



Agenda item:

Decision maker: Governance & Audit Committee

Subject: Regulation of Investigatory Powers Act 2000 (RIPA)

Date of decision: 27th January 2012

Report from: Michael Lawther City Solicitor and Strategic Director

Report by: Lyn Graham, Chief Internal Auditor

Wards affected All

Key decision (over £250k) N/A

1. Summary

- 1.1 19 Regulation of Investigatory Powers Act (RIPA) authorisations have been made for the year 2011 (January to December 2011) and are detailed on Appendix A attached, some of which have already been reported to this Committee.

2. Purpose of report

- 2.1 To update Members on the Authority's use of Regulatory Powers, in accordance with Policy, for the period for the year 2011 from January to December 2011.

3. Background

- 3.1 Surveillance by a public authority may constitute an infringement of an individual's rights and freedoms which are protected by the Human Rights Act 1998. However, by following the authorisation procedures set out by the Regulation of Investigatory Powers Act, officers of the Council are ensuring that they can demonstrate that the surveillance is necessary for a purpose permitted by the Human Rights Act and that it is a proportionate measure to take, given all of the circumstances.
- 3.2 Compliance with the Regulation of Investigatory Powers Act (RIPA) will significantly reduce the chances of any surveillance carried out by the Council being unlawful and therefore subject to legal challenge. PCC has a Policy and procedures to ensure that officers comply with the Regulation of Investigatory Powers Act requirements to mitigate any legal challenge risks.
- 3.3 The Office of Surveillance Commissioners issues guidance to relevant bodies on the use of RIPA and have recently issued (December 2011) an update.

4. Recommendations

It is recommended that Members of the Governance and Audit Committee:

- 4.1 Note the RIPA applications authorised for 2011 from January to December 2011,
4.2 Approve the change in reporting to Members annually.

5. Regulation of Investigatory Powers Act Authorisations

- 5.1 19 RIPA applications have been authorised for the year 2011 (January to December 2011) these include:
- 8 x testing of underage tobacco sales/illegal tobacco sales/ illegal sale of alcohol resulting in two potential prosecutions, 1 licensee training, 1 warning, and 2 surrendered licences
 - 3 x sales of counterfeit goods resulting in 1 no offence being detected and 2 prosecutions pending
 - 7 x blue badge frauds resulting in 3 prosecutions, 2 prosecutions pending and 2 minor offences so warnings were given.
 - 1 x -cold calling of rogue traders resulting in 3 warnings given
- 5.2 Where a prosecution doesn't arise it can be because a warning has been issued to a first offender to deter any re-offending or because the intelligence that an officer has at the time of the authorisation turns out to be unfounded. On these occasions it has been determined that a RIPA authorisation for covert surveillance is the only way to test the intelligence.
- 5.3 RIPA numbers for this year (January to December 2011) total 19 compared to 11 for the same period last year. This is due to the increased activity on Blue Badge fraud and testing of illegal sales. Portsmouth City Council currently carries out RIPA authorisations for Trading Standards test purchases. In 2010 there were:
- 6 x misuse of Blue Badge authorisations leading to 3 prosecutions
 - 4 x authorisations for counterfeit clothing sales leading to 2 prosecutions pending
 - 1 x for breaching licensing conditions where no offence was detected.

OSC Guidance

- 5.4 The recent updated guidance issued by the Office of Surveillance Commissioners (OSC) mainly focuses on Intrusive surveillance; which local authorities are not allowed to conduct, CHIS (covert human intelligence source) which where appropriate we have covered in our Policy and drive bys and test purchases, both of which we covered in our last update report to members for inclusion in our Policy.

Training

- 5.5 Services that are likely to carry out activities under RIPA authorisations (including those authorised by other bodies such as the Police) include:
- Anti-Social Behaviour Order Unit
 - Health and Social care
 - Close Circuit Television (CCTV)
 - Revenues and Benefits
 - Trading Standards
 - Any other enforcement activity
- 5.6 As reported at the last meeting of G&A awareness training was rolled out in April 2010 and further updated training given to some of these officers on 23RD August 2011. Further training is planned for 20th March 2012.

Reporting

5.7 Currently the RIPA Policy requires regular reports on RIPA activity to be brought to this Committee and this has usually been at least three times a year. As the numbers of RIPA applications are relatively low this has led to reports giving similar information on each occasion. To enable Members to review the RIPA activity in its entirety for the year and hopefully make it more meaningful it is proposed to report annually to members. If activity increases or other matters arise (such as an inspection by the Office of Surveillance Commissioners) then further reports will be brought to Members at that time.

