

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Policy and Resources
Date of Decision:	26 September 2014
Decision Title:	Regulation of Investigatory Powers Act 2000 – Annual review and confirmation of existing policy with regards to surveillance activity
Decision Reference:	6049
Report From:	Director of Culture, Communities and Business Services /Director of Policy and Governance

Contact name: Julie Chambers – Trading Standards Team Manager (Legal & Compliance)/Peter Andrews – Corporate Risk Manager

Tel: 01962
833683/01962
847309

julie.chambers@hants.gov.uk

Email: peter.andrews@hants.gov.uk

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) and the approval of necessary procedural changes in accordance with regulatory changes to be made by the Home Office.

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 24 September 2013, item reference 5149. 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. A number of changes to the way that local authorities are permitted to operate the powers within RIPA were made as part of the Protection of Freedoms Act, with those changes coming into force on 1 November 2012. These restrict the

use of such powers to the investigation of serious crime. This has not affected the County Council's use of these powers as in practice; it had already restricted its use of surveillance to these areas.

- 2.4. 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. In addition, all authorisations are subject to judicial approval, through a magistrate.
- 2.5. Regular reports on the County Council's use of surveillance powers are presented to the Audit Committee on a quarterly basis. The responsibility for the governance of the Council's use of surveillance powers rests with the Council's Monitoring Officer.
- 2.6. The County Council's use of surveillance powers is regularly subject to external inspection, by both the Office of the Surveillance Commissioner and the Interception of Communication Commissioner's Office. In his last inspection report, the Chief Surveillance Commissioner commended the County Councils arrangements and control measures in respect of the management of covert surveillance. He particularly noted that the County Council demonstrated a desire to use the powers sparingly, yet to good effect for residents. In the last inspection by the Interception of Communication Commissioner's Office, the Commissioner commented that
"the public authority is acquiring communications data for a correct statutory purpose and for investigations where they have a clear statutory duty and responsibility to conduct a criminal investigation"
- 2.7. In light of the comments from external inspectors, and the absence of any regulatory changes since the approval of the Policy last year, it is recommended that no material changes are made to the Policy.
- 2.8. The Policy statement, for which approval is sought, is attached to this report as Appendix 1.
- 2.9. Applications for the use of surveillance powers under RIPA have to be approved by a magistrate. Magistrates' Courts have strict rules concerning who can have audience before them. 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.
- 2.10. Officers of the Trading Standards Service who routinely utilise the provisions of RIPA are currently authorised to appear on behalf of Hampshire County Council in connection with legal proceedings at Magistrates' Courts following an Executive Member for Policy and Resources decision made on 5 October 2012.
- 2.11. However in August 2014 the County Council was advised by the Home Office that Central Government intended to accept a recommendation made by the Interception of Communication Commissioner that local authority acquisition and disclosure of communications data, in accordance with RIPA, should only occur through the use of the National Anti-Fraud Network (NAFN)

Single Point of Contact (SPoC) route. The purpose of this recommendation being to ensure consistency of approach. Accordingly the Home Office advised that it is intended to revoke the accreditation held by officers within the Trading Standards Service to act as Single Point of Contacts. This is not a criticism of the authority in its past acquisition and disclosure of communications data, as recent inspections of the County Council by the Interception of Communication Commissioners Office have confirmed the County Council has conducted itself lawfully in such regard.

- 2.12. The purpose of the recommendations 5.2 and 5.3, therefore, are to allow the necessary procedural changes to ensure that once the regulations change and the County Council has gained membership of the National Anti-Fraud Network it can continue to lawfully acquire and disclose communications data.

3. Finance

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

4. Performance

- 4.1. The recommended decision sought ensures that the County Council continues to comply with the statutory Codes of Practice under RIPA.

5. Recommendation(s)

- 5.1. That the County Council's current Policy with regard to RIPA, attached as appendix 1 to this report, be approved.
- 5.2. That with regards to the approval of **acquisition and disclosure of communications data** (as defined in RIPA) authorisations and notices 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 notices **only**
- 5.3. That with regards to the approval of **acquisition and disclosure of communications data** (as defined in RIPA) authorisations and notices 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.

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

Hampshire safer and more secure for all:	Yes
Maximising well-being:	Yes
Enhancing our quality of place:	No

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. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

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

3. Impact on Crime and Disorder:

3.1. 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.

4. 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

Policy Statement

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.

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.

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.

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.

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.

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.

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. The party who consents to the recording of the telephone conversation could either be an officer of the County Council or a third party. On occasions, officers of the County Council do need to record telephone conversations, to secure evidence.

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.

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.