

AGENDA ITEM 5

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

19TH MAY 2016

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - USE OF RIPA IN 2015-16 BY RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES IN DISCUSSIONS WITH THE DEPUTY LEADER, CLLR WEBBER.

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1. PURPOSE

- 1.1 To enable Members to review the Council's use of the Regulation of Investigatory Powers Act 2000 ('RIPA') during the period 1st April 2015 - 31st March 2016 and to set the Corporate Policies for the continued use of RIPA.

2. RECOMMENDATIONS

It is recommended that Members: -

- 2.1 Note the contents of the report;
- 2.2 Acknowledge RIPA has been used in an appropriate manner that is consistent with the Council's RIPA policies during the period 1st April 2015 - 31st March 2016; and
- 2.3 Acknowledge that the current Corporate RIPA Policy and the current Corporate Policy on the Acquisition of Communications Data under RIPA remain fit for purpose and therefore continue to apply.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure Members are kept apprised of how RIPA has been used during the period 1st April 2015 - 31st March 2016 and that it has been used in an appropriate manner consistent with the Council's RIPA policies.

4. BACKGROUND

4.1 Use of RIPA in 2015-16 by the Council

Surveillance and the use of Covert Human Intelligence Resources

During the year from 1st April 2015 to 31st March 2016, 5 new authorisations were granted by Authorising Officers as follows:

- 4 x directed surveillance;

- 1 x use of a Covert Human Intelligence Source;

The 4 directed surveillance authorisations were issued for the purpose of preventing or detecting conduct which constitutes one or more criminal offences, where at least one of the offences is punishable by a maximum term of imprisonment of at least 6 months (or is under Sections 146, 147 or 147A of the Licensing Act 2003 or Section 7 of the Children and Young Persons Act 1933) or Section 91 or 92 of the Children and Families Act 2014 in relation to the following:

- 3 x fly tipping;
- 1 x counterfeit clothing and tobacco;

The 1 authorisation for the use of covert human intelligence sources was issued for the purpose of preventing or detecting crime or of preventing disorder in relation to the following:

- 1 x sale of illegal satellite decoders;

At the start of this year the following authorisations that had been authorised in the previous year were carried forward:

- 2 x directed surveillance;
- 0 x use of a Covert Human Intelligence Sources;

The 2 directed surveillance authorisations that had been authorised in the previous year and had been carried forward were also issued for the purpose of preventing or detecting conduct which constitutes one or more criminal offences, where at least one of the offences is punishable by a maximum term of imprisonment of at least 6 months (or is under Sections 146, 147 or 147A of the Licensing Act 2003 or Section 7 of the Children and Young Persons Act 1933 or Section 91 or 92 of the Children and Families Act 2014) in relation to the following:

- 1 x fly-tipping;
- 1 x counterfeit tobacco and perfumes;

During the year 2015/16 6 authorisations for directed surveillance were cancelled and 0 authorisations were carried forward to the current year.

The outcomes of the investigations that were concluded were as follows:

- 1 x authorisation identified that fly tipping was taking place in the location under investigation.
- 1 x authorisation identified that fly tipping was not taking place at that time in the location under investigation.
- 2 x authorisations resulted in no fly tipping occurring whilst the cameras were deployed. However on one occasion the infra red lamp used for night time surveillance was stolen so the surveillance was stopped. Nevertheless the camera identified the perpetrator who was then prosecuted by the police. On the other occasion an unknown person erected dummy cameras and signage at the site and this deterred any further flytipping. In both cases flytipping ceased.

- 1 x authorisation identified that clothing was being distributed from the target's premise. As a result a warrant was executed at the premise which resulted in the seizure of a substantial number of counterfeit goods.
- 1 x authorisation identified that the target appeared to be involved in the supply of counterfeit goods. A storage location and possible associates were identified.

Investigations carried over into 2016/17:

- 1 x CHIS authorisation

During the year 0 authorisations for the use of covert human intelligence sources (CHIS) were cancelled.

The outcomes of some of the cases demonstrate how the use of surveillance is able to produce results that are of benefit from an enforcement point of view. In some of the other cases the value of the use of directed surveillance was in establishing that the problems had stopped because of external causes. Without the use of surveillance officers would not have had any way of finding out whether the alleged incidents were still continuing. Thus the surveillance has enabled officers to ascertain the actual situation at the locations in a manner that made effective use of officers' time.

