

HAMPSHIRE COUNTY COUNCIL

Report

Committee:	Audit Committee
Date:	23 June 2016
Title:	Information Compliance - Use of Regulated Investigatory Powers
Reference:	7558
Report From:	Director of Culture, Communities and Business Services and Director of Transformation 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, as required by the Code of Practice issued by the Home Office. It is also to provide assurance that the County Council uses its surveillance powers in a lawful and proportionate way.
- 1.2. This report confirms that there has been no use of surveillance powers and two applications for Communications Data in 2015-16.

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 24 September 2015 detailing the County Council's use of surveillance powers in 2014-2015, this report (in addition to any quarterly reports) presents information for the period 2015-2016. The last quarterly report to this Committee was 04 February 2016.
- 2.3. All applications for covert surveillance activity are coordinated through the County Council's Trading Standards Service (Legal and Compliance Team) as per the current County Council's RIPA policy. Only one senior officer within

that service can act as authorising officer for the whole of the County Council. The responsibility for the governance of the Council's use of surveillance powers rests with the Council's Monitoring Officer.

- 2.4. In addition, there it is a legal requirement for judicial approval, through a magistrate, of all authorisations under RIPA obtained by local authorities in accordance with the provisions of the Protection of Freedoms Act 2012. Since 1 November 2012 where Hampshire County Council has sought the required judicial approval of surveillance activity, it has been granted.
- 2.5. 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.
- 2.6. 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.
- 2.7. 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.
- 2.8. 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.
- 2.9. 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.

- 2.10. 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	0	1	9	£80,835
Total				£ 632,550

- 2.11. The approvals for surveillance for the period of April 2015 to March 2016 are shown in Appendix 1.

3. Value for Money

3.1. In the period of April 2015 to March 2016 all RIPA activity has been conducted by the Trading Standards Service which operates the Intelligence Operating Model as a means of directing resources towards area of most harm and detriment being identified. The appropriate methodology for dealing with such investigations is individually assessed accordingly to the circumstances and may utilise a variety of enforcement techniques; of which one may be surveillance. Having a range of enforcement techniques available ensures that only those which are necessary and proportionate are used and, accordingly are not used just because they can. Where there is no need to use surveillance, isn't conducted.

3.2. It should also be borne in mind that surveillance activity of the nature governed by the RIPA framework would ordinarily, although not exclusively, occur in the earlier stages of any investigation. Due to the complex nature of some investigations the end result, in terms of any outcome, may not be seen

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

for many months and usually not in the same financial year. This can be seen in the figures for 2015-2016 in Table A. The number of convictions secured was higher than previous years but, this stemmed from surveillance activity that had occurred in earlier years.

- 3.3. Whilst the number of authorisations for RIPA surveillance activity has dropped in recent years, this cannot be used as an indication of likely future use and as such, it is appropriate to ensure that future enforcement capability remains unaffected in order to ensure that the authority remains as efficient and effective as it can be.

4. Continued use of Surveillance Powers

- 4.1. In order to continue to be able to use its surveillance powers under the Regulation of Investigatory Powers Act (RIPA), the County Council must have a formal approved Policy on its use. This Policy must be reviewed and approved on an annual basis. The Executive Member for Policy and Resources will be presented the County Council's Policy on Surveillance for the next period (2016-2017) in September.
- 4.2. The timetable for this annual report to the Audit Committee has been brought forward to allow the Committee members the opportunity to comment prior to the Executive Member for Policy and Resources prior to the September decision.

5. Use of Camera Systems

- 5.1. Although not covered under the Regulation of Investigatory Powers Act (RIPA) and subject to different regulations, the use of camera systems is also a form of surveillance. This part of the report provides the assurance that the County Council operates any such systems in a proportionate and lawful way.
- 5.2. The County Council does not operate the large scale high street CCTV monitored systems that may be found in a District or Unitary Authority, however, the Council does own and operate a small number of CCTV, ANPR (vehicle number plate recognition) and other camera systems in a variety of locations and for a number of purposes.
- 5.3. A Surveillance Camera Code of Practice has been introduced under the Protection of Freedoms Act 2012 which applies to the use of surveillance camera systems that operate in public places, regardless of whether or not there is any live viewing, or recording of images or information or associated data. The County Council is required to comply with the provisions of the Code.
- 5.4. The use of camera systems by the Council is subject to compliance with its Policy on the Use of Camera Systems, which was approved by the Council's Risk Management Board. This Policy contains the very latest guidance from the Surveillance Camera Commissioner.
- 5.5. The Policy provides a proportionate and common sense approach to meeting the regulatory standards and reassure the public that surveillance cameras in public places operated by Hampshire County Council are there to protect and

look after them – rather than look at them – and are operated in a way which is proportionate, effective in meeting a stated purpose and transparent.

- 5.6. The County Council's use of camera systems is inspected and regulated by the Office of the Surveillance Commissioner.

6. Finance

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

7. Performance

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

8. Conclusions

- 8.1. 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.
- 8.2. Additionally, any activities are reviewed and the Policy on Surveillance is renewed every year, which is approved by the Executive Member for Policy and Resources.

9. Recommendation

- 9.1. That the Audit Committee notes the contents of this report and that the County Council's surveillance powers continue to be exercised appropriately and proportionately.
- 9.2. The Audit Committee is also invited to consider the County Council's use of surveillance powers for the previous financial year and to provide the Executive Member for Policy and Resources with assurance that the County Council is operating its powers in a lawful and proportionate manner. Furthermore, the Audit Committee is invited to assure him of the continued use of surveillance powers by the County Council.

9.3. 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 2015 – 31 March 2016)

Direct Surveillance

2015-16 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	1	1	Fraud
2	0	0	
3	0	0	
4	1	2	Fraud/Doorstep Crime
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.