

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

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| <b>Decision Maker:</b>   | Executive Member for Policy and Resources   |
| <b>Date of Decision:</b> | 26 September 2018   |
| <b>Decision Title:</b>   | Regulation of Investigatory Powers Act 2000 – Annual review and confirmation of existing policy with regards to surveillance activity |
| <b>Report From:</b>      | Director of Culture, Communities and Business Services / Director of Transformation and Governance – Corporate Services               |

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### 1. Recommendation(s)

1.1. That the County Council's proposed Policy with regard to RIPA, attached as appendix 1 to this report, be approved.

### 2. Executive Summary

2.1. The purpose of this paper is to seek the annual approval of the County Council's Policy on Surveillance as required under the Codes of Practice issued by the Home Office associated with the Regulation of Investigatory Powers Act (RIPA).

2.2. The Policy statement, for which approval is sought, is attached to this report as Appendix 1.

### 2. Contextual information

2.1. RIPA is the act of parliament that regulates the County Council's use of covert surveillance. The County Council operates a strict control policy, which ensures that only authorised surveillance takes place; where it is lawful, necessary and proportionate to do so.

2.2. The current statutory Codes of Practice made by the Secretary of State for the Home Office under the Regulation of Investigatory Powers Act 2000 require that each local authority must have their RIPA policy confirmed by the

appropriate executive function on an annual basis, that is, the Executive Member for Policy and Resources.

- 2.3. The current Policy was subject to Executive Decision approval on 18 October 2017. This was for a twelve month period and approval for the continued use of surveillance powers for the next 12 months is required.

### **3. Use of Powers**

- 3.1. The County Council uses these powers very sparingly. The Trading Standards Service has adopted the Intelligence Operating Model (IOM) as a means of identifying suspicious activity for further investigation and, thus ensuring resources are used efficiently. The introduction of the IOM has contributed towards the decline in recent surveillance activity as the nature of investigations' identified have not warranted such techniques being used.
- 3.2. In 2017/2018 there was 1 instance of the County Council using its surveillance powers in relation to Directed Surveillance (that is where the person is not aware surveillance is taking place and can be done using cameras or videos), and 1 Covert Human Intelligence Source powers (this is where a person is required to covertly/secretly form a 'relationship' with the person/business under investigation for the purpose of obtaining information to further a criminal investigation, for example through face to face conversations, emails or telephone calls).
- 3.3. In 2017/2018 the County Council made no applications in relation to its communications data powers (this is where a request is made to a telecommunications supplier for subscriber data and service use data (not content), for example, identifying who a particular internet domain is registered to or the identity of the subscriber to a particular telephone number).
- 3.4. It should be noted that the use of surveillance is not the totality of any criminal investigation, but a small part of it, and that criminal investigations may not complete their passage through the criminal court process for many months, if not years after the surveillance activity has ceased.
- 3.5. The principal reasons for the use of surveillance are for prevention and detection of crime and not for criminal proceedings. As such, conviction rates, although excellent, are not the only measure of success (different methods of disposal such as letters of written warning, Simple Cautions and website takedowns are also justifiable indicators of RIPA usage).
- 3.6. Over the last ten years the use of surveillance in the fight against counterfeit goods has resulted in £632,550 worth of counterfeit goods being seized.
- 3.7. When the policy was last submitted to annual review and approval in October 2017, an example of successful use of communications data powers was referred to. It indicated that substantial custodial sentences had been imposed by the Courts and that the Trading Standards Service had commenced proceedings using the Proceeds of Crime Act 2002 to recover the criminal benefit obtained. These proceedings have subsequently been concluded and the defendants in questions have been ordered by the Courts

to repay £250,000 within 6 months or face an additional sentence of imprisonment in default – one defendant being 20 months and the other 9 months.

