

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Policy and Resources
Date:	9 June 2011
Title:	Regulation of Investigatory Powers Act (RIPA)
Reference:	2871
Report From:	Chief Executive

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1. Executive Summary

1.1. The purpose of this paper is to seek approval of the County Council's Policy on Surveillance as required under the Codes of Practice issued by the Home Office associated with the Regulation of Investigatory Powers Act (RIPA). The Policy is appended to this report as Appendix 1.

2. Contextual information

2.1. RIPA is the act of parliament that regulates the County Council's use of covert surveillance. The County Council operates a strict control policy which ensures that only authorised surveillance takes place.

2.2. The existing Code of Practice issued by the Home office requires that the Councils Policy on surveillance is reviewed and approved by Elected Members on an annual basis. This report seeks the approval of the reviewed Policy, which is appended to this report.

3. Current use of Investigatory Powers

3.1. The County Council uses covert surveillance to support the work of the Trading Standards Service. Their surveillance efforts are targeted towards protecting those who are being cheated by businesses that trade fraudulently or, unfairly treated by businesses that act with gross negligence towards their customers; particularly young, vulnerable or elderly customers. Such work is often done in response to complaints from members of the public, and in conjunction with the Police and UK Border Agency.

- 3.2. The proper operation of the use of surveillance as outlined in the County Councils Policy, is safeguarded through scrutiny by the County Councils Audit Committee. The most recent report was submitted to the Audit Committee on 31 March 2011 and detailed how surveillance has been used by the County Council, and equally importantly, what results have accrued from its use.
- 3.3. Although the County Council uses these powers in extremely limited circumstances, and under strict control, this limited use of surveillance has resulted in 23 convictions and the seizure of nearly a quarter of a million pounds worth of fake goods in the last two and a half years.
- 3.4. The County Council is subject to external inspection of its use of surveillance. In October 2008 the Office of Surveillance Commissioners audited the County Council's management of covert activities. In his letter accompanying the report, the Chief Surveillance Commissioner wrote, "I am pleased to see that your staff in central departments and Trading Standards pay due regard to appropriate use of their covert powers and your central oversight is well-established and represents good practice". It is likely that the County Council will be audited again later this year.
- 3.5. In November 2010 the County Council was audited by the Interception of Communications Office. The inspector stated that he was satisfied that data had been acquired for the correct purpose and that he found no evidence that any data had been obtained for trivial reasons.
- 3.6. The government has outlined important proposed changes to the operation of surveillance by local authorities in the Protection of Freedoms Bill, with the aim that these changes will become law in early 2012. The County Council welcomes the increased checks and balances that the legislation will bring. However, as the County Council currently only uses the legislation to investigate crime, for example, the sale of counterfeit goods, and alcohol and cigarettes to children, it already restricts its use of surveillance to the kind of offences envisaged by the legislation.

4. Important Elements of the County Council's Policy

- 4.1. The Code of Practice recommends the designation of a Senior Responsible Officer (SRO) who is responsible for the integrity of the process and ensuring compliance with Part 2 of the Act and the associated Codes. It is proposed that this role continues to be undertaken by the Director of Culture, Communities and Business Services.
- 4.2. All applications for covert surveillance activity are coordinated through the Council's Regulatory Services (Legal and Compliance Team). Only 3 senior officers within that service act as authorising officers for the whole of the County Council.
- 4.3. The Surveillance Policy confirms the County Council's current practice of only granting authorisation for directed surveillance if it is proportionate to what is sought to be achieved by carrying it out.

4.4. Assurance reports on the County Councils use of surveillance are provided to the Audit Committee for scrutiny.

5. Conclusion

5.1. The County Council recognises that the use of covert surveillance as part of its investigatory activities may cause concern to the public and that it has a responsibility to ensure that its surveillance powers continue to be exercised appropriately and proportionately. It therefore has a robust process for authorisation and monitoring of all surveillance activities and only uses them in relation to the prevention and detection of crime; and where it is lawful, necessary and proportionate to do so.

6. Recommendation

6.1. That the Policy on surveillance and use of regulatory powers appended to the report be approved.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Improvement plan link number (if appropriate):	

Links to previous Member decisions:

<u>Title</u>	<u>Reference</u>	<u>Date</u>
Direct links to specific legislation or Government Directives		
<u>Title</u> The Regulation of Investigatory Powers (Directed Surveillance and Covert Intelligent Sources) Order 2010 The Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2010 The Regulation of Investigatory Powers (Covert Human Intelligent Sources: Code of Practice) Order 2010		<u>Date</u> 2010

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

- 1.1. Race and equality impact assessment has been considered in the development of this report and no adverse impact has been identified

