

SAFER AND STRONGER COMMUNITIES SCRUTINY COMMITTEE
12TH November 2012

Regulation of Investigatory Powers Act Update and Revised Policy

Report by the County Solicitor & Head of Law and Governance

Introduction

1. The use of covert investigatory techniques, such as surveillance on an individual or a premises or accessing records of the use of a telephone number, is sometimes necessary for the effective detection or prevention of crime. However, by their nature such actions impinge on human rights, particularly the right to a private and family life.
2. The Regulation of Investigatory Powers Act (RIPA) provides the legislative framework governing the use of covert investigatory techniques by public authorities. Compliance with the requirements of this Act when carrying out such activities ensures that the actions are lawful. In broad terms, the Act requires the activity to be authorised by an appropriate, senior officer. In considering an application to conduct an activity which falls within the scope of the Act the authorising officer must be satisfied that the activity is necessary for one of a limited range of purposes and to be proportionate to what it seeks to achieve.
3. In response to adverse media reports on the use of surveillance by local authorities the Government has amended RIPA to introduce further controls. This paper outlines these new controls and the implications for the Council. The revised RIPA policy is also included for comment.

Exempt Information

4. None

Types of Covert Investigatory Techniques

5. There are three types of covert investigatory techniques.
 - a. Directed surveillance. The covert observation, recording or monitoring of a person, persons or location in a way that is likely to result in the obtaining of private information.
 - b. Use of a covert human intelligence source. Establishing a relationship with someone in order to covertly obtain information from that person.
 - c. Obtaining and disclosing communications data (e.g. the name and address of the user of a telephone number or e-mail address).

6. RIPA does not allow the use of any other covert techniques by local authorities to be authorised. In particular it does not allow the use of 'intrusive' surveillance, namely surveillance carried out in relation to residential premises.
7. To undertake any activity within the scope of RIPA a senior officer must consider and authorise the activity. Before any of these techniques can be authorised the authorising officer must be satisfied that the activity is necessary for the purpose of prevention or detection of crime and that the actual activity is proportionate to what it seeks to achieve (this involves balancing the level of intrusion with the need for the operation or activity taking account of the seriousness of the issue and other means to obtain the information that is sought).

The Protection of Freedoms Act 2012

8. The Protection of Freedoms Act 2012 introduces two new controls on the use of covert investigatory techniques by local authorities.
9. **Approval of Local Authority Authorisations under RIPA by a Justice of the Peace.** From 1st November 2012 local authority authorisations under RIPA for the use of particular covert techniques can only be given effect once an order approving the authorisation or notice has been granted by a Justice of the Peace.
10. **Directed surveillance crime threshold.** A local authority can now only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.

Implications for Oxfordshire County Council

11. All authorisations granted by Oxfordshire County Council under RIPA in recent years would have met the serious crime threshold. Therefore, in practice this new threshold will not limit the normal functions of the authority. If it is considered necessary to carry out an activity which would normally be authorised under RIPA in relation to a crime which does not meet this threshold, then the fact that the action cannot be authorised under RIPA does not prohibit us from carrying out the activity. However, we will be doing so without the protection of the RIPA framework and therefore additional care is required. The revised RIPA policy makes it clear that such activities must still be authorised by one of the senior officers that authorise activities under RIPA and that specific advice must be sought from the County Solicitor.
12. The judicial approval process will require additional steps to be taken before activities can commence. An application will need to be made to the Magistrates Court each time an internal authorisation is granted where the activity falls within the scope of RIPA. The investigating officer in the case will

need to attend the court and provide material to the Magistrates so that they can decide whether to grant an order approving the internal authorisation. It should be noted that judicial approval is not required where the surveillance is required urgently (e.g. when the officer needs to respond immediately to events or where the timescale makes it impractical to seek approval given the limited time between us becoming aware that the activity is required and the time at which the activity must be carried out).

13. Provided the internal authorisation was granted with due consideration of the necessity and proportionality of the activity, then the judicial review process should not limit our activities.
14. We have met with the Magistrates Court Manager and agreed the process to be followed when applying for judicial approval. A briefing note has been provided for Magistrates.

Policy

15. The Council's RIPA policy has been revised to reflect the new requirements. A copy of the revised policy is annexed to this report for the committee's review.

Recommendation

16. The Committee is asked to note the changes to the RIPA regime and their implications and to review and comment on the revised RIPA Policy.

NAME: Peter Clark, County Solicitor & Head of Law and Governance

Background papers: None

Contact Officer: Richard Webb, Acting Head of Trading Standards and Community Safety

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