
Audit and Governance Committee

21 September 2009

Report of the Assistant Director of Resources (Customer Service and Governance)

Regulation of Investigatory Powers Act (RIPA) Inspection Outcomes

Summary

- 1 This report advises members of the outcome of Surveillance Commissioner's inspection in June 2009 and the proposed response to the inspector's recommendations. It also informs members of possible changes that might affect the legislation and its use. This forms part of the council's internal control framework and any breach of the legislation would present a significant reputational risk to the council.

Background

- 2 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a legal framework for surveillance and other activity¹ that would otherwise breach a person's right to privacy under the Human Rights Act 1998. The Surveillance Commissioner and the Interception of Communications Commissioner have power to inspect public authorities and to report on compliance with the Act and the Codes of Practice made under it. The Surveillance Commissioner carried out his third inspection at York on 24 June 2009 (there has been none by the Interception of Communications Commissioner).
- 3 The Commissioner's letter stated 'I am pleased to see that good practice is identified in your very comprehensive RIPA Guidance and Procedure document and that you have developed policies and procedures which support confidence in using the legislation'. The inspector's report makes four recommendations for improvement which are addressed below.
- 4 There has been some public debate in the last year on the way local authorities have applied RIPA. The Government is considering changes to the powers available to local authorities and to the Codes of Practice but proposals are not available yet which might affect the response to recommendation 4 below.

¹ RIPA covers directed surveillance, the use of informers formally known as covert human intelligence sources or CHIS, and the collection of communications data. In this report "surveillance" is used to include CHIS as their use is so unusual. Collection of communications data was not within the scope of the inspection although the same principles apply.

RIPA procedure and application

- 5 City of York has a Guidance and Procedure Document to ensure compliance with the Act and its codes. It explains how all surveillance, use of informers, or collection of communications data, must be both necessary and proportionate to the crime prevention or detection which is its purpose. Authorisation is granted by one of a group of senior officers who have had specialist training covering the human rights implications of surveillance.
- 6 This ensures that surveillance is never applied to trivial matters, or the kinds of problems reported in the last year such as schools admissions or dog fouling. In the last two years, City of York authorisations have dealt with crimes in the following categories:

category	Number of authorisations
Animal health ²	1
Benefits or other fraud	5
Child protection	6
Cowboy builders	3
Trading standards including fake goods	12

- 7 The power to carry out this work is important to the council's public protection role in these areas. The Government has consulted on possible changes and a response was submitted from City of York emphasising the need to continue with surveillance and the entirely proper way this council has used it.

Options and analysis

- 8 The four recommendations made by the Surveillance Commissioner and proposed action in response are as follows:
- 9 **Recommendation 1:** *Role of Veritau in representing a relevant public authority in accord with Schedule 1 Part 1 of the 2000 Act to be determined.* The inspector is alluding to the transfer of counter-fraud work to Veritau Ltd, which is not itself a public authority as defined in the Act. Advice from Legal Services is that Veritau officers cannot authorise directed surveillance - that is, an intrusion into the privacy of a citizen - under RIPA.

The proposed action is: *to amend the Schedule of Authorised Officers of the RIPA Procedure so that authorisations for any counter-fraud related surveillance, be made by the Assistant Director of Resources (Customer Service and Governance) or in his or her absence, the Director of Resources.*

² Concerning alleged illegal animal movements during the "bluetongue" crisis

This will require them to have undertaken suitable training; see recommendation 4.

- 10 **Recommendation 2:** *Legal Services to take a more pro-active role in dip-sampling of RIPA authorisations for legal compliance purposes.*

The proposed action is: a six-monthly review of all authorisations is to be carried out by a solicitor nominated by the Head of Legal Services and assisted by the RIPA coordinator. An alternative would be dip-sampling but as there are typically only six or so in a period a full review is to be undertaken.

- 11 **Recommendation 3:** *Policy to be drawn-up for the use of private investigation companies acting as agents of the council.*

The proposed action is: this recommendation covers both Veritau Ltd and other investigators who may be used from time to time. Suitable amendments are to be made to the council's Procedure to cover choice of company, contract terms and the management of "product" – the output of the operation.

- 12 **Recommendation 4:** *Refresher training to be arranged for applicants and authorising officers to address compliance issues identified by this inspection visit.*

The proposed action is: immediate training is being arranged for the new authorising officers within Resources, however wider training may be delayed to reflect any imminent changes required by the Government.

Corporate strategy

- 13 Use of RIPA supports the council's law enforcement and public safety functions and so contributes to the following corporate strategy items:

Safer City

Effective Organisation.

Implications

- 14 Financial implications: training for both applicants and authorisers can be arranged for around £2k, plus the officer time needed to take part. This should be incorporated into general investigation training for applicants if possible, and funded from relevant service budgets.
- 15 There are no other legal, HR, IT&T, crime & disorder, equalities, property or other implications arising from this report.

Risk Management

- 16 In addressing the Surveillance Commissioner's report recommendations and in enhancing the procedures the council is managing the risk of misuse of RIPA legislation and of associated reputational risks experienced by other public bodies.

Recommendations

- 17 A&G members are asked to note and support the action proposed by officers to address the inspector's recommendations contained in paragraphs 9 to 12 above.

Reason: *to ensure continued compliance with RIPA and its Codes of Practice.*

Contact Details

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Report Approved



Date

8th September
2009

Wards Affected: *List wards or tick box to indicate all*

All



For further information please contact the author of the report

Background Papers: *these should be just publically available documents*

RIPA Guidance and Procedure Document V 7.0 (current approved version)

RIPA Guidance and Procedure Document V 8.0 (proposed amended version)

City of York council response to "Consolidating Orders and Codes of Practice - A Public Consultation Paper" (Home Office consultation) (July 2009)

Annex:

none

