

Application of Regulation of Investigatory Powers Act 2000 (RIPA)

Summary

- 1 This report proposes a response to a letter from the Chairman of the Local Government Association following media comment on councils' application of the Regulation of Investigatory Powers Act 2000 (RIPA).

Background

- 2 Between April and June 2008 there was a series of press reports about councils carrying out surveillance of individuals, carrying the implication that this was an excessive use of state power and an unreasonable intrusion into privacy. Reports were not well-informed and even the BBC referred to RIPA as an "anti-terror law". Several information requests were made to the council about its use of surveillance, access to communications data, and application of RIPA.
- 3 The Chairman of the Local Government Association, Sir Simon Milton, wrote to all councils on 20 June asking that the council satisfy itself "that the use of these powers is only being authorised....at the appropriate senior political... level". The letter goes on to suggest a reconsideration of what is, and is not, a reasonable application of RIPA and invites a reply. The full text is at annex A. He remarked that public confidence in councils' proper use of their powers is at risk.
- 4 All City of York authorisations in the last three years have concerned benefits fraud or trading standards offences, except for one child protection case. There have been no local complaints of abuse of power.
- 5 This report seeks to assure York citizens that the council achieves a proper balance between maintenance of personal privacy, and the protection of public funds and of the rights of others. The annual report to Corporate Services EMAP summarises RIPA authorisations and thus provides oversight of the procedure.

Consultation

- 6 The options have been circulated among RIPA authorising officers for comment. These dozen or so officers have delegated power to authorise surveillance, conditionally on having had suitable specialist training. All have done so, many of them twice. Two are assistant directors, and the remainder report to ADs and thus have appropriate seniority for this task. All supported option 3.

Options

- 7 Option 1 is to devise a set of non-trivial matters, against which surveillance may be authorised by qualified officers.
- 8 Option 2a is to devise a set of trivial matters, against which surveillance may **not** be authorised. Option 2b is to permit surveillance of them in exceptional circumstances.
- 9 Option 3 is to leave matters as they are, ie that certain senior officers (identified by the Director of Resources and subject to having undertaken suitable training) may authorise surveillance; and record their reasoning about necessity and proportionality in the central record.
- 10 Option 4 is to review the list of delegations to authorise surveillance, perhaps to include either directors or even members, in place of the service managers currently identified.

Analysis

- 11 The LGA letter discusses how surveillance must be proportionate to the seriousness of the matter under investigation, and that carrying out surveillance for trivial purposes – or those “not considered a crime by the public” - undermines public confidence. It goes on to identify dog fouling and littering as likely to fail a proportionality test.
- 12 Option 1 risks omitting some matter that cannot then be investigated fully without the delay of first adding it to the list. Option 2 risks creating a buffer zone around an arbitrary set of “trivial “ matters but leaving others to the discretion of authorising officers; in practice 2b is probably a return to the status quo. Option 4 risks delay in gaining authorisation, and in there being too wide a gap between the work of an investigation and its supervision. Authorisation should be close enough for necessity and proportionality to be easily understood, but distant enough for independent judgement. It would be unusual for directors or members to take part in operational processes, especially when a procedure has been independently inspected and appears to be working well.
- 13 This leaves option 3, status quo, which is recommended.

Implications

- 14 Option 3, involving no change to a well-established procedure, has no material implications.

Corporate priorities

- 15 The recommendation will contribute to the following corporate objective:
....to provide clear, consistent direction to the organisation

Risk Management

- 16 The strategy is aimed at reducing the risks associated with non-compliance with the Act or codes of practice. No new risks are introduced by these recommendations.

Recommendations

- 17 It is recommended that the Committee:
- leaves the procedure and decision-making structure unchanged.
 - notes that members have the opportunity to challenge the use made of RIPA
 - replies to the LGA to confirm that the review has taken place.

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Report Approved **Date**

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Wards Affected: *List wards or tick box to indicate all***All****For further information please contact the author of the report****Background Papers:**

Inspection Report, August 2007; Office of the Surveillance Commissioner

Annexes:

- A Letter from Sir Simon Milton, Chairman of the Local Government Association, 20 June 2008 (transcript): [Local Government Association.doc](#)