

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Policy and Resources
Date of Decision:	5 October 2012
Decision Title:	Regulation of Investigatory Powers Act 2000 – Ability of officers to seek judicial approval for authorisations granted for related surveillance activity and approval of existing policy for surveillance activity
Decision Reference:	4237
Report From:	Director of Culture, Communities and Business Services /Director of Policy and Governance

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1. Executive Summary

- 1.1. The purpose of this paper is to seek the annual approval of the County Council's Policy on Surveillance as required under the Codes of Practice issued by the Home Office associated with the Regulation of Investigatory Powers Act (RIPA).
- 1.2. In addition, approval is also sought for additional staff to be authorised under Section 223 of the Local Government Act 1972, to appear on behalf of Hampshire County Council at Magistrates' Courts, as a result of legislative changes arising from the Protection of Freedoms Act, due to come into force in November.

2. Contextual information

- 2.1. RIPA is the act of parliament that regulates the County Council's use of covert surveillance. The County Council operates a strict control policy, which ensures that only authorised surveillance takes place; where it is lawful, necessary and proportionate to do so.
- 2.2. The current Policy was subject to Executive Decision approval on 9 June 2011, item reference 2871. The current statutory Codes of Practice made by the Secretary of State for the Home Office under the Regulation of

Investigatory Powers Act 2000 require that each local authority must have their RIPA policy confirmed by the appropriate executive function on an annual basis, that is, the Executive Member for Policy and Resources.

- 2.3. 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. It is therefore recommended that no changes are made to the Policy other than to reflect legislative and regulatory changes.
- 2.4. 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.
- 2.5. In addition, there will be a legal requirement for judicial approval, through a Magistrate, of all authorisations under RIPA obtained by local authorities.
- 2.6. These requirements are reflected in amendments to sections 1, 2 and 3 of the Policy statement, for which approval is sought and is attached to this report as Appendix 1.
- 2.7. Hampshire County Council, in conjunction with the Local Government Association, have been working with the Home Office since January 2011 with regards to the implementation of these processes. It has been confirmed that the judicial approval of authorisations under RIPA will constitute legal proceedings. Accordingly, any person who appears before a Magistrate in connection with such an authorisation must have rights of audience in the magistrates' courts in England and Wales.
- 2.8. All solicitors and barristers, by virtue of their qualification and professional competencies, automatically have rights of audience in a Magistrates' Court. All other officers within Hampshire County Council who appear there do so by virtue of an authorisation under Section 223 of the Local Government Act 1972.
- 2.9. The majority of the County Council's RIPA activity is conducted by officers of the Trading Standards Service, and as per the current County Council RIPA policy, all RIPA activity is authorised via that Service. The officers of the Trading Standards Service who routinely utilise the provisions of RIPA are also authorised to enforce various pieces of criminal legislation on behalf of the County Council; will appear before magistrates' to seek entry warrants and are familiar with Court processes. These officers, however, are not currently authorised to appear on behalf of Hampshire County Council in connection with legal proceedings at Magistrates' Courts. The Trading Standards Service has a team of in-house prosecutors who are currently authorised to appear before the Magistrates' Court, however, their ability to be able to react promptly to the need to seek judicial approval for RIPA

authorisations will be greatly hampered by existing and on-going court commitments.

2.10. The limited covert surveillance activity undertaken by the County Council falls within three areas:

- Directed Surveillance
- Covert human Intelligence Sources
- Acquisition and disclosure of communications data

2.11. In order to ensure that any such authorisations to appear at Magistrates Courts are strictly controlled and remain proportionate, detailed recommendations are made with respect to the officers authorised for each of these specific areas of activity.

3. Finance

3.1. The decisions which are sought to be recommended by this report will have no effect upon the budgetary position of Hampshire County Council.

3.2. There may, however, be a budgetary impact if the decisions recommended are not made. There would be a need to seek external legal representation in the event that the officers who are already authorised under Section 223 of the Local Government Act 1972, or who have rights of audience by profession, have other prior Court commitments.

4. Impact on Performance

4.1. The recommended decisions sought will not only ensure that the County Council complies with the statutory Codes of Practice under RIPA, but, will also clarify the legal position of the County Council with regards to RIPA authorisations, following the coming into force of the relevant provisions of the Protection of Freedoms Act 2012. This in turn will ensure a smooth and continuous delivery of service by officers of the County Council who are both skilled and competent in the area of law enforcement and associated surveillance activity.

4.2. Should the recommended decisions not be made, there will be a negative impact on performance. Investigations will inevitably take longer due to the need to ensure that an appropriately authorised person is available to appear before the Magistrates' Court in connection with a RIPA authorisation. Such delays could impede the work of the Trading Standards Service and thus lead to a failure of the County Council to maintain Hampshire as a place that is safe and secure for all.

