

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

28TH SEPTEMBER 2017

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - USE OF RIPA IN 2016-17 BY RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

REPORT OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES IN DISCUSSIONS WITH THE DEPUTY LEADER, CLLR M 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 (as amended) ('RIPA') in 2016 - 2017 and to set the Corporate Policies for the use of RIPA in 2017 - 2018.

2. RECOMMENDATIONS

It is recommended that Cabinet:

- 2.1 Notes the contents of the report;
- 2.2 Acknowledges RIPA has been used in an appropriate manner that is consistent with the RIPA policies during the period 1st April 2016 – 31st March 2017; and
- 2.3 Acknowledges that the current Corporate RIPA Policy and Corporate Policy on the Acquisition of Communications Data under RIPA are still appropriate, fit for purpose and should continue to be used.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure Members are kept apprised of how RIPA has been used during the period 1st April 2016 - 31st March 2017 and that it has been used in an appropriate manner consistent with the Council's RIPA policies.

4. USE OF RIPA BY THE COUNCIL: 1ST APRIL 2016 – 31ST MARCH 2017

4.1 Directed Surveillance and the use of Covert Human Intelligence Sources

4.2 New Authorisations

During the year 1st April 2016 - 31st March 2017, 8 new authorisations were granted by Authorising Officers as follows:

- 8 x directed surveillance; and
- 0 x use of a Covert Human Intelligence Source.

Directed surveillance authorisations can be 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 relates to the underage sale of alcohol or tobacco/nicotine).

The 8 x directed surveillance authorisations all related to fly tipping.

4.3 Authorisations extant as at 1st April 2016

There were no authorisations in respect of either directed surveillance or use of a Covert Human Intelligence Source that had been authorised in the previous year (2015-16) and were carried forward to the 2016 - 2017 financial year.

4.4 Cancellation of Authorisations & Subsequent Outcomes

During the 2016 – 2017 financial year 5 authorisations for directed surveillance were cancelled and 3 authorisations were carried forward to the current financial 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: a prosecution resulted with fines and costs of £550;
- 1 x authorisation identified that fly tipping was taking place in the location under investigation: a hearing date has been set;
- 1 x authorisation resulted in the lens being removed from position by unknown persons; this was then found a short distance away, but the surveillance ceased as it was likely to have been compromised. No fly tipping was observed prior to the lens being removed; and
- 2 x authorisations resulted in fly tipping occurring, however the evidence was inconclusive as the vehicles were too distant from the camera to be clearly identified.

4.5 Authorisations extant as at 1st April 2017

Investigations carried over into 2017-18:

- 3 x directed surveillance

The outcomes of some of the cases demonstrate how the use of directed surveillance is able to produce results that are of benefit from an enforcement point of view. Without the use of directed surveillance, officers would not have been able to progress the investigation to determine whether the alleged incidents were ongoing: directed surveillance has therefore enabled officers to ascertain the true situation at the relevant locations, in a manner that was the most cost-effective in relation to officer time.

4.6 Human Rights Act Authorisations

As part of initial investigations, officers may need to carry out non-overt work which does not fall within the statutory requirements for RIPA, mainly because the work is carried out in such a manner that there is little likelihood of obtaining private information (collateral intrusion). The use of non-overt enforcement techniques 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 addressed, precautions are introduced to minimise collateral intrusion and 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, officers will apply for RIPA authorisation.

Five Human Rights Act authorisations currently exist in relation to:

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

During 2016 - 17 these authorisations were used to carry out monitoring of potential locations for anti-social behaviour on 0 days; underage sales test purchasing operations on 7 days; proxy sales of alcohol monitoring operations on 1 day; vehicle test purchasing operations on 0 occasions; and monitoring of internet sites for 55 investigations. A review of these operations and investigations showed that on no occasion did they result in an improper infringement of a person's human rights.

It is worth noting the increase in the monitoring of internet sites. This is predominantly due to a change in consumer purchasing medium. A report of 2015 concluded that over 77% of consumer purchases in the UK are now concluded online, and both honest and rogue traders utilise a social media presence for transactions. Hence the increase in HRA activity in relation to internet site monitoring is a reflection of the increase in Facebook and other social media sites as a consumer purchase medium.

4.7 Communications Data

During the year from 1st April 2016 - 31st March 2017, 1 application for communications data was approved by the Designated Person in relation to telephone numbers used as part of fraudulent activity.

This application was approved for the purposes of the prevention and detection of crime or preventing disorder in relation to the following:

- 1 x Doorstep crime

This application resulted in obtaining the following:

- Details of the subscriber of a mobile phone number used by the target who had committed doorstep crime in relation to high pressure sales and misdescriptions applied to 'leather' furniture.

5. CHANGES TO USE OF RIPA

- 5.1 In July 2016, the Office of Surveillance Commissioners (OSC) reissued their RIPA Procedures and Guidance; this was the first time that the document has been placed in the public domain. The clarification and guidance therein do not necessitate revision to the current directed surveillance Corporate Policy or the acquisition of communications data Corporate Policy. The Interception of Communications Commissioner's Office have not produced or altered guidance during the year.
- 5.2 On 29th November 2016 the Investigatory Powers Act 2016 received Royal Assent. Many of the anticipated RIPA changes did not appear during transposition of the Bill into the Act; the changes therein predominantly apply to activities that are restricted to Security and Intelligence Agencies.

6. INSPECTION BY THE OFFICE OF THE SURVEILLANCE COMMISSIONERS

- 6.1 On 19th October 2016 RIPA activity carried out by the Council was inspected by Neil Smart of the Office of the Surveillance Commissioners. Inspections are conducted at 3 yearly intervals.
- 6.2 As part of the audit, Mr Smart spoke with various officers who had been involved in RIPA authorised activity, and examined the Master Files of RIPA documentation.
- 6.3 The final report provided the following recommendations:
1. The use of CHIS (Covert Human Intelligence Sources) must have a strengthened risk assessment. The use of a CHIS in the Council is rare, however, infrequently a staff member involved in the periphery of an investigation may fall within that definition.
 2. When an authorisation is cancelled, there will likely be 'surveillance product' held by the Council, such as footage recorded during the activity; on the cancellation form, it should be made clear what will happen to this surveillance product. There is no suggestion that the product is not being dealt with appropriately now, simply that there needs to be a suitable record of how it will be dealt with.
 3. The Senior Responsible Officer should maintain a master list of surveillance equipment held within the Council. When new surveillance equipment is needed, the relevant department should consult the master list to determine if there is equipment held in another department that could be loaned, rather than purchasing new.
- 6.4 In all, the findings of the inspection were positive, with Mr Smart commenting that the Council approaches the use of the RIPA statutory powers with a degree of circumspection and treating those powers as a final resort, when all other methods of investigation have been exhausted. Mr Smart was also able to provide some advice on best practice for the Council to carry forward,

including consideration to be given to the number of authorising officers within the Council to be reduced to a number more consistent with the number of authorisations granted.

7. CONSULTATION

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

8. EQUALITY AND DIVERSITY

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

9. FINANCIAL IMPLICATIONS

9.1 There are no financial implications linked to the contents of this report.

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

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

11. CONCLUSION

11.1 The Senior Responsible Officer (Director of Legal & Democratic Services) considers that RIPA has been used appropriately in relation to all of the above uses of directed surveillance and acquiring of communications data and that RIPA has been used in a manner that is consistent with the two corporate policies.

11.2 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.

Other Information:-

Relevant Scrutiny Committee

Public Service Delivery, Communities & Prosperity Scrutiny Committee

Background Papers - None

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