4.2 Human Rights Act Authorisations

As part of their initial investigations, officers sometimes need to carry out non-overt work which does not meet the statutory requirements for RIPA to apply, mainly because the work is carried out in such a manner that there is little likelihood of obtaining private information. The use of various enforcement techniques of these types are assessed to ensure that they are carried out in compliance with the requirements of the Human Rights Act 1998 (HRA). Such assessments are recorded on a Human Rights Act consideration form, whereby the necessity, proportionality and purpose of the activity are assessed and precautions are introduced to minimise collateral intrusion and then the use of the technique is approved by a senior manager.

Importantly, if the initial work carried out using the HRA-compliant technique shows that an investigation needs to be carried out using RIPA-based techniques, then officers will apply for the relevant RIPA authorisation.

Five such Human Rights Act authorisations currently exist in relation to the following:

- Anti-social behaviour monitoring;
- Underage sales test purchasing;
- Proxy sales monitoring;
- Internet site monitoring;
- Vehicle test purchasing;

During 2015-16 these authorisations were used to carry out monitoring of potential locations for anti-social behaviour on 11 days; underage sales test purchasing operations on 5 days; proxy sales of alcohol monitoring operations

on 2 days; vehicle test purchasing operations on 0 occasions; and monitoring of internet sites for 19 investigations. A review of these operations and investigations showed that on no occasions did they result in an improper infringement of a person's human rights.

4.3 Communications Data

During the year from 1st April 2015 to 31st March 2016, 4 applications for communications data were approved by Designated Persons in relation to various telephone numbers.

These applications were issued for the purposes of the prevention and detection of crime or preventing disorder in relation to the following:

- 1 x doorstep crime;
- 1 x counterfeit clothing, watches, headphones, perfumes and tobacco
- 1 x counterfeit perfumes, tobacco and clothing;
- 1 x unsafe, insurance write-off vehicle;

These applications resulted in the obtaining of the following:

- Details of the subscriber to one of the two mobile phone numbers used by the target who had committed doorstep crime in relation to tree cutting work, identified the subscriber as being the target's girlfriend at an address that had previously been used by the target.
- A variety of possible associates were identified with regard to the target who was selling counterfeit clothing, watches, headphones, perfumes and tobacco.
- A variety of possible associates were identified with regard to the target who was suspected of selling counterfeit perfumes, tobacco and clothing.
- A new name used by the main target involved with the sale of the unsafe car was found, along with a new address for where a bank transfer was made, as well as confirming other addresses and details obtained elsewhere.

4.4 Changes to use of RIPA

During the last year there have been no alterations to official guidance or codes of practice from the Home Office or the Office of Surveillance Commissioners (OSC) or the Interception of Communications Commissioner's Office (IOCCO), so there has been no need to revise the current directed surveillance corporate policy or the acquisition of communications data corporate policy.

However a new Investigatory Powers Bill is progressing through Parliament. If it becomes law it will control the acquisition of communications data rather than this being controlled by RIPA, although RIPA will still control directed surveillance and the use of a CHIS. It would appear that the procedure for local authorities to obtain communications data will be similar to the current procedure, with the application initially being considered by a Designated Senior Officer; if approved the application then requiring judicial approval from a magistrate; with all applications needing to be made via the National Anti-

Fraud Network. It is also likely that the definition and types of communications data that are available to local authority officers will change. Once the bill becomes law, the acquisition of communications data corporate policy will need to be revised to reflect the changes.

The Investigatory Powers Bill also states that the various regulators for different parts of RIPA, including the OSC and the IOCCO, will be replaced by an Office of Investigatory Powers Commissioner. This is likely to result in any future inspections of the Council by the Investigatory Powers Commissioner covering all aspects of directed surveillance, the use of a CHIS and acquiring communications data, rather than the current situation of separate inspections by the OSC and IOCCO.

5. CONSULTATION

- 5.1 This report has been prepared in consultation with the Council's Trading Standards Manager who is responsible for operational oversight of RIPA matters.

6. EQUALITY AND DIVERSITY

- 6.1 There are no equality or diversity implications linked to this report.

7. FINANCIAL IMPLICATIONS

- 7.1 There are no financial implications linked to this report.

8. LINKS TO THE COUNCILS CORPORATE PLAN/ OTHER COUNCIL PRIORTIES

- 8.1 The report will ensure that effective governance arrangements with regards to RIPA remain in place by the Council.

9. CONCLUSION

- 9.1 The Senior Responsible Officer (the Council's Monitoring Officer) considers that RIPA has been used appropriately in relation to all of the above uses of directed surveillance or the acquiring of communications data and that RIPA has been used in a manner that is consistent with the two corporate policies.
- 9.2 The Senior Responsible Officer also considers that the current directed surveillance corporate policy and the current acquisition of communications data corporate policy are up to date and the policies remain fit for purpose.

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