6. Equality impact assessment (EIA)

This is an information report only and therefore does not require an equalities impact assessment.

7. Head of Legal Services' comments

The Legal implications are incorporated within the body of this report. There are no other immediate legal implications arising from this report

8. Head of Finance's comments

N/A

.....
Signed by: Michael Lawther, City Solicitor and Strategic Director

Appendices:

Appendix A –Regulation of Investigatory Powers Act Authorisations

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
1 Covert Surveillance Code of Practice Issued by the Home Office and Covert Human Intelligence sources Code of Practice issued by the Home Office	http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/Regulation_of_Investigatory_Powers_Act-codes-of-practice/
2 Regulation of Investigatory Powers Act 2000	http://www.legislation.gov.uk/ukpga/2000/23/contents
3 Portsmouth City Council Regulation of Investigatory Powers Act Policy	http://intranlink/Media/Revised_RIPA_Policy.pdf
4 Home Office guidance	Internal Audit

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by the Governance & Audit Committee on 27th January 2012.

RIPA AUTHORISATIONS JANUARY 2011 to December 2011

APPENDIX A

Ref Number	Date authorised	Purpose	Length of investigation	Number of people under investigation	Outcome
47	5 th January 2011	Sale of Counterfeit Goods	Cancelled 4 th February	1 person (plus any others involved)	Prosecution Pending (see also RIPA 60)
48	13 th January 2011	Illegal Sale of Alcohol	Cancelled 18 th February	15 shops	No test failures
49	19 th January 2011	Blue Badge Fraud	Cancelled 27 th January	1 person	Convicted on 9 counts Fined £350 and costs £450
50	15 th February 2011	Illegal sale of tobacco	Cancelled 4 th April	1 shop	Prosecution Pending
51	15 th February 2011	Testing of underage tobacco sales	Testing completed by 15 th April	21 shops	No test failures
52		Cancelled Replaced by RIPA 54			
53	24 th February 2011	Blue Badge Fraud	Cancelled 11 th March	1 person	Sustained Misuse not proved no further action
54	28 th February 2011	Blue Badge Fraud	Cancelled 7 th March	1 person	12 month conditional discharge + compensation order and costs £1,390.50 and £516
55	6 th May 2011	Blue Badge Fraud	Cancelled 24 th May 2011	1	Fined £200 costs £150 victim supplement £15 compensation £30 total £395

RIPA AUTHORISATIONS JANUARY 2011 to December 2011

APPENDIX A

Ref Number	Date authorised	Purpose	Length of investigation	Number of people under investigation	Outcome
56	18 th May 2011	Illegal sale of Alcohol to underage persons	Cancelled 23 rd June 2011	5 premises	1 x licensee training 1 x warning 1 licence had already been revoked previously and under appeal 2 x surrendered licences and 1 of these potential prosecution
57	23 rd June 2011	Illegal Sale of Alcohol to underage persons	Cancelled 1 st August 2011	5 premises	No offences detected
58	29 th June 2011	Illegal Sale of tobacco to underage persons	Cancelled 26 th July 2011	6 premises	No offences detected
59		Cancelled replaced with RIPA 62			
60	16 th August 2011	Sale of Counterfeit goods	Cancelled 10/10/11	2 people	Prosecution pending
61	24 th August 2011	Cold Calling Rogue Traders	7.5 days	26 businesses	23 trading legally three given written advice re infringements
62	24 th August 2011	Sale of Counterfeit Goods	3 occasions	2 people	No offences detected
63	13 th September 2011	Blue Badge fraud	Cancelled 12 th October	1 person	No offences detected

RIPA AUTHORISATIONS JANUARY 2011 to December 2011

APPENDIX A

Ref Number	Date authorised	Purpose	Length of investigation	Number of people under investigation	Outcome
64	16 th September 2011	Blue Badge Fraud	Cancelled 5 th October	1 person	Prosecution pending
65	29 th September 2011	Illegal Tobacco Sales	Still on-going	1 person	On-going
66	10 TH October 2011	Retesting of previous test purchases failures to minors	Cancelled 24 th November	37-40 premises	No test failures
67	8 th November 2011	Blue Badge Fraud	Cancelled 23 rd November	1 person	Prosecution Pending