

To: Governance & Audit Committee

From: Bryan Sweetland, Cabinet Member, Commercial & Traded Services
Mike Austerberry, Corporate Director, Growth, Environment & Transport

Date: 30 April 2014

Subject: RIPA report on surveillance, covert human intelligence source and telecommunications data requests carried out by KCC between 1 April 2013 – 31 March 2014

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 2013/14 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 a memorandum of understanding 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, 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

Total number of authorisations granted (figure for 2012/13):

Surveillance – 5 (31)

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

Access to telecommunications data – 13 (43)

4. Purposes for which RIPA powers used

Under age sales test purchasing

During this year the Trading Standards Service has fundamentally changed the way in which we seek to restrict the sales of age dependant goods to children. We have developed and promoted the Kent Community Alcohol Partnership to involve communities in preventing access to these goods to children and have used the KCAP principles in relation to goods other than alcohol. Part of this work has involved a significant investment of resources in supporting local businesses to police themselves, which gives them the confidence to develop and grow whilst also reducing enforcement costs. Enforcement action is reserved only for those who do wish to take advantage of the support on offer.

As a result of this change there has been a significant reduction in the number of authorisations for surveillance relating to under age sales. Last year's figure of 12 has been reduced to 3. 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.

Fly tipping

2 telecommunications data requests relate to fly tipping enforcement.

Of these one provided sufficient information to investigate the case which resulted in a formal written warning and the other did not reveal any evidence to support further investigation.

Dangerous storage and illegal sale of fireworks

3 CHIS and 1 telecommunications data request have been authorised for the purpose of investigating the dangerous storage and unlawful sale of fireworks.

Raids carried out as a direct result of the intelligence gathered from these authorisations led to the discovery of two unsafe and illegal fireworks stores. One of these was in a self-storage business without the knowledge of the business owner. This store contained fireworks with a quantity of 50Kg of gunpowder. Expert opinion received stated that there were no safety precautions in place to prevent unintended ignition and that such ignition would have been like a bomb going off, which would have been likely to destroy the building with the linked risks to the safety of the staff and other occupants.

The fireworks in both cases were being sold using a social media website and were being sold outside of the legally permitted period. This period is in place to reduce the impact to communities of fireworks being let off other than at recognised festivals.

These cases are currently before the courts.

Sale of counterfeit goods

5 CHIS, 2 surveillance and 5 telecommunications data authorisations were for the purpose of detecting the criminal activity in selling counterfeit goods. This is serious criminal activity which impacts on the local and national economy.

All of the cases which these authorisations relate to are either still being investigated or are with KCC legal services pending a decision on whether or not to prosecute. It is not possible, at this stage, to provide further details.

Doorstep frauds

2 telecommunications data requests were authorised to investigate one doorstep fraud.

This fraud is targeted at vulnerable home owners in East Kent and revolves around gardening work. The case is an active investigation which has, so far, identified over £30,000 worth of fraud.

Miscellaneous

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

- An investigation into allegations of fraud carried out by a property letting agent.
- False claims of trade association membership. Using the information gained it was discovered that the business was completely fraudulent and the case was passed over to the Companies House Investigations Team.
- A professional car dealer masquerading as a private individual.

5. Results from previous authorisations

A number of cases for which RIPA techniques were deployed have now completed their progress through the courts. Highlights include:-

- A cold calling rogue trader who targeted homeowners living in mobile homes was convicted of offences in Kent and across the country and was sentenced to 6½ years imprisonment. The evidence in this case included that secured from 3 RIPA authorisations.
- Three men selling counterfeit goods were sentenced to 15 months' imprisonment, 12 months' imprisonment and 4 months' imprisonment suspended but with 120 hours unpaid work. The evidence in this case included that secured from 4 RIPA authorisations.
- A seller of counterfeit goods was sentenced to a 12 month community supervision order with 200 hours unpaid work.

6. Judicial oversight

The period covered by this report is the first full year during which authorisations granted within local authorities have required judicial approval via the Magistrates' Courts. All applications need to be approved at court before they can be acted upon.

During the course of this year two applications have not been approved by the court.

One of these was re-presented to the court and approved without alteration when the court recognised that they had misdirected themselves in relation to the question of whether the sale of cigarettes to children was “serious crime” within the definition under the Protection of Freedoms Act.

The other authorisation was rejected when the court suggested that an alternative form of surveillance would be more appropriate. Our view was that this suggested form was more intrusive and could not be justified.

7. Error reporting

In relation to telecommunications data authorisations, it is a requirement that we notify the Commissioner if an error is made at any stage of the process. This year we were notified by Vodafone that they had made an error in relation to one of our requests and had provided the wrong information. The Commissioner was notified by us. The error was entirely due to Vodafone and not to any action by KCC staff or the staff at NAFN. The error was that we were told a number did not have a subscriber when it, in fact, did. This means that no intrusion was created as a result of the error.

8. KCC RIPA Policy

The statutory codes of practice which cover public authority use of RIPA techniques require that the elected members of a local authority should review the authority’s use of RIPA and set policy at least once per year.

Appendix 1 to this report is KCC’s RIPA policy which has been approved by the Cabinet Member for Commercial and Trading Services, within whose portfolio the Trading Standards Service rests.

8. Recommendations

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

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