

**To:** Governance & Audit Committee – June 2011

**From:** Mike Hill, Cabinet Member for Customer and Communities  
Amanda Honey, Corporate Director Customer and Communities

**Subject:** Annual RIPA report on ‘surveillance’ and other activities carried out by KCC between Jan – December 2010

**Classification:** Unrestricted

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**Summary** This report outlines the work undertaken in 2010 by KCC Officers on surveillance and other activities governed by the Regulation of Investigatory Powers Act 2000 (RIPA).

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## **FOR ASSURANCE**

### **1. Background**

- 1.1. 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 the 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 and in accordance with the Codes of Practice, a report at the end of each year shall be submitted by the senior responsible officer 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 third Annual Report to this Committee.

Some of the roles and responsibilities have altered since the report from 2010. The KCC policy document has to be amended.

### **2. 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 specialise 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. In such cases, due to the potential increased risks, KCC has agreed an MOU with Kent Police.

- 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 on behalf of the Corporate Director of Customer and Communities, which is available for inspection by the Office of the Surveillance Commissioners and the Interception of Communications Commissioner’s Office.

### **3. RIPA work carried out in the year 2010**

- 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 confirmation that an appropriate 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, interfered 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 the only activities covered by RIPA, across the whole of KCC, 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 2010 (and 2009 for comparison):

Surveillance – 37 (2009 = 104)

The reduction in numbers from 2009 is due to advice given on the need for each under-age sales operation (several premises) rather than individual authorisations for each premise.

Acquisition of communications data (telecoms) – 29 (2009 = 39)

Covert human intelligence source (CHIS) – 17 (2009 = 12)

#### **4. 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 error has been submitted covering this reporting period. There were no errors to report to either regime.

#### **5. Developments in 2010**

##### **5.1. Government Review 2010 and outcome**

There was further public consultation on RIPA by the Home Office during 2010.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 and revised Codes of Practice for covert surveillance / property interference and CHIS have been published and came into force on 6 April 2010. The amendments have been included in the Policy document.

Most existing requirements have been maintained, however there are several new suggested improvements. It is 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. Under the new structure, the Corporate Director of Customer and Communities will assume this role.

In the Codes, it is considered good practise that members should review the Authority's use and Policy of RIPA at least once a year. This Committee already fulfils this function. Members should also consider internal reports on the use of RIPA on at least a quarterly basis and this will be introduced in 2011. Members should not, however, be involved in making decisions on specific authorisations.

##### **5.2. Government – 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 still 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 when the amendments are available it will require further updating to the KCC Policy.

##### **5.3. Memorandum of Understanding with Kent Police on Covert Human Intelligence Sources**

In 2009 Cabinet Member M. Hill for Trading Standards and Chief Constable M. Fuller for Kent Police signed a formal Memorandum of Understanding relating to the operation and handling of CHIS. The agreement recognizes

the need to protect the safety and welfare of any “informant” or similar person. The handling of informants requires special care, skills and security issues; Kent Police take the lead and legal responsibility in these circumstances however there has been no use of this arrangement in 2010.

5.4. New Head of Paid Services

Confidential material – although the Council has never authorised any directed surveillance where ‘confidential material’ might be disclosed (for example information as between a doctor or lawyer and their client) there is a need to ensure the 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 deputy. The KCC Policy has been amended to state that the Group Managing Director should carry out such authorisations.

**6. Conclusion**

- 6.1. During the reporting year the applications to use the RIPA powers are all submitted in relation to criminal investigations where there is a clear statutory duty and responsibility.
- 6.2. The applications were all carefully considered and found to be legal, necessary and proportionate.

**7. Recommendation**

- 7.1. Members are asked to:

Note for assurance the use of the powers under RIPA during the period.

Appendix – KCC – Use of RIPA Powers 2010

Further information: Ian Treacher, Assistant Head of Trading Standards