

Governance Committee

28 March 2012

Office of Surveillance Commissioners Report - Regulation of Investigatory Powers Act 2000 (RIPA)

Report by the Chief Officer

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1 Summary

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) was introduced to ensure that investigatory powers used by public authorities complies with human rights law, in particular the European Convention on Human Rights (ECHR). Its main purpose is to ensure that any surveillance on, or the gathering of communications data about any person is a justified infringement of Article 8 of the European Convention on Human Rights (the rights to privacy).
- 1.2 On 16 November 2011, the Service underwent an inspection by the Office of Surveillance Commissioners. This report details the recommendations and actions taken to address them.

2 Recommendation

- 2.1 The Committee notes the recommendations made in the report issued to the Chief Officer by the Chief Surveillance Commissioner and approves the actions taken to address them.

3 Introduction and background

- 3.1 Some activities undertaken by the Service may require covert or overt surveillance. RIPA provides the statutory framework required to carry out such activities. This framework means that any use of RIPA must be assessed, authorised and recorded appropriately.
- 3.2 The authorisation process involves a small number of identified senior officers who are recognised as authorising officers to enable them to authorise requests for proposed RIPA activity. These officers do need to be independent from the proposed activity. The authorising officers will have received specific RIPA based training.
- 3.3 To date, we have not used the RIPA to assist or support in any investigation carried out by the Service, but can see the benefits of having a supported and established policy.

4 Codes of Practice

4.1 RIPA is accompanied by three Codes of Practice which are relevant to HFRS activities as described below.

4.2 Covert and Overt Surveillance

4.2.1 Overt surveillance does not require authorisation under RIPA – for example, the use of CCTV, where a person should reasonably expect to have their images recorded. Although the provisions of the Act do not normally cover the use of overt CCTV surveillance systems, since members of the public are aware that such systems are in use, there may be occasions when the Service uses overt CCTV systems for the purpose of a specific investigation or operation. In such cases, authorisation for directed surveillance is necessary.

Covert surveillance is surveillance that is carried out in a manner to ensure that the person is unaware that it is, or may be taking place. Surveillance may be ‘directed’ or ‘intrusive’. Fire authorities are not authorised to conduct intrusive surveillance.

4.3 The use of a Covert Human Intelligence Source (CHIS)

4.3.1 A CHIS may be required to establish or maintain a personal or other relationship for a covert purpose, i.e. one which the person with whom the relationship is established is unaware of. A CHIS is “tasked” to obtain information, provide access to information or to act for the benefit of the relevant public authority. Authorisation for the use or conduct of a CHIS is required prior to any actions that require the source to establish or maintain a personal or other relationship for a covert purpose. The use of a CHIS by the Authority is likely to be extremely infrequent.

4.4 Accessing Communications Data

4.4.1 This was not covered in the OSC inspection as it comes under the powers of the Interception of Communications Commissioner's Office (IOCCO).

5 Outcomes of the inspection

5.1 An inspection was carried out in November 2011 by an inspector of the Office of Surveillance Commissioners. To summarise, the report sent to the Chief Officer stated that ‘whilst the Service has had no recourse to the powers to date, it has nonetheless established sound ownership and oversight procedures’. The report complimented the Chief Officer ‘on the engaged approach shown by his staff and the fact that his organisation stands fully ready to manage use of RIPA in future in a coordinated and premeditated manner’. The Inspector made the following two recommendations:

- A central record of activity should be established and maintained to comply with paragraph 8.1 of the Code of Practice. We have now established this record which is currently blank as there has been no activity to date.
- The Service’s RIPA policy should be updated to enhance our sections on covert surveillance and property interference, collateral intrusion and the potential covert use of CCTV. We have revised the policy in accordance with the recommendation. The policy can be found at <http://www.hantsfire.gov.uk/theservice/serviceorders.htm?id=60856>

6 Risk analysis

- 6.1 Failure to comply with this legislation may result in actions being taken against the Authority. If the Authority fails to follow correct procedures it may not be able to proceed with legal actions against a third party.

7 People Impact Assessment

- 7.1 The proposals in this report are considered compatible with the provisions of the European Convention on Human Rights, the Human Rights Act 1998, and the Race Relations (Amendment) Act 2000.

8 Background papers

- 8.1 The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of the report:

OSC: <http://surveillancecommissioners.independent.gov.uk/>

RIPA policy: <http://www.hantsfire.gov.uk/theservice/serviceorders.htm?id=60856>

Note: The list excludes: (1) published works; and (2) documents that disclose exempt or confidential information defined in the Act.