treasury loses £1.7 Billion in revenue p.a.
- Directly responsible for 4100 job losses in UK and 17120 in EU p.a.
- 7-9% of all world trade is in counterfeits

It is in the public interest to pursue such cases, since counterfeit sales affect genuine retailers, deprive rights-holders of revenue, and deprive the economy of taxes. In some cases this can influence others to also begin selling such goods in contravention of the law and thus enter into criminality. Counterfeiting may also often be linked to organised crime.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

If local authorities undertake covert surveillance activities without having first gone through an appropriate RIPA authorisation process there is a risk that the Council may face Human Rights challenges.

List of Background Papers

None

Reason for inclusion in Part II, if appropriate

N/A