

From: Mike Hill, Cabinet Member for Customer and Communities
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To: Governance & Audit Committee

Date: 26 July 2012

Subject: Annual RIPA report on 'surveillance' and other activities carried out by KCC between January 2011 and March 2012

Classification: Unrestricted

Summary This report outlines the work undertaken in 2011 and the first three months of 2012 by KCC Officers on surveillance and other activities governed by the Regulation of Investigatory Powers Act 2000 (RIPA).

FOR ASSURANCE

1. Background

- 1.1. The document sets out the extent of Kent County Council's use of RIPA and those 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 the County Council maintains public confidence and in accordance with the Codes of Practice, a report at the end of each year is submitted by the Senior Responsible Officer to the appropriate audit committee, outlining the work carried out in the preceding year by KCC which falls within the remit of RIPA.

This is the fourth Annual Report to this committee.

Some of the roles and responsibilities have altered since the report from 2011. The KCC policy document has been amended and the current policy document is attached as Appendix 1.

- 1.3. Previous reports in relation to this matter have reported on a calendar year whereas all other KCC monitoring is done and reported on a business year basis. So that future reports can be aligned with the normal reporting timescales, and to allow the Senior Responsible Officer to carry out the required monitoring, this report covers all activity in 2011 and also the activity in the first three months of 2012. Future reports will be on a business year basis.

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 specific 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 they can be described as follows:-

Acquisition of communications data – this allows investigators to find out who is using a telephone number or e-mail address and, to some extent, who they are communicating with. It does not allow them to see what is being said between users (they cannot “bug” telephones, for instance).

Covert Surveillance – this allows investigators to watch those suspected of committing crime in such a way that the person does not know they are being watched. 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) – this allows an investigator to form a relationship with someone suspected of committing a crime without that person knowing their true identity. 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 understanding with Kent Police.

2.2. In each of the above scenarios an investigator 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 Trading Standards on behalf of the Corporate Director of Customer and Communities, which is available for inspection by the Office of the Surveillance Commissioner and the Interception of Communications Commissioner’s Office.

3. RIPA work carried out during the period 1st January 2011 – 31st March 2012

3.1. The KCC policy requires that a survey of all KCC units is carried out every two years to establish what use of RIPA is made across KCC. This survey was carried out during the reporting period and revealed that only Trading Standards and Environmental Crime make use of RIPA, which represents no change on the previous survey.

3.2. Appendix 2 to this report gives the month and general purpose or reason for which authority was granted under each of the three headings. 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.

3.3. 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).

3.4. Total number of authorisations granted in the reported period (and 2010 for comparison):

Surveillance – 37 (2010 = 37)

Acquisition of communications data (telecoms) – 50 (2010 = 29)

Covert human intelligence source (CHIS) – 8 (2010 = 17)

3.5. Although it is not possible to give full details of each authorisation, it is possible to summarize the benefit of the activity undertaken using RIPA. In the period concerned RIPA activity has led to or produced evidence in relation to:-

- 13 arrests
- 6 warnings/cautions
- Prosecution of 8 criminals
- 11 reports for prosecution currently in the legal system
- 4 penalty notices for disorder
- 6 licence reviews

In addition one authorisation has provided evidence linking the seizure of counterfeit goods at Dover with a major investigation in another part of the UK linked to counterfeit goods and drugs. Several people are in custody awaiting trial.

There are a number of matters still under active investigation.

Each investigation may have a number of RIPA authorisations within it. For example a recent seizure of 15,000 items of counterfeit goods with 5 arrests required 5 surveillance authorisations to locate the storage unit being used.

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 (IoCCO). 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.

4.2. In March 2012 the OSC audited KCC's use of RIPA for surveillance and CHIS activity.

His Honour Dr Colin Kolbert reported that all of the recommendations made in the last audit (2009) had been discharged. He also reported that KCC

makes significant use of RIPA, adopting a progressive approach and that standards are good.

HH Dr Kolbert made two minor recommendations. One related to using the central record as an audit tool internally and one related to training. The first recommendation has been adopted in full and we are in the process of identifying suitable training providers in relation to the second.

- 4.3. During the reported period the IoCCO carried out an inspection of the National Anti-Fraud Network, who, on Home Office advice, co-ordinate our RIPA activity in relation to communications data. No issues in relation to KCC activity were raised.

5. Developments in 2011

5.1. Changes to authorisation process

Government is making slow progress towards their stated policy of requiring local authorities to seek judicial approval for their authorisations under RIPA.

We expect this new system to come into force on 1 November 2012.

As yet there are no details relating to how judicial approval is to be sought other than the fact that it will be via the Magistrates Court.

5.2. 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. Kent Police take the lead and legal responsibility in these circumstances, however there has been no use of this arrangement in the reported period.

5.3. Change to agreed policy

Environmental Crime Officers (ECOs) within the Environment, Highways and Waste Directorate identified a need for them to be able to seek communications data in the course of their criminal investigations. This need arose as the ECOs found instances where piles of fly tipped rubbish contained details of telephone numbers but not addresses. Access to details of the owners of these telephone numbers was, therefore, the only means of investigating these crimes.

Research revealed that ECOs were lawfully allowed the same access to communications data as Trading Standards Officers and were subject to the same safeguarding procedures.

The matter was put to the Corporate Director, Customer and Communities in her capacity as Senior Responsible Officer under RIPA.

The Corporate Director authorised this change to KCC policy subject to its inclusion in this report.

6. Conclusion

- 6.1. During the reporting period, 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:

- a) Note for assurance the use of the powers under RIPA during the period.
- b) Endorse the minor change in policy set out at 5.3 above.

Background Documents:

- Appendix 1 : KCC – RIPA Policy
- Appendix 2 : KCC – Use of RIPA Powers 1 January 2011 – 31 March 2012.

Further information:

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