5. Recommendation(s)

5.1. That the County Council's Policy with regard to RIPA, attached as appendix 1 to this report, be approved.

5.2. That with regards to the approval of **directed surveillance** (as defined in RIPA) authorisations and renewals sought by the Trading Standards Service,

all officers within the Trading Standards Service who are authorised by the Director of Culture, Communities and Business Services to enforce criminal legislation on behalf of the County Council are also authorised under Section 223 of the Local Government Act 1972 to appear before a Magistrates' Court in connection with the said authorisations and renewals **only**.

- 5.3. That with regards to the approval of **covert human intelligence source** (as defined in RIPA) authorisations and renewals sought by the Trading Standards Service, all officers within the Trading Standards Service who are authorised by the Director of Culture, Communities and Business Services to enforce criminal legislation on behalf of the County Council are also authorised under Section 223 of the Local Government Act 1972 to appear before a Magistrates' Court in connection with the said authorisations and renewals **only**.
- 5.4. That with regards to the approval of **directed surveillance** and **covert human intelligence source** authorisations and renewals sought by any other Service within the County Council, only those officers within the Trading Standards Service Legal & Compliance Team who are authorised by the Director of Culture, Communities and Business Services as prosecutors by virtue of Section 223 of the Local Government Act 1972 are also authorised to appear before a Magistrates' Court in connection with said authorisations.
- 5.5. That with regards to the approval of **acquisition and disclosure of communications data** (as defined in RIPA) authorisations and notices sought by any part of the County Council, only those officers within the Trading Standards Service Legal & Compliance Team who are authorised by the Director of Culture, Communities and Business Services as prosecutors by virtue of Section 223 of the Local Government Act 1972, and who are also accredited by the Home Office to act as Single Points of Contact (SPOC) with regards to communications data, are also authorised to appear before a Magistrates' Court in connection with said authorisations and notices.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	Yes
Corporate Business plan link number (if appropriate):	
Maximising well-being:	Yes
Corporate Business plan link number (if appropriate):	
Enhancing our quality of place:	No
Corporate Business plan link number (if appropriate):	

Other Significant Links

Links to previous Member decisions:		
<u>Title</u> Regulation of Investigatory Powers Act (RIPA)	<u>Reference</u> 2871	<u>Date</u> 9 June 2011
Direct links to specific legislation or Government Directives		
<u>Title</u> Regulation of Investigatory Powers Act 2000 as amended Protection of Freedoms Act 2012		<u>Date</u> 2000 2012

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. No adverse impact

2. Impact on Crime and Disorder:

2.1. Efficient arrangements for seeking judicial approval of authorisations assists with efficient and effective enforcement of legislation.

3. Climate Change:

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

No impact

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

Not relevant.

Policy Statement

1. Hampshire County Council will not undertake any activity defined within the Regulation of Investigatory Powers Act 2000 without prior, or emergency, authorisation, from a trained, senior officer who is empowered to grant such consents; and subject to Sections 37 and 38 of the Protections of Freedoms Act 2012 and any pertaining regulations relating to the approval of such authorisations by a Magistrate.
2. The Director of Culture, Communities and Business Services has been appointed the Senior Responsible Officer and, as such, has been given authority to appoint Authorising Officers (for surveillance activities) and Designated Persons and Single Points of Contact (for the purposes of access to communications data) under the Act.
3. The Authorising Officer or Designated Person will not authorise the use of surveillance techniques, human intelligence sources or access to communications data unless the authorisation can be shown to be necessary for the purpose of preventing or detecting serious crime or of preventing disorder, in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012.
4. In addition, the Authorising Officer or Designated Person must believe that the surveillance or obtaining of communications data is necessary and proportionate to what it seeks to achieve. In making this judgment, the officer will consider whether the information can be obtained using other methods and whether efforts have been made to reduce the impact of the surveillance on other people, who are not the subject of the operation.
5. Applications for authorisation of surveillance, the use of a Covert Human Intelligence Sources or the obtaining of communications data will, except in emergency where legislation permits, be made in writing on the appropriate form.
6. Intrusive surveillance operations are defined as activities using covert surveillance techniques, on residential premises, or in any private vehicle, which involves the use of a surveillance device, or an individual, in such a vehicle or on such premises. Hampshire County Council officers are NOT legally entitled to authorise these types of operations.
7. However public bodies are permitted to record telephone conversations, where one party consents to the recording being made and appropriate surveillance authorisation has been granted. On occasions, officers of the County Council do need to record telephone conversations, to secure evidence.
8. It is the policy of this authority to be open and transparent in the way that it works and delivers its services. To that end, a well-publicised Corporate Complaints procedure is in place and information on how to make a complaint to the Investigatory Powers Tribunal will be provided on request to the Senior Responsible Officer.
9. The County Councils use of its powers under the Regulation of Investigatory Powers Act 2000 will be subject to regular scrutiny by the County Councils Audit Committee.