

HERTFORDSHIRE COUNTY COUNCIL

**CABINET
MONDAY, 9 JULY 2018 AT 2.00PM**

Agenda Item
No.

8

**REGULATION OF INVESTIGATORY POWERS (RIPA): ANNUAL REPORT
AND ADOPTION OF NEW POLICY ON THE USE OF SOCIAL MEDIA IN
INVESTIGATIONS**

Report of the Chief Legal Officer

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Executive Member:- Terry Hone, Community Safety & Waste
Management

1. Purpose of report

- 1.1 To inform Cabinet of the use of RIPA within the County Council over the past year; to highlight any deviations from policy; and to provide details of any internal and external inspections and audits.
- 1.2 To allow Cabinet to consider the Council's policies on (a) Directed Surveillance and Covert Human Intelligence Sources and (b) the Acquisition and Disclosure of Communications Data from communication service providers and proposed amendments to them.
- 1.3 To seek approval to a new policy on the Use of Social Media in Investigations.

2. Summary

- 2.1 This report sets out details of the use of RIPA in the Council during the period 1 April 2017 – 31 March 2018 and is the annual report required by guidance to be made to Members.
- 2.2 In September 2017, the Investigatory Powers Commissioner's Office undertook an inspection of the Council and the Fire & Rescue Service's use of RIPA. The report on the whole was positive. The recommendations made by the Inspector, His Honour Norman Jones QC, are being implemented by officers.
- 2.3 The Council's policies on Directed Surveillance and Covert Human Intelligence Sources and on Acquisition and Disclosure of Communications Data from communication service providers have

been reviewed and updated and Cabinet will be invited to approve the revised policies as set out at Appendices A and B to this Report.

- 2.4 A separate policy on the Use of Social Media in Investigations is attached as Appendix C to the Report. This is a new policy which Cabinet will be requested to approve.

3. Recommendations

- 3.1 The Community Safety and Waste Management Cabinet Panel considered a report on this item of business at its meeting on 21 June 2018. The Panel recommended to Cabinet that Cabinet approves the policies on:

- (a) Directed Surveillance and Covert Human Intelligence Sources (Appendix A);
- (b) Acquisition and Disclosure of Communications Data from communication service providers (Appendix B); and
- (c) Use of Social Media in Investigations (Appendix C).

4. Background

- 4.1 The Regulation of Investigatory Powers Act 2000 (the Act) regulates covert investigations and the acquisition and disclosure of communications data from communication service providers 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.
- 4.2 The County Council has separate policies on covert investigations and the acquisition and disclosure of communications data. These require Members to consider internal reports on the use of RIPA on at least an annual basis, to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose.
- 4.3 Given the increasing use of social media in society guidance is that authorities should have a policy on the use of social media in investigations. A policy has been developed and that is attached at Appendix C. This policy will also be brought to Members annually for review.
- 4.4 Following the coming into force of the relevant provisions of the Investigatory Powers Act 2016, the Investigatory Powers Commissioner's Office was established with effect from 1 September 2017 to oversee the use of investigatory powers by police, law

enforcement, intelligence agencies and local and other public authorities.

5. Use of RIPA for Covert Surveillance

In the year April 2017 to March 2018, Hertfordshire County Council's use of RIPA for surveillance purposes was as follows:

- (a) Directed Surveillance
The number of directed surveillance authorisations granted during the period was two. This was for a test purchasing exercise (of fireworks by underage persons) and covert surveillance (including test purchasing) of pre-configured devices for accessing copyrighted work, such as film and live sport via the internet.
- (b) Covert Human Intelligence Sources (CHIS)
The number of CHIS recruited during the period was 0 (zero); the number who ceased to be used during the period was 0 (zero); and the number of active CHIS at the end of the period was 0 (zero).
- (c) Breach in procedures
The number of breaches identified under each category of authorisation (Directed Surveillance and CHIS) was 0 (zero).

6. Use of RIPA for the Acquisition and Disclosure of Communications Data

6.1 In the year April 2017 to March 2018, Hertfordshire County Council's use of RIPA for obtaining communications data was as follows:

- (a) Applications for communications data: 2

These were in connection with an investigation into the activities of rogue traders.

- (b) Applications rejected: 0

6.2 The use of the National Anti-Fraud Network (NAFN), who process applications from Trading Standards for communications data, means that no inspections of the service in Hertfordshire, requesting communications data, are made. Our applications will form part of any audit made of NAFN.

7. The Benefits of RIPA to Hertfordshire County Council

- 7.1 RIPA authorisations form an essential tool for enforcement and any restriction in the use of RIPA would have a severe adverse impact on the work of Trading Standards. RIPA authorisations are an integral part of the authority's enforcement work, enabling the detection and prevention of crime, providing a cornerstone in building safer and stronger communities.
- 7.2 The other outcomes for the Council following RIPA authorisations in the year April to March 2017 / 2018 are that a prosecution, relating to copyright infringement, has been authorised for two traders, following the directed surveillance thereof and after confirmation of communications data. A separate investigation, involving an application for communications data is continuing.

