

**Title of meeting:** Governance & Audit & Standards Committee

**Date of meeting:** 29<sup>th</sup> January 2016

**Subject:** Regulation of Investigative Powers Act 2000 (RIPA)

**Report by:** Michael Lawther, Deputy Chief Executive Officer, Monitoring Officer and City Solicitor

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

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**1. Purpose of report**

- 1.1 To update Members on the Authority's use of Regulatory Powers for the period from 27<sup>th</sup> June 2013 to 29<sup>th</sup> January 2016 and the changes required to the Policy.

**2. Recommendations**

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

- 2.1 Note the RIPA application authorised since the last report to this Committee on the 27<sup>th</sup> June 2013
- 2.2 Approve the required changes to the Corporate Policy and Procedure on the Regulation of Investigative Powers Act 2000 (RIPA) as a result of the new Codes of Practice and Guidance and changes in personnel (attached as Appendix A and detailed in paragraphs 6.1.1 to 6.1.10 of the report)

**3. Background**

- 3.1 PCC has a Corporate Policy and Procedure on the Regulation of Investigative Powers Act 2000 (RIPA) (the Policy) to ensure that officers comply with the Regulation of Investigatory Powers Act requirements to mitigate any legal challenge risks and this is updated when there are changes in the codes of practice or legislation including case law and personnel.

**4. Reasons for recommendations**

- 4.1 Following the issue of updated Codes of Practice and Guidance by the Office of Surveillance Commissioner and a change in personnel there have been minor

amendments made to PCC's Policy. There has been one RIPA application since the last report to Committee on the 27<sup>th</sup> June 2013.

## **5. Regulation of Investigatory Powers Act Authorisations**

- 5.1 RIPA activity is normally reported to Members every six months and this was last done on 27<sup>th</sup> June 2013. As no RIPA activity has occurred for some time a verbal update only has been provided to the Chair at some Briefings. RIPA activity has tailed off mainly due to the changes in law around Blue Badge Fraud (which was the biggest user of RIPA) which has made it easier for the Authority to take action.
- 5.2 One RIPA application (RIPA reference number 79) for Telecoms data has been authorised since the last RIPA report to this Committee. The application was approved by Magistrates and is still under investigation. The application concerned identifying the perpetrator re aggressive selling tactics contrary to unfair trading laws.

## **6. Changes to Policy**

- 6.1 The proposed changes to the Policy are highlighted on the attached document Appendix A and are as follows:
- 6.1.1 Summary paragraph 3 emphasising that Authorities can only consider using RIPA for the prevention or detection of crime and disorder.
- 6.1.2 The addition of guidance around covert surveillance of social networking sites in paragraphs 4.6 & 4.7 of the Policy.
- 6.1.3 Emphasising that Authorising Officers must see the process through for any applications that they have authorised in paragraph 4.12 and in 4.13 setting out the procedure for appointing temporary Authorising Officers in exceptional circumstances.
- 6.1.4 Discouraging investigating officers from copying information from one RIPA application to another in paragraph 4.15.
- 6.1.5 Bringing to the attention of investigating officers the principles established by the case *Kinloch v Her Majesty's Advocate* [2012] that consideration should be given to likely scenarios before any activity takes place and included in the RIPA but they are not expected to have the benefit of hindsight in paragraph 4.16.
- 6.1.6 The Commissioners consider that it is best practice for the Authorising Officer to apply to Magistrates for approval but accept that if that is not practicable the Investigating Officer should. Any comments made by the Magistrate should be promptly reported back to the Authorising Officer, recorded and action taken to incorporate or address them. This is added as paragraph 4.21.

- 6.1.7 In paragraph 4.23 the use of the Authorising Officers own words to state why they believe the activity is necessary and proportionate has been added.
- 6.1.8 There is no longer a power to make urgent oral authorisations for local authorities and this has been made clear in paragraph 4.24.
- 6.1.9 A new paragraph 10.2 has been added stating that any requests for guidance from the OSC must only come from the Senior Responsible Officer.
- 6.1.10 Appendix A sets out the Current Authorising Officers and the Senior Responsible Officer contact details.

**7. Equality impact assessment**

- 7.1 An equality impact assessment is not required as the recommendations do not have a negative impact on any of the protected characteristics as described in the Equality Act 2010.

**8. Legal implications**

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

**9. Director of Finance's comments**

- 9.1 N/A

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Signed by: Michael Lawther, Deputy Chief Executive, Monitoring Officer & City Solicitor

**Appendices: APPENDIX A UPDATED POLICY**

**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	<a href="https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice">https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice</a>



	issued by the Home Office	
2	Regulation of Investigatory Powers Act 2000	<a href="http://www.legislation.gov.uk/ukpga/2000/23/contents">http://www.legislation.gov.uk/ukpga/2000/23/contents</a>
3	Portsmouth City Council Regulation of Investigatory Powers Act Policy	Revised Policy attached as Appendix to this report.
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>

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

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Signed by: