

HAMPSHIRE COUNTY COUNCIL

Report

Committee/Panel:	Audit Committee
Date:	23 July 2019
Title:	Information Compliance - Use of Regulated Investigatory Powers
Report From:	Director of Culture, Communities and Business Services and Director of Transformation and Governance – Corporate Services

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1. Purpose of this Report

- 1.1. The purpose of this paper is to provide the Audit Committee with information on the instances that the County Council has used its investigatory powers in the last financial year, as required by the Code of Practice issued by the Home Office. It is also to provide assurance that the County Council uses its surveillance powers in a lawful and proportionate way.
- 1.2. This report confirms that there has been 2 uses of surveillance powers and 0 applications for Communications Data in 2018-19.
- 1.3. The level of use of surveillance powers for 2018-19 is very low, continuing the trend seen in recent years.

2. Contextual information

- 2.1. The County Council operates a strict control policy which ensures that only authorised surveillance takes place in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA).
- 2.2. In July 2018 a report was presented to the Committee detailing the County Council's use of surveillance powers in 2017-2018. This report (in addition to any quarterly reports) presents information for the period 2018-2019. The last quarterly report to this Committee was 23 May 2019.
- 2.3. All applications for covert surveillance activity are coordinated through the County Council's Trading Standards Service (Legal and Compliance Team) as per the current County Council's RIPA policy. Only two senior officers

within that service can act as authorising officer for the whole of the County Council. The responsibility for the governance of the Council's use of surveillance powers rests with the Council's Monitoring Officer.

- 2.4. In addition, there is a legal requirement for judicial approval, through a magistrate, of all authorisations under RIPA obtained by local authorities in accordance with the provisions of the Protection of Freedoms Act 2012. Since 1 November 2012 where Hampshire County Council has sought the required judicial approval of surveillance activity, it has been granted.
- 2.5. The County Council's use of surveillance powers is regularly subject to external inspection by the Investigatory Powers Commissioner's Office. This Office was formed in September 2017 as a result of the introduction of the Investigatory Powers Act 2016, and is an amalgamation of three separate commissioners. These were the Office of the Surveillance Commissioner; the Interception of Communication Commissioner's Office, and the Intelligence Services Commissioner. In his regulatory function, the Assistant Surveillance Commissioner reviews the County Council's use of directed surveillance, covert human intelligence source (CHIS), and CCTV systems under the Regulation of Investigatory Powers Act. In his last report in December 2017, the Assistant Surveillance Commissioner indicated his satisfaction with the County Council's application of its covert activities arrangements. He expressed the view that *'the County Council are taking their responsibilities under the legislation seriously, and that standards and approach are commendably high'* and has recommended some minor changes for implementation for the future, which have been accepted, to make the County Council's procedures more robust and stand up to scrutiny.
- 2.6. The Trading Standards Service has adopted the Intelligence Operating Model (IOM) as a means of identifying suspicious activity for further investigation and, thus ensuring resources are used efficiently. The introduction of the IOM has contributed towards the decline in recent surveillance activity as the nature of investigations' identified have not warranted such techniques being used. This is subject to change depending upon the nature of the investigations that are identified through the use of the IOM.
- 2.7. A number of changes to the way that local authorities are permitted to operate the powers within RIPA were made as part of the Protection of Freedoms Act, and those changes came into force on 1 November 2012. These restrict the use of such powers to the investigation of serious crime. This did not affect the County Council's use of these powers as in practice it already restricted its use of surveillance to these areas, for example, the sale of counterfeit goods, and alcohol and cigarettes to children.
- 2.8. Officers of the County Council's Trading Standards Service ensure that surveillance efforts are targeted towards protecting those who are being cheated by businesses that trade fraudulently, or unfairly treated by businesses that act with gross negligence towards their customers; particularly young, vulnerable or elderly customers. Such work is often done in response to complaints from members of the public, and in conjunction with the Police and UK Border Agency.

2.9. It should be noted that the use of surveillance is not the totality of any criminal investigation, but a small part of it, and that criminal investigations may not complete their passage through the criminal court process for many months, if not years after the surveillance activity has ceased.

The principal reasons for the use of surveillance are for prevention and detection of crime and not for criminal proceedings. As such, conviction rates, although excellent, are not the only measure of success (different methods of disposal such as letters of written warning, Simple Cautions and website takedowns are also justifiable indicators of RIPA usage).

In the 10 year period since 2008, surveillance activities have resulted in 46 written warnings, 13 simple cautions and 44 prosecutions, along with the seizure of fake goods valued at over £630,000.

2.10. The approvals for surveillance for the period of April 2018 to March 2019 are shown in Appendix 1.

3. Value for Money

3.1. In the period of April 2018 to March 2019 all RIPA activity has been conducted by the Trading Standards Service which operates the IOM as a means of directing resources towards area of most harm and detriment being identified. The appropriate methodology for dealing with such investigations is individually assessed according to the circumstances and may utilise a variety of enforcement techniques; of which one may be surveillance. Having a range of enforcement techniques available ensures that only those which are necessary and proportionate are used and, accordingly are not used just because they can. Where there is no need to use surveillance, it isn't conducted.

3.2. It should also be borne in mind that surveillance activity of the nature governed by the RIPA framework would ordinarily, although not exclusively, occur in the earlier stages of any investigation. Due to the complex nature of some investigations the end result, in terms of any outcome, may not be seen for many months and usually not in the same financial year.