8. Inspection by the Investigatory Powers Commissioner's Office

- 8.1 An inspection of the Council's use of RIPA in relation to directed surveillance and CHIS work was undertaken on 27 September 2017 by an Assistant Surveillance Commissioner, HH Norman Jones QC. The Assistant Surveillance Commissioner met with the deputy Executive Member for Community Safety and Waste, the Director of Community Protection (as responsible for the Fire & Rescue Service) the Chief Legal Officer (as Senior Responsible Officer for RIPA), the Assistant Director of Community Protection (as Senior Authorising Officer and RIPA Lead Officer) and officers from Trading Standards.
- 8.2 The Assistant Surveillance Commissioner concluded that:
- (a) the Council had highly experienced RIPA senior officers to ensure the Council retained its compliance with the legislation
 - (b) the Council had excellent policy and procedure documents which with some limited amendments should serve officers well in their use of RIPA
 - (c) there needed to be some improvement in the oversight of the system in practice and encouraged recognition of the applicability of RIPA throughout the Council and not just in Trading Standards

He was also encouraged that members were kept informed of the Council's RIPA activity and that Members paid interest in the Council's RIPA activity.

- 8.3 The Assistant Surveillance Commissioner made six recommendations as follows:
- (a) Amend the Central Record of Authorisations to include a column for self authorisation and delete the column for urgent authorisation as this no longer exists. These amendments have been made.
 - (b) Ensure the exercise of robust oversight at each stage of the authorisation process to ensure a good quality of authorisation. Consideration is being given to the appropriate review mechanism for applications and generic applications are to include consideration of individual premises.
 - (c) Adopt the Home Office Review Form
 - (d) Raise RIPA awareness throughout the Council
 - (e) Provide regular refresher training to ensure a high quality both of application and authorisation. Ensure that officers are trained to manage CHIS
 - (f) Amend the Policy and Procedure Documents, in relation to a summary of social media and the duty of care owed to a CHIS in the policies, as well as some minor, technical amendments in the procedures
- 8.4 All recommendations are being addressed, both in the re-draft of this year's policy and procedure documents and the uploading of the social media policy, but also as a part of staff training.
- 8.5 RIPA training continues to be made available accordingly and an e-learning package is in the process of being rolled out throughout the Council.

9. RIPA Policies

Directed Surveillance and Covert Human Intelligence Sources (Appendix A)

- 9.1 This document has been updated to reflect the comments made by the Assistant Surveillance Commissioner. It has also been updated to reflect the following:
- 9.1.1 The Chief Surveillance Commissioner has been replaced by the Investigatory Powers Commissioner's Office.
 - 9.1.2 Guidance for surveillance can now be found on the Investigatory Powers Commissioner's Office website and the <https://www.gov.uk/government/collections/ripa-codes>.

Acquisition and Disclosure of Communications Data from communication services providers (Appendix B)

- 9.2 This document has been updated as follows:
 - 9.2.1 The Interception of Communications Commissioner have both been replaced by the Investigatory Powers Commissioner's Office.
 - 9.2.2 Guidance for communications data can be found at <https://www.gov.uk/government/collections/ripa-codes>
 - 9.2.3 The Designated Persons have changed to the Assistant Chief Legal Officer Environment and Dispute Resolution and the Assistant Chief Legal Officer Adult and Childrens' Law
 - 9.2.3 Section 5 Considerations has been updated to reflect the correct process.

Use of Social Media in Investigations (Appendix C)

- 9.3 This is a new policy which has been developed to support officers who may be using social media in their work. A draft of the proposed policy was shared with the Assistant Surveillance Commissioner when he undertook his inspection in September 2017. The Assistant Surveillance Commissioner expressed the opinion that the document was "excellent" and covered the subject as well as it can at this time.
 - 9.3.1 This has been introduced as social media has become a significant part of many people's lives, with people regularly using and interacting with many different forms of social media. A sizable amount of information about a person's life, from daily routines to specific events, can be obtained by looking at their social media account. Their accessibility on mobile devices can also mean that a person's precise location at a given time may also be recorded.
 - 9.3.2 RIPA authorisation might be required for monitoring of social media accounts. Without the correct authorisation evidence obtained may be inadmissible and could lead to civil action against the Council.

10. Financial Implications

- 10.1 There are no financial implications resulting from this report.

11. Equal Opportunities

- 11.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered the equalities implications of the decision that they are taking.
- 11.2 Rigorous consideration will ensure that proper appreciation of any potential impact of that decision on the County Council's statutory obligations under the Public Sector Equality Duty. As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment (EqIA) produced by officers.
- 11.3 The Equality Act 2010 requires the Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.
- 11.4 No Equalities Impact Assessment (EqIA) was undertaken in relation to this matter as the review and subsequent minor amendment of the Policies did not constitute the need.