

Agenda item: 

**Title of meeting:** Governance & Audit & Standards  
**Date of meeting:** 13<sup>th</sup> March 2013  
**Subject:** Regulation of Investigatory Powers Act (RIPA)  
**Report by:** City Solicitor  
**Wards affected:** n/a  
**Key decision:** No  
**Full Council decision:** No

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### 1. Purpose of report

To inform members that there has been one RIPA authorisation since the last report to Members dated 26/6/13, that numbers of RIPA applications have declined and the reasons for this.

### 2. Recommendations

It is recommended that Members note the fact that there has only been one RIPA application since the last report and the reasons why the use of RIPA applications has declined.

### 3. Background

- 3.1 Since the introduction of the Protection of Freedoms Act 2012 judicial approval is required for directed surveillance by a local authority. Local authorities can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment **or** are related to the underage sale of alcohol and tobacco.
- 3.2 One RIPA request was authorised since the last report in June 2013 for the surveillance of a suspected misuse of a blue badge.
- 3.3 RIPA activity over the last 6 years has been:

2008	7	Blue badge misuse and Trading Standards
2009	7	Blue badge misuse & Trading Standards
2010	17	Mainly blue badge misuse with some Trading

		Standards
2011	14	Ditto
2012	5 + 2 telecoms	Blue Badge misuse and Trading Standards
2013	1	Blue badge misuse

#### **4. Reasons for recommendations**

- 4.1 Clearly, directed surveillance is now unlawful for summary matters therefore as an Authority we only use surveillance in parking matters where there is intelligence to support an investigation under the Fraud Act which meets the sentencing threshold.
- 4.2 Prior to the Protection of Freedoms Act there was no sentencing threshold and proportionality was considered via a formal application. The view at the time was surveillance was proportionate and necessary for deliberate sustained abuse, albeit for summary matters. The level of offending and sentencing reflect the seriousness that the court took with these matters.
- 4.3 It is always difficult to predict offences in these matters where we have intelligence of abuse but, we have to accept the change in the law and are now intervening perhaps more quickly where we view offences are summary, but accept we will have fewer offences to prosecute.
- 4.4 During 2013 a number of investigations were undertaken for Blue Badge, Parking Permits, and other generic parking frauds whereby the evidence (inclusive of historic data) required immediate intervention with the perpetrator; which in turn obviously negates necessity elements required to meet the need for the use of RIPA.
- 4.5 A very recent example of this - a driver parked in Portsmouth displaying disabled blue badge refused a CEO statutory request to produce a disabled badge for inspection; and drove off at speed. Subsequent checks with the issuing Authority (Bucks County Council) revealed the badge was reported lost by badge holder during 2011 / and further that the Badge Holder had passed away 3 weeks prior to the detected use of the badge in Portsmouth. Provisional investigation of this matter appeared to evidence offences under S21 Chronically Sick Disabled Persons Act 1970 (Refusal to Produce) / S117 or S115 Road Traffic Regulation Act 1984 (Use of the badge) S6 Fraud Act 2006 (Possession) Potential Offence under Theft Act 1968 (Theft by Finding). A serious matter but clearly RIPA is not appropriate with this investigation.
- 4.6 21 Badges were seized during a Street Smart operation which was a two day public inspection programme in the city centre. Although this operation used a combination of uniformed and non-uniformed PACE trained officers the activity was completely overt challenging vehicle drivers as the either parked on arrival or returned to their respective parked vehicles. Although this operation only lasted two working days it generated almost eight weeks work to deal with all the matters

arising including a number of reports relating to misuse by residents who had been previously issued with a warning.

4.7 It is the view of the Officers who manage enforcement that the use of Authorised Directed Surveillance (RIPA) remains an invaluable tool in the investigative toolkit where the necessity and proportionality elements are satisfied but will clearly be used less because of the new tests of criminality.

**5. Equality impact assessment (EIA)**

There are no equality impacts arising from this report.

**6. Legal comments**

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

**7. Finance's comments**

There are no Financial Implications arising from this report.

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 Signed by:

**Appendices: None**

**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	<a href="http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/Regulation-of-Investigatory-Powers-Act-codes-of-practice/">http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/Regulation of Investigatory Powers Act-codes-of-practice/</a>
2 Regulation of Investigatory	<a href="http://www.legislation.gov.uk/ukpga/2000/">http://www.legislation.gov.uk/ukpga/2000/</a>

	Powers Act 2000	<a href="#">23/contents</a>
3	Home Office guidance	<a href="http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/?view=Standard&amp;pubID=1079688">http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/?view=Standard&amp;pubID=1079688</a>
4	Protection of Freedoms Bill	<a href="http://www.homeoffice.gov.uk/publications/about-us/legislation/protection-freedoms-bill/">http://www.homeoffice.gov.uk/publications/about-us/legislation/protection-freedoms-bill/</a>