



Meeting: Audit Committee

Date: 27 July 2016

Wards Affected: All

Report Title: Regulation of Investigatory Powers Act 2000

Is the decision a key decision? No

When does the decision need to be implemented? N/A

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1. Background

- 1.1 As a Local Authority, Torbay Council may wish to undertake an investigation under the Regulation of Investigatory Powers Act (RIPA) 2000.
- 1.2 RIPA 2000 regulates the use and method of surveillance which is carried out by public authorities. A Council is a public authority under RIPA 2000. A public authority may carry out covert surveillance where this surveillance is directed and not intrusive.
- 1.3 This report is to update members on any current RIPA authorisations and to bring forward the action from the meeting of 29th July 2015 where Members requested evidence of the authorisations used by the Council in relation to communications data and the use of National Anti Fraud Network (NAFN) as single point of contact.
- 1.4 Torbay Council has not currently undertaken any main RIPA authorisation since 2008 it is however necessary to ensure that all Members and staff are kept aware of the requirements of RIPA should the need arise.

2. Introduction

- 2.1 The Audit Committee are presented with information below regarding use of RIPA for investigations.
- 2.2 One of the roles of the Council in terms of its obligations towards RIPA takes into account the use of Communications data.

3. Communications Data

- 3.1 The Protection of Freedoms Act 2012 and RIPA (Directed Surveillance and Covert Human Intelligence Sources)(Amendment) Order 2012 came into effect on 1 November 2012. The Act and regulations made a number of changes to the Council's powers to undertake surveillance using RIPA.
- 3.2 From 1 November 2012 the council has not been able to use RIPA to investigate matters relating to anti social behaviour and can only carry out covert directed surveillance if the criminal offence under investigation is punishable by at least 6 months imprisonment, or where an offence is thought to have been committed under Sections 146, 147 or 147A of the Licensing Act 2003 for under age sales of alcohol, and the offence of underage sales of tobacco.
- 3.3 In addition the use of directed surveillance and/or the acquisition of communications data using RIPA now needs to be authorised by a Justice of the Peace before it can take effect.
- 3.4 All officers who use RIPA were made aware of these changes and the council's policy on the use of RIPA was amended accordingly. The Council does need the authorised post holder to apply to the Magistrates Court for approvals to use directed surveillance and communications data under section 223 of the Local Government Act 1972 as these are court proceedings.
- 3.5 RIPA allows the council to acquire communications data where it is to investigate any of the matters referred to in paragraph 3.2 above. To date the council has made use of it on a number of occasions. The Council needs to have a dedicated Single Point of Contact (SPOC). The Council subscribes to the National Anti Fraud Network (NAFN) and they provide a legally compliant RIPA telecommunications service. All NAFN intelligence officers are accredited SPOCs under RIPA. They ensure requests are legally compliant and conform to codes of practice, the council makes use of this service rather than training its own officers to be a SPOC. The council still needs to have its own designated person for communications data and this is Anne-Marie Bond, Assistant Director Corporate and Business Services. Caroline Taylor, Director of Adult Services is the Senior Reporting Officer.
- 3.6 The Council is also externally audited by the Office of the Interception of Communications Commissioner (OICC). An inspection was undertaken by the inspector of the OICC in June 2013 of NAFN and the report was entirely satisfactory.
- 3.7 The table below shows the use of NAFN as SPOC for investigations since the year 2013/14. In 2015/16 three applications were made to acquire data under RIPA.

| Financial Year | RIPA led to a successful prosecution, caution, or fixed penalty notice | Department | Purpose |
|----------------|--|------------------|---|
| 2013-14 | Investigation legal file written. | Community Safety | The prevention and detection of crime or preventing disorder S21 (4)(c). Using NAFN, communication data is sought due to potential offences under Section 2 Fraud Act 2006 (fraud by false representation) |
| 2014-15 | No | Community Safety | The prevention and detection of crime or preventing disorder S22 (2)(b). Using NAFN, communication data is sought due to potential offences under the Road Traffic Act 1988 for the sale of an unroadworthy car. |
| 2015-16 | No – alleged offender currently in prison | Community Safety | The prevention and detection of crime or preventing disorder S22 (2)(b). Using NAFN, communication data is sought due to potential offences under the Environment Protection Act 1990 for a "fly tipping" incident. |
| 2015-16 | No – warning Issued | Community Safety | The prevention and detection of crime or preventing disorder S22 (2)(b). Using NAFN, communication data is sought due to potential offences under the Trade Marks Act 1994 for the supply of counterfeit goods. |
| 2015-16 | No | Community Safety | The prevention and detection of crime or preventing disorder S22 (2)(b). Using NAFN, communication data is sought due to potential offences under the Environment Protection Act 1990 for a "fly tipping incident". |