2. Impact on Crime and Disorder:

- 2.1. The County Council has a legal obligation under Section 17 of the Crime and Disorder Act 1998 to consider the impact of all the decision it makes on the prevention of crime. The County Council is only able to lawfully carry out covert surveillance activity on the grounds of prevention and detection of crime and disorder. By complying with RIPA and the statutory Codes of Practice this activity will be carried out without unlawfully contravening the requirements of the European Convention on Human Rights and the Human Rights Act 1998. All activity under RIPA will therefore assist the County Council, where it is both necessary and proportionate to do so, in its aim to prevent and detect crime.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Proposals have no effect on climate change

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Proposals have no effect on climate change

Hampshire County Council
Policy on Surveillance and Use of Regulatory Powers

Background

The Human Rights Act 1998 (HRA) came into force in October 2000. It gives effect to the European Convention on Human Rights (ECHR).

The HRA makes it unlawful for a public authority i.e. Hampshire County Council to act in a way that is incompatible with a Convention right. Under Article 8 of the ECHR everyone has the right to respect for his private and family life, his home and his correspondence. However, it is recognised that there may be circumstances in a democratic society where it may be necessary for the County Council to interfere with this right, but only in accordance with the law and only as necessary in the interests of national security, public safety or the economic well-being of the Country, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedoms of others.

A failure to comply with the HRA could result in a civil claim against the County Council or it could be raised as a defence in any proceedings brought by the County Council. To be able to justify any interference with the right to respect for an individual's privacy and to comply with the HRA, the Council will need to demonstrate that any intrusion into an individual's privacy is necessary for the purposes of an investigation and/or an enquiry.

The Council will also consider whether any intrusion and the effects of the intrusion is proportionate to what is sought to be achieved.

Surveillance is often a necessary part of any investigation/enquiry. Covert surveillance is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA), as is the use of Covert Human Intelligence Sources (CHIS) and Access to Communications Data (ACD). Covert Human Intelligence Sources are persons who establish or maintain a personal or other relationship with another person for the covert purpose of obtaining information about that person.

Where covert surveillance or the use of CHIS is considered appropriate, or where access to communications data is required, it will be necessary for it to be authorised before it can commence. There are also provisions relating to review, renewal and cancellation of authorisations.

This applies whether the surveillance or the use of a CHIS is being undertaken by Council Officers or by an outside agency acting on the Council's behalf. Authorising officers will need to satisfy themselves that a defensible case can be made out for covert surveillance activity, the use of a CHIS or access to communications data.

RIPA is supported by numerous Statutory Instruments and by Codes of Practice issued by the Secretary of State. The Codes are admissible as evidence in civil and criminal proceedings and a Court or Tribunal must take any relevant provision of the Codes into account.

Policy Statement

- 1 Hampshire County Council will not undertake any activity defined within the Regulation of Investigatory Powers Act 2000 without prior, or emergency, authorisation, from a trained, senior officer who is empowered to grant such consents. The Director of Culture, Communities and Business Services has been appointed the Senior Responsible Officer and, as such, has been given authority to appoint Authorising Officers (for surveillance activities) and Designated Persons and Single Points of Contact (for the purposes of access to communications data) under the Act.
- 2 The Authorising Officer or Designated Person will not authorise the use of surveillance techniques, human intelligence sources or access to communications data unless the authorisation can be shown to be necessary for the purpose of preventing or detecting crime or of preventing disorder.
- 3 In addition, the Authorising Officer or Designated Person must believe that the surveillance or obtaining of communications data is necessary and proportionate to what it seeks to achieve. In making this judgment, the officer will consider whether the information can be obtained using other methods and whether efforts have been made to reduce the impact of the surveillance on other people, who are not the subject of the operation.
- 4 Applications for authorisation of surveillance, the use of a Covert Human Intelligence Sources or the obtaining of communications data will, except in emergency where legislation permits, be made in writing on the appropriate form.
- 5 Intrusive surveillance operations are defined as activities using covert surveillance techniques, on residential premises, or in any private vehicle, which involves the use of a surveillance device, or an individual, in such a vehicle or on such premises. Hampshire County Council officers are NOT legally entitled to authorise these types of operations.
- 6 However public bodies are permitted to record telephone conversations, where one party consents to the recording being made and appropriate surveillance authorisation has been granted. On occasions, officers of the County Council do need to record telephone conversations, to secure evidence.
- 7 It is the policy of this authority to be open and transparent in the way that it works and delivers its services. To that end, a well-publicised Corporate Complaints procedure is in place and information on how to make a complaint to the Investigatory Powers Tribunal will be provided on request to the Senior Responsible Officer.
- 8 The County Councils use of its powers under the Regulation of Investigatory Powers Act 2000 will be subject to regular scrutiny by the County Councils Audit Committee.