

**To:** Governance & Audit Committee – June 2010

**From:** Mike Hill, Cabinet Member Community Services  
Clive Bainbridge, Director of Community Safety & Regulatory Services

**Subject:** Annual RIPA report on ‘surveillance’ and other activities carried out by KCC between Jan – December 2009

**Classification:** Unrestricted

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**Summary** FOR INFORMATION: This report outlines the work undertaken in 2009 by KCC Officers on surveillance and other activities governed by the Regulation of Investigatory Powers Act 2000 (RIPA).

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## 1.0 Background

1.1 The County Council’s Policy and Protocol on Surveillance, including the Acquisition of Communications data, was approved by Cabinet decision taken on 12 January 2009. The document sets out the extent of Kent County Council’s use of RIPA and who can authorise such activity. There remains considerable interest from some media and pressure groups so the County Council wishes to be as open and transparent as possible to assure the public that these powers are used only in a ‘lawful, necessary and proportionate’ manner.

1.2 To achieve maximum transparency and ensure that the County Council maintains public confidence Section 14.3 of the Policy and Protocol on Surveillance requires that:

*‘At the end of each year a report shall be submitted by the Director of Community Safety and Regulatory Services to the appropriate Audit Committee, outlining the work carried out in the preceding year by KCC falling within the remit of RIPA.’*

This is the second Annual report to this Committee.

## 2.0 What this report covers

2.1 There are three types of activity where authority is required to be granted to individual officers to carry out a specialist function within the remit of RIPA. These are as follows:

- Acquisition of Communications Data
- Covert Surveillance
- Covert Human Intelligence Source ( CHIS )

Each of the above is defined in detail within the Policy document but in simplified form can be described as follows:

Acquisition of communications data – obtaining from a communications service provider names, addresses, telephone billing records and traffic data but not the content of any communication

Covert surveillance – intended to be carried out without the person knowing and in such a way that it is likely that private information may be obtained about a person (not necessarily the person under surveillance). Local authorities are only permitted to carry

out certain types of covert surveillance and for example cannot carry out surveillance within or into private homes or vehicles (or similar “bugging” activity).

Covert human intelligence source (CHIS) – the most common form is an officer developing a relationship with an individual without disclosing that it is being done on behalf of the County Council for the purpose of an investigation. In most cases this would be an officer acting as a potential customer and talking to a trader about the goods / services being offered for sale. Alternatively, a theoretical and rare occurrence would be the use of an ‘informant’ working on behalf of an officer of the Council.

- 2.2 In each of the above scenarios an officer is required to obtain authorisation from a named senior officer before undertaking the activity. This decision is logged in detail, with the senior officer considering the lawfulness, necessity and proportionality of the activity proposed and then completing and signing an authorisation document, which is then held on a central file. There is one central file for KCC, held by the Director of Community Safety & Regulatory Services, which is available for inspection by the Office of the Surveillance Commissioners and the Interception of Communications Commissioner’s Office.

### **3.0 RIPA work carried out in the year 2009**

- 3.1 The appendix to this report gives the date, general purpose or reason for which authority was granted under each of the three headings together with the grade of senior manager that granted the authority. It is not possible to give further details as this may breach confidentiality legislation, such as the Enterprise Act, offend the subjudice rules, interfere with the proper investigation of potential offenders, or disclose other operational information which could hinder past, current or future activities, investigatory techniques or investigations.

- 3.2 It can be seen from the information in the appendix that, across the whole of KCC, the only activities covered by RIPA, were carried out within two services, Environmental Crime (Environment, Highways and Waste Directorate) and Trading Standards (Communities Directorate).

- 3.3 Total number of authorisations granted in 2009 (and 2008 for comparison):

Surveillance 104 (2008 = 23)  
(mainly for test purchase under-age sales operations see explanation 5.1)

Acquisition of communications data (Telecoms) 39 (2008 = 38)

Covert human intelligence source (CHIS) 12 (2008 =8)

### **4.0 The Interception of Communications Commissioner’s Office and the Office of Surveillance Commissioner.**

- 4.1 There are two separate national bodies which carry out audits to ascertain standards within those enforcement bodies which carry out covert surveillance and access communications data. These are respectively the Office of the Surveillance Commissioner (OSC) and the Interception of Communications Commissioner’s Office (ICCO). As required by the legislation and Codes, a brief report of usage and of any errors internally detected, has been submitted to the OSC and the ICCO covering this reporting period. There were no errors to report to either regime.

