

Cabinet

Meeting to be held on 7 January 2016

Report of the Director of Governance, Finance and Public Services

Electoral Division affected: None

Regulation of Investigatory Powers Act 2000: Annual Report to Cabinet

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. Elected members cannot be involved in decisions on specific authorisations, but have oversight of the process via the reporting requirement to the Overview and Scrutiny Committee.

Recommendation

The Cabinet is asked to note the content of this report and approve the updated corporate policy with immediate effect.

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.

RIPA covers directed surveillance, for example the use of photography or video to record persons suspected of being engaged in criminal activity, and the use of a Covert Human Intelligence Source (CHIS), for example an informant, where the surveillance involves developing a relationship in order to obtain information.

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.

Authorisations for the use of a CHIS are also used very infrequently and are primarily applied for where Trading Standards Officers engaged in the investigation of internet sales of counterfeit or unsafe products have to develop a relationship with a seller to earn their "trust" in order to obtain information.

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 corporate policy, attached at Appendix 'A'.

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 County Council may not be able to successfully defend Human Rights challenges.

List of Background Papers

None

Reason for inclusion in Part II, if appropriate

N/A