



Meeting: Audit Committee

Date: 29 July 2015

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? Immediately

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1. Purpose and Introduction

- 1.1 Torbay Council in its role as a Local Authority 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 reminds Members of the amendments to the guidance on the use of RIPA and the 2014 inspection recommendations.
- 1.4 Torbay Council has not currently undertaken a 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. Proposed Decision

- 2.1 That the Audit Committee receives quarterly reports from the RIPA Co-ordinator on the use of RIPA within the Council.
- 2.2 That the proposed actions to be taken by the RIPA Co-ordinator in response to the Office of the Surveillance Commissioner's inspection of the Council's RIPA procedures and their recommendations set out in paragraph 4.15 of the submitted report be noted.

3. Reason for Decision

- 3.1 The reason for this decision is to ensure that compliance with the Act is achieved and to show best practice for Members to have involvement in the overall approach to RIPA and monitor the Authorities surveillance processes cultures and controls.

The Home Office's recently issued guidance reaffirms the recommendation that, to attain best practice:

"...elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on use of the 2000 Act on a regular basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose."

Supporting Information

4. Position

- 4.1 The Regulation of Investigatory Powers Act 2000 ("RIPA"), SI 2003/3171, and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010/521) as amended by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, SI 2012/1500 (the 2012 order), regulate the way investigations are carried out for the prevention and detection of crime.
- 4.2 Controls on covert surveillance were introduced as a consequence of the Human Rights Act 1998, which enshrined the European Convention on Human Rights into UK law and came into effect on 2 October 2000. RIPA aims to ensure that public bodies respect the privacy of members of the public when carrying out their investigations and that there is an interference with privacy only where the law permits it and there is a clear public interest justification.
- 4.3 The main aim of RIPA is to ensure that covert investigations are conducted in such a way as to protect individuals' rights and act as a safeguard to protect Council officers and the Council against any legal challenge.
- 4.4 Directed surveillance and Covert Human Intelligence Sources (the meaning of both of which are set out in RIPA and explained in the Council's Policy and Procedure document) shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Act) namely: for the purpose of preventing or detecting crime or the prevention of disorder. Examples of its use by the Council would be for the detection of crimes such as housing benefit fraud, fly-tipping and offences under the Trades' Description Act.
- 4.5 Further, the powers must be used in accordance with the Human Rights Act 1998 and, in particular Article 8 - (the right to respect for private and family life, home and correspondence). Authorisation under RIPA will only ensure that there is a justifiable interference with an individual's Article 8 right if it is necessary and proportionate for these activities to take place.
- 4.6 In complying with RIPA, officers must have full regard to the Code of Practice on the use of covert surveillance issued by the Home Office. Although the Codes of practice

do not extend the Council's legal obligations under RIPA 2000 the codes are nevertheless admissible as evidence in both criminal and civil proceedings. The Council's own policy and procedure is available on the Council's intranet. [Torbay Council RIPA Policy & Guidance Manual](#)

- 4.7 RIPA and the Code of Practice also set out the requirements for using covert surveillance in relation to confidential information, juvenile sources, vulnerable individuals, home surveillance and collateral intrusion (interference with the privacy of persons other than the subject(s) of surveillance).
- 4.8 All applications for RIPA authorisations have to be considered and approved by specified trained authorising officers within the Council. Applications for directed surveillance will be authorised for the Council at Executive Head level or above. The Council has adopted a RIPA Policy and Procedure and produced a range of forms which are available to all officers on the intranet. Training has been undertaken for Elected Members, but due to elections, retraining of new Members is required. There will also be various training sessions for staff including a practical session so authorising officers can keep their skills up to date as we have not had an authorisation since 2008, this was a recommendation of the OSC inspection.
- 4.9 When investigating criminal offences, the Council also has powers (by virtue of the RIPA (Communications Data) Order 2004 ("the Communications Order") to gain access to communications data – that is information held by telecommunication or postal service providers about the use of their services by persons who are the subject of criminal investigations. The Council is using the National Anti Fraud Network (NAFN) to make all its applications for access to communications data.
- 4.10 The Council's use of its powers under RIPA and the Communications Order are subject to external scrutiny in the form of annual inspections by the Office of Surveillance Commissioner's Office (OSC) and the Interception of Communications Commissioner's Office (IOCCO) respectively.
- 4.11 The Audit Committee will receive quarterly reports from the RIPA Co-ordinator on the Council's use of RIPA.
- 4.12 Section 23A was added to Chapter 2 of RIPA (by section 37 of the Protection of Freedoms Act 2012). An authorisation or notice to obtain communications data shall not take effect until a Magistrate has made an order approving it. The magistrate must be satisfied that:
 - i) There were reasonable grounds for the Designated Person (the person authorising the obtaining of the data) within the local authority to believe that obtaining communications data was necessary and proportionate and that there remain reasonable grounds for believing so.
 - ii) The Designated Person was of the correct seniority within the local authority in accordance the Regulation of Investigatory Powers (Communications Data) Order 2010 (SI 2010/480) i.e. Director, Head of Service, Service Manager or equivalent.
 - iii) The granting or renewal of the application was only for the prescribed type of communications data to be acquired for the prescribed purpose as set out in the above Order (i.e. subscriber and service use data (e.g.

