

HAMPSHIRE COUNTY COUNCIL

Report

Committee:	Audit Committee
Date:	27 September 2012
Title:	Information Compliance - Use of Regulated Investigatory Powers
Reference:	4238
Report From:	Director of Culture, Communities and Business Services and Director of Policy and Governance

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1. Summary

1.1. The purpose of this report is to provide the Audit Committee with assurance that the County Council uses its investigatory powers in a lawful and proportionate way.

2. Contextual Information

- 2.1. The County Council operates a strict control policy which ensures that only authorised surveillance takes place in accordance with the Regulation of Investigatory Powers Act.
- 2.2. Members will recall the report presented to the Committee on 31 March 2011 detailing the County Councils use of surveillance powers in 2010-2011, this report presents information for the period 2011-2012.
- 2.3. All applications for covert surveillance activity are coordinated through the Council's Trading Standards Service (Legal and Compliance Team). Only 1 senior officer within that service can act as authorising officers for the whole of the County Council.
- 2.4. Officers of the County Councils Trading Standards Service surveillance efforts are targeted towards protecting those who are being cheated by businesses that trade fraudulently or, unfairly treated by businesses that act with gross negligence towards their customers; particularly young, vulnerable or elderly customers. Such work is often done in response to complaints from

members of the public, and in conjunction with the Police and UK Border Agency.

- 2.5. It should be noted that the use of surveillance is not the totality of any criminal investigation, but, a small part of it and that criminal investigations may not complete their passage through the criminal court process for many months, if not years after the surveillance activity has ceased.
- 2.6. The principal reasons for the use of surveillance are for prevention and detection of crime and not for criminal proceedings. As such, conviction rates, although excellent, are not the only measure of success (different methods of disposal such as letters of written warning and Simple Cautions are also justifiable indicators of RIPA usage).

The following table gives an indication of the results from the use of surveillance in the fight against counterfeit goods:

Table A

Year	Written Warnings	Convictions		Value of Fake Goods Seized
		Simple Cautions	Prosecutions ¹	
2008-2009	6	5	2	£92945
2009-2010	17	4	1	£87790
2010 – 2011	15	3	8	£38550
2011-2012	2	0	7	£38750
2012-2013 Q1	0	0	0	£71380

Surveillance activity usually takes place in the early stages of an investigation. This, coupled with the length of time that it takes for legal proceedings to complete, means that it can be many months before a full result is known. As such, for more recent authorisations, the result is simply not known. This will be the case for all authorisations in 2012-2013 Q1 and some of the investigations from 2011-2012. In addition, the value of counterfeit goods seized in Q1 of 2012-2013 is not yet complete. The figure given relates to 1 particular investigation with a large seizure of over 7000 items. The analysis has not yet been completed on the street value of the items seized so a nominal figure of £10 per item has been applied in order to estimate a figure for the purposes of this report.

- 2.7. The County Council's use of such powers is regularly subject to external inspection. Following the last such inspection in November 2011, the Chief Surveillance Commissioner commended the County Councils arrangements and control measures in respect of the management of covert surveillance. In his inspection report he particularly noted the County Councils demonstrated desire to use the powers sparingly, yet to good effect for residents.

¹ Subject to caveat that not all criminal proceedings will have completed and will include convictions and proceedings which may still be active

- 2.8. The approvals for surveillance for the period of April 2011 to March 2012 (and for Q1 2012-13) are shown in Appendix 1.
- 2.9. A number of changes to the way that local authorities will be permitted to operate the powers within RIPA were made as part of the Protection of Freedoms Act, with those changes due to come into force on 1 November 2012. These will restrict the use of such powers to the investigation of serious crime. This will not effect the County Councils use of these powers as in practice it already restricts its use of surveillance to these areas, for example, the sale of counterfeit goods, and alcohol and cigarettes to children.
- 2.10. In addition, there will be a legal requirement for judicial approval, through a magistrate, of all authorisations under RIPA obtained by local authorities.
- 2.11. In accordance with the Codes of Practice issued by the Home Office associated with the Regulation of Investigatory Powers Act 2000, Officers will be providing the Audit Committee with figures on the number and nature of the County Councils use of surveillance powers on a quarterly basis, supported by the regular annual detailed report.