3.3. Whilst the number of authorisations for RIPA surveillance activity has dropped in recent years, this cannot be used as an indication of likely future use and as such, it is appropriate to ensure that future enforcement capability remains unaffected in order to ensure that the authority remains as efficient and effective as it can be. This is an approach that was supported by the Assistant Surveillance Commissioner in his most recent report, in December 2017.

4. Continued Use of Surveillance Powers

4.1. In order to continue to be able to use its surveillance powers under RIPA, the County Council must have a formal approved Policy on its use. This Policy must be reviewed and approved on an annual basis. The County Council's Policy on Surveillance (2018-2019) was presented and approved by the

Executive Member for Policy and Resources in September 2018. A Policy for use in 2019/20 will be presented to the Executive Member for Policy and Resources in September 2019.

5. Use of Camera Systems

- 5.1. Although not covered under RIPA and subject to different regulations, the use of camera systems is also a form of surveillance. This part of the report provides the assurance that the County Council operates any such systems in a proportionate and lawful way.
- 5.2. The County Council does not operate the large scale high street CCTV monitored systems that may be found in a District or Unitary Authority, however, the Council does own and operate a small number of CCTV, ANPR (vehicle number plate recognition) and other camera systems in a variety of locations and for a number of purposes.
- 5.3. A Surveillance Camera Code of Practice has been introduced under the Protection of Freedoms Act 2012 which applies to the use of surveillance camera systems that operate in public places, regardless of whether or not there is any live viewing, or recording of images or information or associated data. The County Council is required to comply with the provisions of the Code.
- 5.4. The use of camera systems by the Council is subject to compliance with its Policy on the Use of Camera Systems, which was approved by the Council's Risk Management Board. This Policy contains the very latest guidance from the Surveillance Camera Commissioner.
- 5.5. The Policy provides a proportionate and common sense approach to meeting the regulatory standards and reassure the public that surveillance cameras in public places operated by Hampshire County Council are there to protect and look after them – rather than look at them – and are operated in a way which is proportionate, effective in meeting a stated purpose and transparent.
- 5.6. The County Council's use of camera systems is inspected and regulated by the Investigatory Powers Commissioner's Office.

6. Consultation and Equalities

- 6.1. Where a consultation has been undertaken insert an analysis of the consultation responses and refer to further details of the consultation which should be included in a separate appendix.
- 6.2. If equality impacts have been identified in the Equality Statement in integral Appendix B highlight any particular issues, explain any proposed mitigation and consider any other relevant factors that have been taken into consideration in formulating the recommendation. See the Report Writing Guide for more information.

7. Finance

7.1. This report will have no effect upon the budgetary position of Hampshire County Council.

8. Performance

8.1. The recommendation sought ensures that the County Council continues to comply with the statutory Codes of Practice under RIPA.

9. Conclusions

9.1. The County Council recognises that the use of covert surveillance as part of its investigatory activities may cause concern to the public and that it has a responsibility to ensure that its surveillance powers continue to be exercised appropriately and proportionately. It therefore has a robust process for authorisation and monitoring of all surveillance activities and only uses them in relation to the prevention and detection of crime; and where it is lawful, necessary and proportionate to do so.

9.2. Additionally, any activities are reviewed and the Policy on Surveillance is renewed every year, which is approved by the Executive Member for Policy and Resources.

10. Recommendation

10.1. That the Audit Committee notes the contents of this report and that the County Council's surveillance powers continue to be exercised appropriately and proportionately.

10.2. The Audit Committee is also invited to consider the County Council's use of surveillance powers for the previous financial year and to provide the Executive Member for Policy and Resources with assurance that the County Council is operating its powers in a lawful and proportionate manner. Furthermore, the Audit Committee is invited to assure him of the continued use of surveillance powers by the County Council.

CORPORATE OR LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	no
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	no
People in Hampshire enjoy being part of strong, inclusive communities:	no

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

This report requests that the Audit Committee receive and note the data and therefore the recommended action will not impact on groups with protected characteristics in any way.

APPENDIX 1 - Number of Authorisations by Quarter (1 April 2018 – 31 March 2019)

Direct Surveillance

2018-19 Quarter	Purpose of Surveillance			Description of "other"
	C'feit Goods	Under Age Sales	Other	
1	0	0	0	
2	0	0	0	
3	0	0	0	
4	0	0	0	
Total -	0	0	0	

Covert Human Intelligence Source (CHIS)

Quarter	Purpose of Surveillance		
	C'feit Goods	Under Age Sales	Other
1	0	0	0
2	1	0	0
3	1	0	0
4	0	0	0
Total -	2	0	0

Communications Data

Quarter	Number of Applications	Number of Specific Notices	Offences related to:
1	0	0	
2	0	0	
3	0	0	
4	0	0	
Total -	0	0	

Definitions:

Directed Surveillance - An authorisation for Directed Surveillance will relate to an activity and, must be done in connection with an investigation and detection of crime or disorder e.g. the person is not aware surveillance is taking place and can be done using cameras, videos

CHIS - An authorisation is required where a person is required to covertly/secretly form a 'relationship' with the person/business under investigation for the purpose of obtaining information to further a criminal investigation e.g., face to face conversations, emails, telephone calls.

Communications - this is where a request can be made to a telecommunications supplier for subscriber data and service use data (not content) **and** only in relation to the prevention and detection of crime or disorder e.g. who is internet domain registered to, who is the subscriber to a particular telephone number.