

To: Governance & Audit Committee

From: Mike Hill, Cabinet Member, Customer & Communities
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Date: 11 April 2013

Subject: RIPA report on surveillance, covert human intelligence source and telecommunications data requests carried out by KCC between 1 April 2012 – 31 March 2013

Classification: Unrestricted

FOR ASSURANCE

Summary This report outlines work undertaken by KCC Officers on surveillance, the use of covert human intelligence source (CHIS) and access to telecommunications data governed by the Regulation of Investigatory Powers Act 2000 (RIPA) during the 2012/13 business year.

1. Background

- 1.1. The document sets out the extent of Kent County Council's use of covert surveillance, covert human intelligence sources and access to telecommunications data. The County Council wishes to be as open and transparent as possible, to keep Members and senior officers informed and to assure the public these powers are used only in a 'lawful, necessary and proportionate' manner.
- 1.2. To achieve transparency and in accordance with the Codes of Practice, an annual report outlining the work carried out is submitted by the Senior Responsible Officer (SRO) to an appropriate Committee. The last report (for the first 6 months of the 2012/13 business year) was submitted and approved by Governance and Audit Committee on 19 December 2012.

2. What this report covers

- 2.1 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).
- 2.2 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.

- 2.3 Access to telecommunications data – Local authorities can have limited access to data held by telecommunications providers. Most commonly this will be the details of the person or business who is the registered subscriber to a telephone number. Local authorities are not able to access the content of communications and so cannot “bug” telephones or read text messages.
- 2.4 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 an authorisation document.

After authorisation has been granted (if it is) the officer seeking to use the powers applies for judicial approval and attends a Magistrates’ Court to secure this.

For surveillance and CHIS the approval document is then held on a central file. There is one central file for KCC, held on behalf of the Corporate Director Customer and Communities, which is available for inspection by the Office of the Surveillance Commissioners. For telecommunications authorisations KCC uses the services of the National Anti Fraud Network to manage applications and keep our records. This was on the advice of the Telecommunications Commissioner.

3. RIPA work carried out between 1 April – 31 March 2013

- 3.1. Total number of authorisations granted (figure for 2011/12) :

Surveillance – 31 (34)

Covert human intelligence source (CHIS) – 11 (8)

Access to telecommunications data – 43 (48)

4. Purposes for which RIPA powers used

Under age sales test purchasing

12 surveillance authorisations relate to test purchasing operations for the sale of age restricted goods to children. Each authorisation is based upon the intelligence received about premises where these sales are suspected. Intelligence sources vary but include Kent Police, Community Wardens, School staff, concerned parents and members of the public.

An authorisation would not be required if we asked a young person to enter a shop unaccompanied and attempt to make a purchase but, as soon as we send an officer to observe what happens, an authorisation becomes necessary. Our view is that it is important for both the safety of the young person and the security of any evidence gained for an officer to be present.

Before any test is carried out each shop receives detailed guidance from Trading Standards Officers on how to avoid making unlawful sales.

Fly tipping

2 surveillance and 13 telecommunications data requests relate to fly tipping enforcement.

The surveillance applications relate to the placing of remote camera equipment in fly tipping hot spots. Neither operation resulted in any evidence of fly tipping being uncovered.

4 telecommunications data requests relate to the same investigation which has now resulted in the conviction of RB who was ordered to pay fines and costs totalling £2500.

Of the remaining authorisations, 1 was cancelled by the authorising manager as a result of less intrusive means producing the required information and 8 did not lead to the securing of useful evidence.

Sale of counterfeit goods

14 surveillance, 9 CHIS and 8 telecommunications data requests have been authorised for the purpose of investigating the sale of counterfeit goods.

12 of these authorisations relate to 3 investigations all of which are currently before the courts awaiting pleas or trial. In each of these cases arrests have been made and counterfeit goods totalling over 13000 items have been seized. A further 10 relate to other ongoing investigations including 1 relating to the sale of counterfeit car maintenance software. 4 have been concluded by issuing formal warnings whilst 5 did not produce any evidence of value.

Doorstep frauds

16 telecommunications data requests were authorised to investigate doorstep frauds, mainly in the area of property repairs including roofing work, tree surgery and driveway work.

One of these cases has been concluded with a prosecution where JH was convicted, given a 12 month conditional discharge and ordered to pay costs and compensation totalling £2574.

4 authorisations are the subject of continuing investigations.

3 further authorisations identified potential suspects but other evidential insufficiencies, mainly linked to the vulnerability of the victims, meant that a prosecution was unlikely to succeed.

In 1 case whilst the authorisation did not produce any useable evidence, officers intervened and prevented 3 potential victims from being subjected to the fraud saving them at least £10000.

1 matter, relating to a will writing service, was resolved by providing advice to the business which enabled them to trade lawfully and prevented any further victims of their false claims. This would not have been possible without the identity evidence secured through this authorisation.

6 authorisations did not produce any useable evidence.

Miscellaneous

Other matters for which RIPA authorisations have been used are:-

A burglar alarm business making claims about the alarms they supplied which may have the impact of leaving homeowners uninsured as the alarms do not meet insurance company standards. This matter is currently before the courts.

The sale of cars with reduced mileage readings. This matter was concluded with a formal warning.

False claims of membership of the Federation of Master Builders. Ongoing investigation.

So called "charity bag fraud" where false claims about the charitable purpose of donations of second hand clothing are made. Ongoing investigation.

False claims made in selling horses. CJ was prosecuted for 12 offences and received 12 x 12 month conditional discharges.

5. Protection of Freedoms Act 2012

- 4.1 On 1 November 2012 the Protection of Freedoms Act came into force meaning that a new system of judicial approval for local authority use of RIPA came into force. This involves seeking an order from a Magistrate each time an authorisation is granted.
- 4.2 Since this requirement came into force, 12 applications have been made and all have been approved by the Court.

5. Recommendations

Members are asked to note for assurance the use of the powers under RIPA during the period.

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