

Review of Policy and Procedure under the Regulation of Investigatory Powers Act 2000

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Purpose of this report

To provide an annual update of the Council's use of its powers and compliance under and with the Regulation of Investigatory Powers Act 2000 (RIPA) and the review of the Policy and procedures under RIPA following an inspection by the Office of Surveillance Commissioners in August 2017.

RECOMMENDATIONS

The Committee is asked to:

1. Note the results of the Assistant Surveillance Commissioner's Inspection of 8 August 2017.
2. Note and endorse the changes made to the Policy and Procedure Guide on the use of covert surveillance and covert human intelligence sources made in line with the Inspection Recommendations
3. Consider and note the Summary of RIPA applications detailing the Council's use of its powers and compliance with RIPA since the last report.

Introduction

1. As part of its statutory functions it is sometimes necessary for the Council to carry out covert surveillance. This is normally in the area of enforcement such as trading standards or in relation to other suspected criminal activity such as benefit fraud.

2. As surveillance may infringe the rights of individuals, it must be carried out in accordance with RIPA and the procedure within the Council's Policy and Procedure Guide in order to ensure it is reasonable and proportionate and does not breach other legislation such as the Data Protection Act 1998 or the Human Rights Act 1998.
3. Independent oversight and inspection of the use of RIPA by public bodies was carried out by the Office of Surveillance Commissioners (OSC). As from 1 September 2017 this function was transferred to the Investigatory Powers Commissioner's Office (ICPO).
4. On 27 October 2016 this Committee received a report which detailed the background to the RIPA process and the updated Policy and Procedure Guide. The report also highlighted the recommendations made during a 2016 OSC inspection, compliance and implementation of those recommendations and that a further inspection was due to take place within 12 months.

Inspection

5. On 8 August 2017 Sir David Clarke, Assistant Surveillance Commissioner, carried out an inspection of the Council's use of and compliance with RIPA as scheduled. The inspection included a review of the relevant documentation, systems and procedures and discussions with the Senior Responsible Officer, a senior trading standards officer, a senior social worker (childcare), an Authorising Officer from Trading Standards, Children's Services, and the Chief Executive. The actions taken and improvements made since the last inspection as detailed in the last report to this Committee were also considered.
6. The Inspection Report dated 15 August 2017 was sent to the Chief Executive under cover of a letter dated 5 September 2017.
7. The Inspection Report reiterated the recommendations from the 2016 Report and confirmed that they were all discharged.
8. The Report concluded that that:

"CBC's RIPA structure is now in good health, well managed and fit for its purpose."
9. Without implying any criticism two formal recommendations were also made:
 - I. *That CBC's RIPA Policy and Procedure Guide be further revised in accordance with [the] report (paragraphs 11);*
 - II. *That the issue of conducting juvenile test purchase operations without RIPA directed surveillance authorisation be kept under review (paragraph 15)*

10. The Surveillance Commissioner confirmed that the next inspection will be scheduled for 3 years in 2020. It is anticipated that the ICPO will honour this date.
11. Other points made during the inspection included being careful about the use of social media within investigations and considering the introduction of a process for surveillance authorisation in non-RIPA cases. These were not the subject of formal recommendations but will be considered during the coming year.

Current Position

12. The Guide has been amended as recommended by the Assistant Commissioner and a tracked copy of the Guide is attached as Appendix A. This also includes updates to the version control and minor amendments on page 22 of the Guide to take account of the re-ordering of the Council's Constitution.
13. As the Policy and Procedure Guide was reviewed by the Assistant Commissioner it was not considered that any further review of the Guide was needed at this time.
14. The comments regarding the process for juvenile test purchase operations within Trading Standards has been referred to the AD for Public Protection and Transport (who is also an Authorising Officer) for consideration.

Annual Report on the use of RIPA

15. Where it is proposed to carry out covert surveillance relating to preventing or detecting serious criminal behaviour which would carry a custodial sentence of at least 6 months or relates to offences for the sale of alcohol and tobacco to children RIPA will apply.
16. Where RIPA applies an Investigation Officer must provide a report to an Authorising Officer (AO) who must then approve the surveillance. The surveillance must be proportionate and necessary under RIPA and there may be other considerations under legislation to take account of to ensure it is also reasonable and in the public interest. The AO will complete the relevant paperwork and send it to the Monitoring Officer who will arrange for it to be checked and approved. An application is then made to the Magistrates Court who will either allow the surveillance or will reject the application.
17. One application for covert surveillance under RIPA was made in September 2016. Although this predates the report to this Committee on 27 October 2016 it was not detailed in that report and is therefore now reported for completeness. The summary is detailed in Appendix B attached.

18. As detailed above the Inspection of 8 August 2017 did consider the application paperwork and concluded that the application was correctly made. It was however identified that the formal cancellation of the surveillance should have been more timely and processes are now in place to ensure this occurs in the future.

Council Priorities

19. The Policy and effective and compliant use of RIPA supports all of the Council's priorities through reducing fraud or other criminal activity either as part of the Council's regulatory activities or to ensure proper use of resources and services.

Corporate Implications

Risk Management

20. It is important that the Council has in place an effective legal procedure for carrying out surveillance within the framework of RIPA. The risk to the Council of a failure in this area is the failure to obtain a conviction with attendant costs and reputational damage and/or the incorrect and potentially illegal expenditure of resources on or with services users who are not entitled to such services.

Staffing (including Trades Unions)

21. There are no specific staffing issues arising from this report apart from those already mentioned.

Legal Implications

22. All organisations have a duty to comply with RIPA. Failure to do so may render any surveillance information inadmissible in Court or leave any decisions made open to legal challenge. Non-compliance with RIPA may also mean that there is a breach of the Human Rights Act 1998 or the Data Protection Act 1998.
23. Regular review of the Guide will ensure the Council's processes and procedures remain fit for purpose and should ensure the Council continues to comply with RIPA and minimise any risks associated with covert surveillance.

Financial Implications

24. There are no direct financial implications arising from this report save as already detailed.

Equalities Implications

25. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These requirements will form part of the tests carried out within the RIPA procedures.

Conclusion and next Steps

26. The committee is asked to note the amendments to the Policy & Procedure Guide, the results of the inspection and the RIPA surveillance applications summary.

Appendices

Appendix A - RIPA Policy and Procedure Guide (tracked)

Appendix B – Summary of RIPA Surveillance Applications

Background Papers

There were no background papers taken into account save as already mentioned. The Home Office Codes are available via the following link:
<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>