

HAMPSHIRE COUNTY COUNCIL

Report

Committee:	Audit Committee
Date:	24 September 2015
Title:	Information Compliance - Use of Regulated Investigatory Powers
Reference:	6886
Report From:	Director of Culture, Communities and Business Services and Director of Policy and Governance – Corporate Services

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1. Summary

- 1.1. The purpose of this report is to provide the Audit Committee with information on the instances that the County Council has used its investigatory powers in the last financial year and the previous three months, as required by the Code of Practice issued by the Home Office.
- 1.2. This report confirms that there has been no use of surveillance powers in the the fourth quarter of 2014-15 and first quarter of 2015-16.
- 1.3. 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 2000 (RIPA).
- 2.2. Members may recall the report presented to the Committee on 25 September 2014 detailing the County Council's use of surveillance powers in 2013-2014, this report (in addition to the quarterly reports) presents information for the period 2014-2015. The last quarterly report to this Committee was 25 June 2015.

- 2.3. All applications for covert surveillance activity are coordinated through the County Council's Trading Standards Service (Legal and Compliance Team). Only one senior officer within that service can act as authorising officer for the whole of the County Council.
- 2.4. Officers of the County Council's Trading Standards Service ensure that 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	£92,945
2009-2010	17	4	1	£87,790
2010-2011	15	3	8	£38,550
2011-2012	2	0	7	£38,750
2012-2013	1	0	5	£138,595
2013-2014	3	0	5	£149,195
2014-2015	0	0	5	£5,890
2015-2016 Q1	0	1	3	£540

Total

£ 552,255

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

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

not known. This will be the case for all authorisations in 2015-2016 Q1 and some of the investigations from 2014-2015.

- 2.7. 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 December 2014, the Assistant Surveillance Commissioner came to review the County Council's use of directed surveillance, covert human intelligence source and CCTV systems under the Regulation of Investigatory Powers Act, and policies and procedures the County Council has in place. The formal report was received by the County Council in January 2015, where the Assistant Surveillance Commissioner indicated his satisfaction with the County Council's application of its covert activities arrangements. He expressed that the County Council has '*a generally sound RIPA structure, policy and procedures and committed senior management*', and has recommended some changes for implementation for the future, which have been accepted, to make the County Council's procedures more robust and stand up to scrutiny.
- 2.8. The Trading Standards Service has adopted the Intelligence Operating Model (IOM) as a means of identifying suspicious activity for further investigation and, thus ensuring resources are used efficiently. The introduction of the IOM has contributed towards the decline in recent surveillance activity as the nature of investigations' identified have not warranted such techniques being used.
- 2.9. The approvals for surveillance for the period of April 2014 to March 2015 (and for Q1 2015-16) are shown in Appendix 1.
- 2.10. 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, and those changes came into force on 1 November 2012. These restrict the use of such powers to the investigation of serious crime. This did not effect the County Councils use of these powers as in practice it already restricted its use of surveillance to these areas, for example, the sale of counterfeit goods, and alcohol and cigarettes to children.
- 2.11. In addition, there it is a legal requirement for judicial approval, through a magistrate, of all authorisations under RIPA obtained by local authorities. Since 1 November 2012 where Hampshire County Council has sought the required judicial approval of surveillance activity, it has been granted.
- 2.12. In accordance with the Codes of Practice issued by the Home Office associated with the Regulation of Investigatory Powers Act 2000, Officers will continue to provide the Audit Committee with figures on the number and the nature of the County Council's use of surveillance powers on a quarterly basis, supported by the regular annual detailed report.

3. Finance

- 3.1. This report will have no effect upon the budgetary position of Hampshire County Council.

4. Performance

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

5. Conclusions

- 5.1. 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.

6. Recommendation

- 6.1. That the Audit Committee notes 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.)

Document

Location

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:

4.1. 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

4.2. 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 by Quarter (1 April 2014 – 31 March 2015)

Direct Surveillance

2014-15 Quarter	Purpose of Surveillance			Description of "other"
	C'feit Goods	Under Age Sales	Other	
1	0	0	0	
2	0	0	0	
3	0	0	0	
4	0	0	0	
Total -	0			

Covert Human Intelligence Source (CHIS)

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

Communications Data

Quarter	Number of Applications	Number of Specific Notices	Offences related to:
1	0	0	
2	3	3	Supply of potentially unsafe electrical goods and fraudulent activities.
3	1	1	Supply of potentially unsafe electrical goods and fraudulent activities
4	0	0	
Total -	4		

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 2015 – 30 June 2015

Direct Surveillance

2015-16 Quarter	Purpose of Surveillance		
	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	1	1	Fraud
2	-	-	
3	-	-	
4	-	-	
Total -	1		

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.

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