mobile phone subscriber information and itemized call records) to be acquired only for the purpose of preventing or detecting crime or preventing disorder).

- 4.13 Under S38 of the Protection of Freedoms Act 2012 an authorisation for directed surveillance and covert human intelligence sources made by a local authority, will not come into effect until it has been approved by a magistrate. The magistrate will be required to consider whether it was, and continues to be, reasonable for the local authority to believe that the use of the covert technique in question is necessary and proportionate. A magistrate is able to exercise his or her own discretion and judgement when deciding whether to approve the authorisation. The internal authorisation process remains unaffected.
- 4.14 Pursuant to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, SI 2012/1500 (the 2012 order), a serious crime threshold (offences which attract a maximum custodial sentence of 6 months or more or relate to underage sales of alcohol and tobacco) will need to be applied to any Directed Surveillance application. Any criminal activity being investigated that falls below this threshold cannot be authorised under RIPA procedures. This is designed to limit the scope of RIPA powers so that it is not used for more trivial offences.
- 4.15 During the monitoring period covered by this report there were no fresh applications for either Directed Surveillance of Covert Human Intelligence Sources and therefore no Judicial approvals were necessary for these activities.
- 4.16 On 3rd June 2014 the Office of Surveillance Commissioners undertook an inspection of the Councils RIPA processes and procedures. The OSC forwarded a report of their findings from the inspection which was received shortly after the inspection. They have determined that the Council uses its powers under RIPA 2000 in a measured and proportionate manner. Furthermore they have identified some areas where the Council could tighten up its procedures and have made 2 recommendations (see below) which the Council has accepted and have undertaken to implement. Members will be kept updated on progress. The Member training was identified as an area of Good Practice and new Members will shortly receive this training.

OSCs Recommendations:

- 1) RIPA training should continue to be formally delivered to Council staff who are likely to engage the legislation to ensure it can be applied to an appropriate standard. This should be considered as ongoing professional development.
- 2) The policy/guidance document should be further amended (mainly to reflect change in format of the document).

Both these recommendations have been accepted and form part of an action plan to be achieved by the end of 2015

5. Possibilities and Options

- 5.1 As this is specified in an Act we cannot amend or change the requirements, therefore the options above are the only one the Council can undertake

6. Fair Decision Making

- 6.1 Not required for this statutory duty.
- 6.2 Scrutiny by Members of the Council's use of its powers under RIPA assists in ensuring that the Council does not misuse its powers resulting in injustice to any individual.

7. Public Services (Social Value) Act 2012

- 7.1 It is not considered that this is relevant as there is no need to procure any type of services and consultation is not required as this is a statutory instrument and we are obliged to carry out what is specified.

8. Risks

- 8.1 The key risks to the Council are that without clear and robust policies and procedures in place, there would be a risk that officers/Members would fail to comply with any relevant legislation and associated codes of practice. Consequently, complaints may be made against the Council by aggrieved persons, which may proceed to investigation by the independent tribunals set up by the Office of the Surveillance Commissioner. The tribunals have powers to cancel authorisations, order the destruction of any records obtained in the exercise of his powers conferred by RIPA and award any compensation that they see fit.