

**To:** Governance & Audit Committee – 30 June 2009

**From:** Richard Long, Chairman of Governance & Audit Committee  
Clive Bainbridge, Director of Community Safety & Regulatory Services

**Subject:** Annual report on ‘surveillance’ activities carried out by KCC between Jan – December 2008

**Classification:** Unrestricted

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**Summary** This report outlines the work undertaken in 2008 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 Cabinet decision number xxxxxxx, taken on 12 January 2009, approved the County Council’s Policy and Protocol on Surveillance, including the Acquisition of Communications data. The document sets out the extent of KCC’s powers in relation to surveillance and details the circumstances in which those powers can be used. This is a sensitive area, with considerable public interest and 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.’*

## 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 will 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.

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 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.

### **3.0 RIPA work carried out in the year 2008/09**

- 3.1 The appendix to this report gives the 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.
- 3.2 It can be seen from the information in the appendix that the only activities covered by RIPA, across the whole of KCC, are carried out within two services, Environmental Crime / fly tipping (Environment, Highways and Waste Directorate) and Trading Standards (Communities Directorate). Constant vigilance is required to ensure that officers do not unknowingly engage in activities which might cross into RIPA territory. Periodically we have conducted an audit of all senior managers who are required to provide a positive documented response confirming the position, within their service / unit. This is an important check and the Inspector commended our approach.
- 3.3 The report covers the year 2008 as all of the many Freedom of Information requests about this subject have asked for a return by calendar, rather than financial year. However, the report to this Committee could be changed to any other reasonable period if requested.

### **4.0 The Interception of Communications Commissioner’s Office**

- 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).
- 4.2 The last inspection by the ICCO was 5 March 2007 which was concluded with a letter from the Chief Inspector at the ICCO stating “.in view of the limited use which the Council is making of its powers to acquire communications data and in the light of the fact that it is now able to achieve a good level of compliance with the legislation it would not be our intention to carry out another inspection for at least 18 months.” The reference to limited use refers to the fact that we are principally only using the powers to obtain details of the

subscriber to a telephone number. In view of the above letter I have not provided any further detail but when the next audit is carried out the results will be brought to this Committee.

## **5.0 Office of Surveillance Commissioner**

- 5.1 The last inspection by the OSC was carried out on 12 February 2009, the report was received on 3 March and the Council responded in full on 28 May. The report has RESTRICTED status and although it is not, therefore, a document which can be publicly reproduced I have provided commentary (see para 6. below) on the Council's response to the report's recommendations.
- 5.2 To explain the rationale behind the OSC reports not being made public I have provided a direct quote, by Sir Christopher Rose, Chief Surveillance Commissioner, as a foreword to his annual report to Parliament.

*During this reporting period there has been a significant increase in the number of Freedom of Information requests from the media. It is not usually an area on which I comment but I report my concern. I never disclose the contents of my reports to anyone other than the relevant Chief Constable or Chief Executive. But requests to the recipients of my reports have been aimed at acquiring my reports, my correspondence to and from chief officers and the action plans related to the recommendations that I make. Responses by public authorities have been inconsistent and there is the perception that a decision by one authority to respond positively may lead the requestor to view negatively those which do not disclose the information requested.*

*When asked for guidance I have responded that it is in the public interest to demonstrate that covert surveillance conducted on behalf of the State is properly regulated. This Annual Report is designed to provide that assurance. Seeking assurance of regulation is one thing, but attempting to acquire, under the auspices of freedom of information, operational details or knowledge of covert techniques is another. Redaction of these details from my reports could be misconstrued as secrecy or might adversely affect context and meaning.*

*I favour the advice provided by the Information Commissioner (Guidance Note 25). I regard myself as a 'qualified person' as defined by Section 36 of the Freedom of Information Act and it is my 'reasonable opinion' that for public authorities to disclose the contents of my reports would prejudice the effective conduct of public affairs. The risk of disclosure might tempt some individuals to withhold the full details of covert activities from me or my representatives; it might inhibit my ability to provide the evidence that is necessary to support my recommendations and it might inhibit the free and frank exchange of views and provision of advice that is currently the hallmark of the relationship which my Office enjoys with public authorities.*

## **6.0 Council's response to the report**

- 6.1 To date we have not received any comments about the response but as the Council essentially accepted and have addressed all of the recommendations, I am expecting a positive reply.
- 6.2 Although the audit found six areas for improvement, as outlined below, the Director of Law and Governance and the Director of Community Safety and Regulatory Services,

(the Senior Officers who met with the Inspector during the audit) are satisfied that the Council's policies and procedures were fundamentally robust and protected both the Council and the public.

- 6.1 Policy documents - the Inspector advised that the Council's single Policy and Protocol document should be divided into three separate areas covering Directed Surveillance, Covert Human Intelligence Sources and Communications data. The current single document is now in the process of being split into three discrete documents which will increase the volume of paperwork but should provide greater clarity. An example of this is the section dealing with CCTV which is not normally within the scope of RIPA but could fall within scope if there is an intention to use the CCTV for enforcement purposes as part of a specific operation or investigation. Amendments to the policy will draw the attention of staff who control CCTV to their responsibilities and the need to ensure that any such authorisations have been correctly approved.
- 6.2 Confidential material - although the Council has never 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) 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 at the highest level by the Chief Executive or his deputy. The policy will therefore be amended to state that Chief Executive and the Chief Officers who deputise for him will each 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.
- 6.3 Covert Human Intelligence Sources (CHIS) - the Council has agreed to produce a documented risk assessment scheme for all CHIS authorisations. These are mainly test purchasing scenarios (as described in 2.1 above) and normally only involve use of the Council's own officers.
- 6.4 Central records - all records of authorisations for the whole of the authority are kept centrally, as required, under the control of the Director of Community Safety & Regulatory Services. The records for RIPA purposes are currently kept in the same system along with other records of instances where human rights could potentially be subject to interference, such as forfeiture, seizures, prohibitions under a variety of legislation. Following the Inspectors recommendation these records will be separated. In addition the central record of authorisations will consist of a single sequential database with numbers issued on request and the basic detail logged at the time of the request. This will mean that the central database operates in real time as a record of authorisations issued or to be issued.
- 6.5 Training - the Inspector felt that further training for authorising officers and officers who apply for authorisations would be helpful. This training was already planned and has largely now been completed although RIPA awareness training for Directorate senior managers has still to be delivered.
- 6.6 Quality of authorisations – the inspector felt that some authorisations should include more information and it should be apparent from reading each authorisation that the authorising officer had given it individual thought and consideration. The quality of authorisations has been reviewed and officers are now providing more complete declarations.

## **7.0 Recommendation**

7.1 Governance and Audit Committee is asked to:

- (a) note this report and approve 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
- (b) note and approve the use of a periodic audit across KCC senior managers to ascertain activities which may fall within the ambit of RIPA

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*Appendix – KCC – Use of RIPA Powers*