

7 September 2022



**Regulation of Investigatory Powers Act
2000 – Annual Review of the Council’s
use of powers**

Report of Helen Lynch, Head of Legal and Democratic Services

Purpose of the Report

1. To inform Members about the Council’s use of its powers under the Regulation of Investigatory Powers Act 2000 (‘RIPA’) during the period of 1 April 2021 to 31 March 2022.
2. To inform Members of any changes to the legislation, policy or other developments in respect of the Council’s use of its powers under RIPA.

Executive Summary

3. The Regulation of Investigatory Powers Act 2000 (RIPA) enables local authorities to carry out certain types of surveillance activity provided that specified procedures are followed.
4. Directed surveillance is covert surveillance that is not intrusive and is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person. Directed surveillance must be authorised in accordance with RIPA unless it is undertaken by way of an immediate response to events or circumstances (for example, an Officer on duty observes an offence being committed) such that it is not reasonably practicable to seek authorisation under the 2000 Act.
5. Local authorities are permitted to conduct Directed Surveillance in respect of criminal offences, which have a minimum sentence of six months imprisonment or related to underage sales of alcohol and tobacco or nicotine inhaling products.
6. A Covert Human Intelligence Source (CHIS) is a person who establishes or maintains a personal or other relationship with another person for the covert purpose of:

- (a) Using such a relationship to obtain information, or to provide access to information to another person, or
 - (b) Disclosing information obtained by the use of such a relationship or as a consequence of such a relationship.
7. The relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose.
 8. The Local Authority is able to rely upon the information obtained from those surveillance activities within court proceedings.
 9. The report sets out an overview of the Council's use of its powers under RIPA for the period of 1 April 2021 to 31 March 2022. including updates on training and a review of the policy.

Recommendation

10. It is recommended that the Corporate Overview and Scrutiny Management Board:
 - a. Receive the annual report on the Council's use of powers under RIPA.

The Council's use of RIPA between 1 April 2021 to 31 March 2022

11. For the period reported, 1 April 2021 to 31 March 2022, there were 2 directed surveillance authorisations and 3 CHIS authorisations.
12. All of the operations are subject to ongoing investigation and therefore it is not possible to provide an update in respect of any consequent enforcement or prosecution activity at this stage. However, a summary of the operations is set out below.

Operation 22 June 2021

13. This authorisation related to the sale of illicit tobacco products at a retail premises in County Durham. It was granted on 22 June 2021 and was cancelled in accordance with the legislation on 10 September 2021. The authorisation was for both directed surveillance and CHIS.
14. Officers from the Trading Standards Team conducted an inspection of the premises in May 2021 . A search found illicit pouches of hand rolling tobacco, which failed to meet legal requirements relating to health warnings and some products failed to be in the plain green standardised packaging.
15. In June 2021, a test purchase operation was undertaken at the premises. The test purchase officer was sold a quantity of tobacco. Upon examination, it was found that the product did not comply with the requirements for standardised packaging or combined health warnings.
16. The offences subject to investigation are under the following legislation:
 - Standardised Packaging of Tobacco Products Regulations and the Tobacco and Related Products Regulations 2015 which carry a maximum sentence of an unlimited fine or up to 2 years' imprisonment,
 - Proceeds of Crime Act 2002 carry maximum sentences of up to 14 years' imprisonment.

Operation 13 December 2021

17. This authorisation was granted 13 December 2021 and was cancelled on 11 January 2022. The authorisation was for CHIS only.
18. Intelligence was received that an internet commercial profile was selling autographed collections which did not appear to be genuine.

19. The collections were advertised in vast quantities with signatures from actors, musicians and sports stars. Certificates of Authenticity were said to be sold with the collections.
20. A covert human intelligence source (CHIS) was authorised to be deployed to instigate a test purchase situation. An attempt was made to purchase an autographed item that was then be examined for authenticity of the signature by an expert in the field.
21. The possible offences relate to:
 - Fraud Act 2006 carrying a maximum sentence of up to 10 years' imprisonment.
 - Consumer Protection from Unfair Trading Regulations 2008 carrying a maximum sentence of up to 2 years' imprisonment and/or an unlimited fine.
 - Proceeds of Crime Act 2002 carrying a maximum sentence of up to 14 years' imprisonment.
22. The operation was cancelled and it was recorded that the deployment of the CHIS was invaluable in the investigation and facilitated test purchases of items believed to be fraudulent, which are being examined for authenticity.

Operation 22 December 2021

23. This authorisation was for both directed surveillance and CHIS which was authorised by the Court on 22 December 2021. The directed surveillance was cancelled on 11 March 2022 and the CHIS cancelled on 23 March 2022.
24. The operation related to the sale of illicit tobacco products at a business premises within County Durham. Intelligence also suggested that tobacco products were being sold to children.
25. A test purchase operation was undertaken at the premises in September 2021. The Officer was sold what are believed to be counterfeit cigarettes. It also believed that the cigarette packet features a registered trademark used without authorisation. The products do not conform with the standardised outer packaging and combined health warnings.
26. Offences under consideration relate to:

- Fraudulent trading under the Companies Act 2006 carries a maximum sentence of an unlimited fine and/or up to 10 years' imprisonment.
 - Trade Marks Act 1994 carry maximum sentences of an unlimited fine and/or up to 10 years' imprisonment.
 - Standardised Packaging of Tobacco Products Regulations 2015 and the Tobacco and Related Products Regulations 2015 carry maximum sentences of an unlimited fine and/or up to 2 years' imprisonment.
 - Proceeds of Crime Act 2002 carry maximum sentences of up to 14 years' imprisonment.
27. Following the evidence gathered as part of the operation, further lines of enquiry are being explored as part of an ongoing investigation.