- 4.2 The last audit inspection by the ICCO was on 7<sup>th</sup> September 2009. The Inspector reported that he was satisfied that “Kent County Council is acquiring communications data lawfully and for a correct statutory purpose”.
- 4.3 The last inspection by the OSC was carried out on 12 February 2009, and was reported in the previous Annual Report to this Committee.

## **5.0 Developments in 2009/2010**

- 5.1 There was a significant increase in the number of Surveillance authorisations in 09/10 in relation to the observation of underage test purchase operations, which accounted for the vast majority of the authorisations. Following the audit in 2009 by an Inspector from the Office of Surveillance Commissioners, he gave the opinion that each separate test purchase event should have an individual authority. This advice was later followed up in the Annual Report by the Commissioner.

However, in March 2010 there was a formal clarification issued which redefined the interpretation and in future, where it is the view of the manager and authorising officer that it is not likely to result in the obtaining of “private information” and no relationship will be established, then a RIPA authorisation is not required as the operation is considered to fall outside the scope of RIPA. The figures for surveillance authorisations should therefore be reduced in future.

Although formal authorisations will not be required, senior managers consider that it is good practice to record the reason why there is a need to carry out ‘surveillance’ during test purchase operations involving the use of young people. For this reason a single document will be prepared and signed (similar to a formal authorisation) but covering a number of test purchases during an operation. This should avoid any challenge at a later time.

- 5.2 Government Review 2009 and outcome:

Last year there was public consultation on RIPA by the Home Office following some media and public concern. The Home Office consulted on which UK enforcement authorities should retain RIPA, the ranks of officers able to grant RIPA authority, and the statutory purposes for which techniques could be used. Of the 222 responses received, most were broadly supportive of the then Government’s and Local Authorities view, that public authorities had a continuing need to use these powers when necessary and proportionate to do so.

The Home Office consequently published the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010. They also revised the Codes of Practice for covert surveillance / property interference and the use of Covert Human Intelligence Sources (CHIS) which came into force on 6 April 2010.

All the existing requirements were maintained but several new requirements were introduced. It was considered good practice for a senior responsible officer, who should be a member of the corporate leadership team, to be made responsible for the integrity and oversight of key aspects of the RIPA regime in the Authority. Another point was that Councilors should review the authority’s use of RIPA and set the policy, at least once a year. Councilors should also consider internal reports on use of RIPA on at least a quarterly basis to ensure that it is being used consistently with the council’s policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.

The KCC Policy and Protocols document is being updated to incorporate the amendments and include the reporting procedures and the revised document will go to Cabinet for consideration and approval.

### 5.3 Coalition Government's: latest proposals

*"We will ban the use of powers in the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime" Source: The Coalition, our programme for government*

There are no other details available at this time, although we have been advised that the use of RIPA is of concern to the new Government and we should expect legislative alteration. It is envisaged that the amendments will be available soon which will enable any further updating of the County Council's Policy and Protocol.

### 5.4 Memorandum of Understanding with Kent Police on CHIS

On the 24<sup>th</sup> November 2009 Cabinet Member Mike Hill, on behalf of Kent Trading Standards and Chief Constable Michael Fuller, on behalf of Kent Police, signed a formal Memorandum of Understanding relating to the operation and handling of Covert Human Intelligence Sources. The agreement recognises the need to protect "informants" but does not cover our own staff or those operating under our direct control. The handling of informants requires special care, skills and security issues and Kent Police will take the lead and legal responsibility in these circumstances.

### 5.5 New Head of Paid Services : Confidential material

The Council has not so far ever authorised any directed surveillance where 'confidential material' might be disclosed (for example information relating to confidential and sensitive matters between a doctor / lawyer and their client). However, there is a need to ensure that if, during surveillance, the possibility of this could arise then the authorisation of that surveillance should be carried out by the Head of Paid Services or a deputy. The KCC Policy will be amended to state that the Group Managing Director with Chief Officers deputising will be named as authorising officers in these circumstances. However, in view of the training requirements they will be supported and assisted by one of the existing suitably experienced Authorising Officers before any decision is made to sign an authorisation.

## 6.0 Recommendation

### 6.1 Governance and Audit Committee is asked to:

Note this report and the appendix which detail the manner in which KCC's formal Policy and Protocol on Surveillance (including the Acquisition of Communications data) has been used and followed during the previous year, including the type of criminal offences where surveillance has been used or communications data has been requested

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*Appendix – KCC – Use of RIPA Powers 2009*