3. Conclusions

- 3.1. The County Council recognises that the use of covert surveillance as part of its investigatory activities may cause concern to the public and that it has a responsibility to ensure that its surveillance powers continue to be exercised appropriately and proportionately. It therefore has a robust process for authorisation and monitoring of all surveillance activities and only uses them in relation to the prevention and detection of crime; and where it is lawful, necessary and proportionate to do so

4. Recommendation

- 4.1. That the Audit Committee note the contents of this report.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

Hampshire safer and more secure for all:	yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Improvement plan link number (if appropriate):	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

- 1.1. Race and equality impact assessment has been considered in the development of this report and no adverse impact has been identified

2. Impact on Crime and Disorder:

- 2.1. The County Council has a legal obligation under Section 17 of the Crime and Disorder Act 1998 to consider the impact of all the decision it makes on the prevention of crime. The County Council is only able to lawfully carry out covert surveillance activity on the grounds of prevention and detection of crime and disorder. By complying with RIPA and the statutory Codes of Practice this activity will be carried out without unlawfully contravening the requirements of the European Convention on Human Rights and the Human Rights Act 1998. All activity under RIPA will therefore assist the County Council, where it is both necessary and proportionate to do so, in its aim to prevent and detect crime.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

The activities reported within this report have no effect on climate change

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

The activities reported within this report have no effect on climate change

APPENDIX 1 - Number of Authorisations 1 April 2011 – 31 March 2012

Direct Surveillance

2011-12 Quarter	Purpose of Surveillance			Description of "other"
	C'feit Goods	Under Age Sales	Other	
1	1	1	1	(To establish whether subject complying with court order re animal health)
2	0	0	1	(Covert camera to provide evidence with regard to theft)
3	1	0	0	
4	0	0	1	(To establish whether subject complying with court order re animal health)

Total - 6

Covert Human Intelligence Source (CHIS)

Quarter	Purpose of Surveillance		
	C'feit Goods	Under Age Sales	Other
1	0	0	0
2	3	0	0
3	2	0	0
4	4	0	0

Total - 9

Communications Data

Quarter	Number of Applications	Number of Specific Notices	Offences related to:
1	2	19	a. Altering mileage of vehicles b. Disposal of dead farm animals
2	0	0	
3	0	0	
4	0	0	

Total - 2

Definitions:

Directed Surveillance - An authorisation for Directed Surveillance will relate to an activity and, must be done in connection with an investigation and detection of crime or disorder e.g. the person is not aware surveillance is taking place and can be done using cameras, videos

CHIS - An authorisation is required where a person is required to covertly/secretly form a 'relationship' with the person/business under investigation for the purpose of obtaining information to further a criminal investigation e.g., face to face conversations, emails, telephone calls.

Communications - this is where a request can be made to a telecommunications supplier for subscriber data and service use data (not content) **and** only in relation to the prevention and detection of crime or disorder e.g. who is internet domain registered to, who is the subscriber to a particular telephone number.

Number of Authorisations 1 April 2012 – 30 June 2012

Direct Surveillance

2011-12 Quarter	Purpose of Surveillance			Description of "other"
	C'feit Goods	Under Age Sales	Other	
1	0	0	0	
2	-	-	-	
3	-	-	-	
4	-	-	-	

Total - 0

Covert Human Intelligence Source (CHIS)

Quarter	Purpose of Surveillance		
	C'feit Goods	Under Age Sales	Other
1	0	0	0
2	-	-	-
3	-	-	-
4	-	-	-

Total - 0

Communications Data

Quarter	Number of Applications	Number of Specific Notices	Offences related to:
1	2	11	Scam letters and counterfeit alcohol
2	-	-	
3	-	-	
4	-	-	

Total - 2

Definitions:

Directed Surveillance - An authorisation for Directed Surveillance will relate to an activity and, must be done in connection with an investigation and detection of crime or disorder e.g. the person is not aware surveillance is taking place and can be done using cameras, videos

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