

Report of: **Executive Member for Finance, Performance and Community Safety**

Meeting of:	Date	Agenda item	Ward(s)
Executive	17 January 2019		All

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SUBJECT: THE COUNCIL'S USE OF INVESTIGATORY POWERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000

1. Synopsis

- 1.1 The report updates the Committee on the Council's use of investigatory powers under the Regulation of Investigatory Powers Act 2000 ("RIPA") and recent legal developments.

2. Recommendations

- 2.1 To note the level of directed surveillance undertaken by the Council.
- 2.2 To note the recent legal developments.

3. Background

- 3.1 RIPA provides a statutory framework regulating the use of directed surveillance, the conduct of covert human intelligence sources (informants or undercover officers) and the acquisition of communications data by public authorities. RIPA requires public authorities, including local authorities, to use covert investigation techniques in a way that is necessary, proportionate and compatible with human rights.
- 3.2 Directed surveillance is covert surveillance conducted for the purposes of a specific investigation or operation and it is likely to result in the obtaining of private information about a person. Private information includes any aspect of a person's private or personal relationship with others, including family and professional or business relationships. Whilst a person may

have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information.

- 3.3 Communications data is generated in the provision, delivery and maintenance of postal or telecommunications services but does not include the content of the communication. Local authorities may only acquire service use information or subscriber information; they may not acquire traffic data.
- 3.4 The use of covert surveillance techniques by local authorities was previously the subject of some controversy. The Government introduced significant changes under the Protection of Freedoms Act 2012, which came into effect on 1 November 2012. The changes mean that a magistrate's approval is required before a RIPA authorisation can take effect.

4. Acquisition of Communications Data

- 4.1 A public authority must make their request for the acquisition of communications data via a single point of contact ("SPoC"). A local authority request must be made through a SPoC at the National Anti-Fraud Network ('NAFN') once it has received judicial approval.
- 4.2 Service use information is data relating to the use made by any person of a postal or telecommunications service. Examples of service use information include; itemised telephone call records, itemised records of connections to internet services, itemised timing and duration of service usage, information about the use of forwarding/redirection services and records of postal items, such as records of registered post, recorded or special delivery postal items and records of parcel delivery and collection.
- 4.3 Subscriber information relates to data held by a communications service provider ("CSP") about people to whom the CSP provides or has provided a communications service. Examples of subscriber information include:
 - 'Subscriber checks' such as "who is the subscriber of phone number 0000 000XXX?" or "who is the account holder of e-mail account example@example.co.uk?"
 - Information about the subscriber to a PO Box number
 - Subscribers' or account holders' account information including names and addresses for installation and billing and information about the connection, disconnection and reconnection of services.
- 4.4 Part 3 of the Investigatory Powers Act 2016 contains provisions relating to authorisations for obtaining communications data. However, this part of the Act is not yet in force and the provisions of RIPA still apply. The Data Retention and Acquisition Regulations 2018 amended RIPA, introducing from 1 November 2018 a serious crime threshold to the acquisition of service use data. The council will now only be able to submit an application to acquire service use data for the investigation of a criminal offence capable of attracting a sentence of 12 months or more. There is no change to the acquisition of subscriber data, which the council can still acquire for any crime where it is necessary and proportionate to do so.

5. Covert Surveillance and Property Interference Revised Code of Practice

- 5.1 In August 2018, the Home Office published a revised code of practice and the council's RIPA

policy will be up-dated to reflect the revised guidance, including an expanded section dealing with online covert activity. The growth of the internet, and the extent of the information that is now available online, presents new opportunities for public authorities to view or gather information, which may assist them in preventing or detecting crime. The revised code of practice provides guidance on where the study of an individual's online presence may engage privacy considerations and a RIPA authorisation will be required.

- 5.2 The Investigatory Powers Commissioner ("the IPC") has responsibility for oversight of investigatory powers used under RIPA. The code of practice sets out that it is good practice for the senior responsible officer ("SRO") to be responsible for engagement with the IPC and their inspectors when they conduct inspections and for overseeing the implementation of any post-inspection plans. The council was last inspected on 1 December 2016 and it is anticipated that we will receive a further inspection in 2019.
- 5.3 The code of practice provides that within local authorities, the SRO should be a member of the corporate leadership team. The council's current SRO is the Interim Corporate Director of Resources.

6. Authorisation of covert surveillance

- 6.1 During this financial year since 1 April 2018, the Council has authorised directed surveillance on 5 occasions for cases of unlawful subletting of council tenancies, investigated by Housing Investigations. These authorisations have all been given judicial approval by a magistrate.
- 6.2 For the previous financial year (1 April 2017 to 31 March 2018) the Council authorised directed surveillance on 1 occasion for a case of unlawful subletting and benefit fraud investigated by Housing Investigations. This authorisation was given judicial approval by a magistrate.
- 6.3 The council has not authorised the use of a covert human intelligence source since October 2010.
- 6.4 The trend in the number of RIPA authorisations has been downwards. By comparison the Council has granted the following number of directed surveillance authorisations in previous years:
- 2010/11 – 23
 - 2011/12 – 15
 - 2012/13 – 17
 - 2013/14 - 6
 - 2014/15 – 4
 - 2015/16 – 1
 - 2016/17 - 2

7. Implications

7.1 Financial implications:

There are no financial implications arising directly from this report. Robust anti-fraud activity is an integral part of the Council's strategy for safeguarding its assets and maximising its use of

resources. The use of investigatory surveillance is one of the tools the Council uses to achieve these aims.

7.2 Legal Implications:

RIPA was introduced to ensure that covert surveillance undertaken by public authorities is undertaken in accordance with the European Convention on Human Rights and the Human Rights Act 1998.

The Council can only undertake covert surveillance if the proposed operation is authorised by one of the Council's authorising officers and subsequently approved by a magistrate. A local authority can only use directed surveillance if it is necessary to prevent or detect criminal offences, which attract a custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. The authorising officer must also be satisfied that the proposed directed surveillance is proportionate to what is sought to be achieved.

There has been a reduction in the number of directed surveillance authorisations granted by the Council since 1 November 2012, when the Protection of Freedoms Act 2012 introduced significant changes to local authorities' use of RIPA. However, the Council could still face a legal challenge to the way in which covert surveillance is conducted; this could lead to the evidence obtained being ruled as inadmissible and/or a complaint to the Investigatory Powers Tribunal.

The Data Retention and Acquisition Regulations 2018 amend Chapter 2 of Part 1 of RIPA, which currently provides for the acquisition of communications data by public authorities. However, when Part 3 of the Investigatory Powers Act 2016 comes into force, it will replace this part of RIPA.

7.3 Environmental Implications:

Nil

7.4 Resident Impact Assessment:

The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

A resident impact assessment has not been conducted, as this report only provides monitoring information and a legal update for the Committee.

8. Reason for recommendations

- 8.1 The Protection of Freedoms Act 2012 has introduced additional safeguards to the use of RIPA and the impact of covert surveillance on the privacy of those under investigation. This has seen a reduction in the use of directed surveillance by the Council.
- 8.2 The Council is managing its covert activities in accordance with RIPA and the Home Office codes of practice.

Appendices: None

Background papers: None

Final report clearance:

Signed by:		8 January 2019
	Executive Member for Finance, Performance and Community Safety	Date

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