RIPA Officers Group.

28. The RIPA officer group have continued to meet on a quarterly basis with a defined work programme and schedule including the review of the Corporate Guidance, in house practices and training to officers undertaking this work.

Training

29. The Investigatory Powers Commissioners Office, which oversees the use of covert surveillance by designated public authorities, places a high value on training. Members of the RIPA Officers group received training from an external provider in March 2020. Further training from an external provider. is scheduled to take place in 2022/23.
30. In addition to training delivered externally, the RIPA monitoring officer and Senior Responsible also delivered induction sessions to two authorisation officers.

Annual Statistical Return

31. The Investigatory Powers Commissioners Office (IPCO) annually requests a statistical return for each authority (the return). Each return covers activity for one calendar year: 1 January to 31 December 2021.
32. IPCO is required by law to gather statistical data from all public authorities on their use of Investigatory Powers available to them under the relevant legislation, including:
- Investigatory Powers Act 2016 (IPA);
 - Regulation of Investigatory Powers Act 2000 (RIPA);

- Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA); and
 - Police Act 1996 (PA).
33. IPCO also collects statistics on other areas where IPCO has an oversight responsibility. This and the information gathered in the annual statistical return informs the IPCO annual report and (with some exceptions) is intended to be published in the IPCO annual report. Some data collected as part of the statistical return may also be used to inform an inspection and wider oversight process.
34. The request for the 2021 return was made on 7 December 2021 and was submitted in advance of the 31 January 2022 deadline. The statistics are collated by the Investigatory Powers Commissioners Office (IPCO).

Inspection

35. The last annual report for 2021/22 recorded the outcome of the IPCO inspection, which was undertaken on 16 December 2020. This Inspector interviewed the Senior Responsible Officer and undertook a desktop inspection of the Council's Policies and Procedures and audited a number of directed surveillance and CHIS applications. The Inspector was satisfied that the Council had discharged the recommendations from the inspection in February 2018 and that the Council's RIPA arrangements were robust. Accordingly, no formal recommendations were made.
36. The Inspector did however make the following good practice recommendations: The Council is recommended to:
- 1) Review the safeguarding obligations in the relevant Code of Practice for any powers used by your authority.
 - 2) Ensure that internal safeguard policies for retaining, reviewing and disposing of any relevant data are accurate and up-to-date.
 - 3) Ensure that the authorising officer for your authority has a full understanding of any data pathways used for RIPA or Investigatory Powers Act 2016 (IPA) data.
 - 4) Ensure that all data obtained under IPA and RIPA is clearly labelled and stored on a data pathway with a known retention policy.

- 5) Review the wording of safeguards in any applications to obtain data under IPA and RIPA and ensure that they accurately reflect the retention and disposal processes at your authority
 - 6) Review whether data obtained under previous authorisations is being retained for longer than is necessary and, if appropriate, consider disposing of retained data.
37. The RIPA Officers group has reviewed the Council's retention periods for documentation obtained under RIPA/the IPA and the retention period for all such documentation has been standardised at 6 years. The relevant wording in applications has been updated accordingly. The RIPA Officers are all aware of their obligations to store data appropriately and ensure that records are periodically reviewed in accordance with the Council's retention policies.
38. It is possible that the Council will be inspected again during the course of 2022/23. If so, the Senior Responsible Officer will be able to confirm that the recommendations have been implemented.

Changes in Legislation and National Practice

39. There have been no changes to legislation or national practice during the period reported. The Senior Responsible Officer and RIPA Monitoring Officer continue to monitor any changes in legislation and guidance and where necessary will implement changes in the practice to reflect those changes.

Review of the Councils Corporate Guidance on RIPA

40. The established practice has been to review the Corporate Guidance on RIPA annually. The review for 2021 resulted in only minor amendments to reflect organisational changes within the Council.
41. The Corporate Guidance will continue to be reviewed on an annual basis to reflect changes in practices, policies and legalisation.

Background Papers

None

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Appendix 1: Implications

Legal Implications

The Council's objective is to make lawful and appropriate use of surveillance techniques where required whilst complying with the provisions of the Human Rights Act 1998 and in particular of Article 8 of the ECHR securing respect for an individual's (qualified right) to privacy.

Finance

None.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

None.

Human Rights

Use of investigatory powers potentially engages the Human Rights Act 1998 and in particular the qualified right to private and family life under article 8 of the European Convention. This right may only be interfered with in circumstances where it is necessary and proportionate to do so in pursuit of the public interest. Oversight by the Board of the Council's RIPA operations is designed to facilitate compliance with the Human Rights Act.

Crime and Disorder

The appropriate use of an oversight of RIPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime.

Staffing

With the report it is recognised that there is a need for an education programme for the workforce.

Accommodation

None.

Risk

None.

Procurement

None.