



Agenda item:

Decision maker:	Governance & Audit & Standards Committee
Subject:	Regulation of Investigatory Powers Act 2000 (RIPA)
Date of decision:	15 th November 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 Three Regulation of Investigatory Powers Act (RIPA) applications have been made since the last report to Governance and Audit Members in June 2012, one was authorised, one was not pursued for authorisation and one did not need a RIPA authorisation. Judicial approval for authorised applications must be sought from 1st November 2012.

2. Purpose of report

- 2.1 To update Members on the Authority's use of Regulatory Powers, in accordance with Policy, for the five month period from June 2012 to October 2012 and the changes introduced by the Protection of Freedoms Bill.

3. Background

- 3.1 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.
- 3.2 The Protection of Freedoms Bill which received Royal Assent on the 1st May 2012 limits the use of RIPA authorisations by local authorities on activity that carries a maximum 6 months imprisonment or more, although there are exceptions to this serious crime rule including the use of a CHIS (Covert Human Resource), communications data, Section 146/147/147a of the Licensing Act and Section 7 of the Children and Young Persons Act 1993 which are to protect minors from the sale of tobacco and alcohol. The Bill also requires the ultimate authorisation of a RIPA by a Magistrate (S.32b).
- 3.3 Home office guidance on the judicial approval process has recently been issued.

4. Recommendations

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

- 4.1 Note the RIPA application authorised in the five month period from June 2012 to October 2012.
- 4.2 Note the new legal position as a result of the Protection of Freedoms Act 2012 and its impact on RIPA authorisations

5. Regulation of Investigatory Powers Act Authorisations

- 5.1 One RIPA application has been authorised in the five month period between June and October 2012. The application for the misuse of a blue badge was authorised on the 19th September and legal action is pending.
- 5.2 This offence can carry a minimum 6 months imprisonment depending on the level of fraud committed.
- 5.3 The other two applications were not authorised for the reasons stated as follows:
- One was for fly tipping identification of telecoms communication data which was not pursued to application. Telecoms data authorisations are made through NAFN (National Anti Fraud Network) and the applicant could not register on the site so did not pursue.
 - The second was a business as usual test purchase for counterfeit sales and does not meet the requirements to need a RIPA authorisation.

6. Judicial approval process

- 6.1 Guidance was issued in October by the Home Office to Local Authorities and Magistrates Courts on the judicial approval process for RIPA and the crime threshold for directed surveillance.
- 6.2 The crime threshold is as reported in paragraph 3.2. The guidance requires that applications will still be authorised by the designated authorising officers but then submitted to a JP for approval. The process is attached as an appendix to this report.
- 6.3 The guidance, paragraph 43, states that “local authorities will want to consider who is best able to answer the JP’s questions on the policy and practice of conducting covert operations and detail of the case itself. It is envisaged that the case investigator will be able to fulfil this role. The investigator will know most about the investigation and will have determined that use of a covert technique is required in order to progress a particular case.” In accordance with the Council’s Constitution the City Solicitor has the delegated power to authorise officers to appear on behalf of the Council in Court and he will from time to time, in consultation with the designated authorising officers, appoint a suitably qualified pool of officers to make the applications to the Court.
- 6.4 The guidance makes it clear that the JP will rely on the documentation provided to make an approval judgement or not and may decide to:
- Approve the grant or renewal of an authorisation
 - Refuse to approve the grant or renewal of an authorisation or notice e.g. because there is not sufficient information in the document

- Refuse to approve the grant or renewal and quash the authorisation or notice e.g. because it does not fall into the correct legal definitions.

- 6.7 There is no complaint route for a judicial decision unless it was made in bad faith and a decision can only be appealed on a point of law.
- 6.8 A judicial application/ order form has to be partially completed by the Authority to accompany the authorised RIPA and documentation and is completed by the approving JP.
- 6.9 It is still not known what, if any, fees will be charged by the Magistrates Court for this service.
- 6.10 Currently the Authority uses the National Anti Fraud Network as a SPOC (Single Point of Contact) to authorise communications data applications on our behalf. However under the new Protection of Freedoms Act the Council will have to take the authorised RIPA's for communications data to the Magistrate for Judicial approval.

7. Equality impact assessment (EIA)

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

8. City Solicitor's comments

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

9. Head of Finance's comments

N/A

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Signed by: Michael Lawther, City Solicitor and Strategic Director

Appendices: Process flow for judicial approval of authorised applications.

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	http://intranlink/Media/Revised_RIPA_Policy.pdf

	Powers Act Policy	
4	Home Office guidance	http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/?view=Standard&pubID=1079688
5	Protection of Freedoms Bill	http://www.homeoffice.gov.uk/publications/about-us/legislation/protection-freedoms-bill/

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by the Governance & Audit & Standards Committee on 15th November 2012.

ANNEX A

LOCAL AUTHORITY PROCEDURE: APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE

