

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Corporate Governance Committee 28th September 2012
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Manager

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) AMENDMENTS TO POLICY & QUARTERLY UPDATE ON USE OF RIPA

Purpose

1. To amend the Council's policy following legislative changes introduced in the Protection of Freedoms Act 2012 which come into force on 1st November 2012, and to update on the use of RIPA powers in the last quarter.

Recommendations

2. That Corporate Governance Committee:
 - (a) **AGREE** the recommendations for amendments to the Council's RIPA policy marked using track changes at Appendix A;
 - (b) **NOTE** the information contained in the report about the council's use of surveillance powers in the period July to September 2012.

Background

3. The Regulation of Investigatory Powers Act 2000 regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
4. Following a Home Office Review into counter-terrorism and security powers the Protection of Freedoms Act 2012 was passed on 1st May 2012 with the effect that from 1st November 2012 all local authority surveillance authorised under RIPA will have to be approved by a Magistrate.

Considerations

5. The role of the Magistrate is to ensure that the correct procedures have been followed and the relevant factors have been taken into account. The new provisions allow the Magistrate, on refusing an approval of an authorisation, to quash that authorisation.
6. Approval will only be given by a Magistrate if he/she is satisfied that:
 - (a) There were reasonable grounds for the authorising officer approving the application to believe that the Directed Surveillance or deployment of a CHIS was necessary and proportionate and that there remain reasonable grounds for believing so.

- (b) The authorising officer was of the correct seniority within the organisation i.e. a Director, Head of Service, Service Manager or equivalent as per the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (“the 2010 Order”).
- (c) The granting of the authorisation was for the prescribed purpose, as set out in the 2010 Order i.e. preventing or detecting crime (and satisfies the Serious Offence Test for Directed Surveillance (see below))
- (d) Any other conditions set out in any order under Part 2 of RIPA are satisfied (none at present).

In addition to the above, where the authorisation is for the deployment of a CHIS, the Magistrate must be satisfied that:

- (e) The provisions of section 29(5) have been complied with. This requires a local authority to ensure that there are officers in place to carry out roles relating to the handling and management of the CHIS as well as the keeping of records (as per the Regulation of Investigatory Powers (Source Records) Regulations 2000).
 - (f) Where the CHIS is under 16 or 18 years of age, the requirements of the Regulation of Investigatory Powers (Juveniles) Order 2000 have been satisfied. This sets out rules about parental consent, meetings, risk assessments and the duration of the authorisation. The authorisation of such persons to act as a CHIS must come from the Chief Executive.
 - (g) Where the application is for the renewal of a CHIS authorisation, a review has been carried out by the local authority and the magistrate has considered the results of the review.
7. The new provisions make it clear that the authorising officer is not required to apply in person and there is no need to give notice to either the subject of the authorisation or their legal representatives (Section 32B(2)). This reflects the covert nature of the exercise of the investigatory powers under RIPA.

Directed Surveillance and the Serious Crime Test

8. The Home Office Review also recommended that where local authorities wish to use RIPA to authorise Directed Surveillance, this should be confined to cases where the offence under investigation carries a custodial sentence of six months or more (the Serious Crime Test). This recommendation was put into effect by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, which also comes into force on 1 November 2012.

Communications Data

Chapter 2 of Part 1 of RIPA allows local authorities, as well as others, to access communications data about an individual from any Communications Service Provider (CSP) (e.g. a telephone or mobile phone service provider). A new section 23A will be added to Chapter 2 of RIPA (by section 37 of the 2012 Act). Once again, an authorisation or notice to obtain communications data from a CSP shall not take effect until a Magistrate has made an order approving it. The magistrate must be satisfied that:

- There were reasonable grounds for the Designated Person (the person authorising the obtaining of the data) within the local authority to believe that obtaining communications data was necessary and proportionate and that there remain reasonable grounds for believing so.
 - The Designated Person was of the correct seniority within the local authority in accordance the Regulation of Investigatory Powers (Communications Data) Order 2010 i.e. Director, Head of Service, Service Manager or equivalent.
 - The granting or renewal of the application was only for the prescribed type of communications data to be acquired for the prescribed purpose as set out in the above Order (i.e. subscriber and service use data (e.g. mobile phone subscriber information and itemized call records) to be acquired only for the purpose of preventing or detecting crime or preventing disorder)
 - Any other conditions set out in an order made by the Secretary of State under Chapter 2 of Part 1 of RIPA are satisfied (none at present).
9. The Draft Communications Data Bill was laid before Parliament on 14 June 2012. This provides an updated framework for ensuring the availability of communications data how public authorities obtain it. It will replace the communications data provisions within the RIPA as amended by the Protection of Freedoms Act.
10. The new RIPA codes of practice and guidance (yet to be published), which will accompany the changes to the local authority surveillance regime, will spell out precisely how the Magistrate approval process will work.

The council's use of RIPA in Quarter 3 2012

11. The information in the table below outlines the authorisations granted by the council during the fourth quarter of the year 2011.

Quarter	Directed surveillance	CHIS	Total	Purpose
July - Sept 2012	1	0	1	To assist in the detection of fly tipping in Earith/Willingham

Implications

12.	Financial	No implications
	Legal	Authorisation of surveillance activity gives that surveillance "lawful authority" for the purposes of the European Convention on Human Rights
	Staffing	No implications
	Risk Management	See comments under "Legal"
	Equality and Diversity	See comments under "Legal"
	Equality Impact Assessment completed	No adverse impact
	Climate Change	No implications

Effect on Strategic Aims

13. None identified.

Conclusions / Summary

14. This report outlines proposed amendments to the Council's RIPA policy months and updates the Committee on the Council's use of RIPA powers in the last quarter. The new procedure will have a profound impact on the work of the council's investigators and auditors. The added scrutiny of authorisation forms by Magistrates increases the importance of staff training and guidance on completing such forms correctly.

Background Papers: the following background papers were used in the preparation of this report:

The Protection of Freedoms Act 2012

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