#### **4. Monitoring of Activity**

- 4.1. Monitoring of the County Council's activity in respect of RIPA is conducted by the Audit Committee. Regular reports on the use of surveillance powers are presented to the Audit Committee on a quarterly basis.
- 4.2. On 20 June 2018, the Audit Committee reviewed the County Council's use of RIPA powers for the previous 12 months). As a result of that review, the Audit Committee has provided its assurance that the County Council is operating its powers in a lawful and proportionate manner, and the continued use of surveillance powers would be appropriate.
- 4.3. The majority of the County Council's RIPA activity is conducted by officers of the Trading Standards Service, and in accordance with the current County Council's RIPA policy, all RIPA activity is authorised via that Service. Additionally, all authorisations by local authorities are subject to judicial approval through a magistrate, in accordance with the provisions of the Protection of Freedoms Act 2012.
- 4.4. The County Council's use of surveillance powers is regularly subject to external inspection. Prior to September 2017 this was carried out by the Office of the Surveillance Commissioner and the Interception of Communications Commissioners Office. From September 2017 all such external inspections are carried out by the Investigatory Powers Commissioner's Office (IPCO). IPCO was formed in September 2017 from the amalgamation of the Office of the Surveillance Commissioner; the Interception of Communication Commissioner's Office and the Intelligence Services Commissioner's Office.
- 4.5. In November 2017, the Assistant Surveillance Commissioner reviewed the County Council's use of directed surveillance, covert human intelligence source and CCTV systems under the Regulation of Investigatory Powers Act, and policies and procedures the County Council has in place. The formal report was received by the County Council in January 2018, where the Assistant Surveillance Commissioner indicated his satisfaction with the County Council's application of its covert activities arrangements. He expressed the view that *'the County Council are taking their responsibilities under the legislation seriously and, that standards and approach are commendably high'*. He further stated that *'The policy of using Trading Standards to maintain standards and skills and advise where necessary is sound, and the commitment and leadership of Julie Chambers means that there can be confidence that any future use will be robust and compliant'*.
- 4.6. Minor recommendations were made for amendment to the policy and procedure in respect of covert surveillance of social networking sites, in order to make the County Council's procedures more robust and stand up to scrutiny. These recommendations being to require any Authorising Officer to have due regard to Note 289, as detailed in the Procedures and Guidance

document published by the Office of the Surveillance Commissioner in July 2016, when considering any application in respect of covert surveillance of social networking sites.

- 4.7. In January 2015 Hampshire County Council joined the National Anti-Fraud Network (NAFN) as a result of changes to the RIPA landscape affecting the acquisition and disclosure of communications data.
- 4.8. On 20 July 2016, the Executive Member for Policy and Resources approved changes to the officers authorised to appear at the Magistrates Court on behalf of the County Council in respect of RIPA approvals, item reference 7638.
- 4.9. In light of the comments and recommendations made by external inspectors, and the absence of any regulatory changes since the approval of the Policy last year, it is recommended that only minor amendments are made to the Policy. These changes are referred to in paragraph 4.6 above.

## **5. Finance**

- 5.1. The decision which is sought to be recommended by this report will have no effect upon the budgetary position of Hampshire County Council.

## **6. Performance**

- 6.1. The recommended decision sought ensures that the County Council continues to comply with the statutory Codes of Practice under RIPA.

**CORPORATE OR LEGAL INFORMATION:****Links to the Strategic Plan**

|   |     |
|---|-----|
| <b>Hampshire maintains strong and sustainable economic growth and prosperity:</b> | yes |
| <b>People in Hampshire live safe, healthy and independent lives:</b>              | yes |
| <b>People in Hampshire enjoy a rich and diverse environment:</b>                  | no  |
| <b>People in Hampshire enjoy being part of strong, inclusive communities:</b>     | no  |
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**Other Significant Links**

| <b>Links to previous Member decisions:</b>   |                  |                   |
|--|------------------|-------------------|
| <u>Title</u>   | <u>Reference</u> | <u>Date</u>       |
| Regulation of Investigatory Powers Act 2000 – Annual review and confirmation of existing policy with regards to surveillance Activity                    | 6885             | 21 September 2015 |
| Information Compliance - Use of Regulated Investigatory Powers   | 7558             | 23 June 2016      |
| Regulation of Investigatory Powers Act 2000 – Ability of officers to seek judicial approval for authorisations granted for related surveillance activity | 7638             | 20 July 2016      |
| Regulation of Investigatory Powers Act 2000 – Annual review and confirmation of existing policy with regards to surveillance                             | 7749             | 29 September 2016 |
| Information Compliance - Use of Regulated Investigatory Powers   |                  | 22 June 2017      |
| Regulation of Investigatory Powers Act 2000 – Annual review and confirmation of existing policy with regards to surveillance                             |                  | 18 October 2017   |
| Information Compliance - Use of Regulated Investigatory Powers   |                  | 20 June 2018      |

| <b>Direct links to specific legislation or Government Directives</b> |             |
|--|-------------|
| <u>Title</u>   | <u>Date</u> |
| Regulation of Investigatory Powers Act 2000 as amended               | 2000        |
| Protection of Freedoms Act 2012                                      | 2012        |

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

| <u>Document</u> | <u>Location</u> |
|-----------------|-----------------|
| None            |                 |

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;

Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

#### **Due regard in this context involves having due regard in particular to:**

The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;

Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;

Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

### **2. Equalities Impact Assessment:**

2.1. As there are no proposed changes to the existing Policy a full Equalities Impact Assessment is not required, however potential impacts have been considered in the development of this report and no adverse impact has been identified.

### **3. Impact on Crime and Disorder:**

3.1. The County Council has a legal obligation under Section 17 of the Crime and Disorder Act 1998 to consider the impact of all the decision it makes on the prevention of crime. The County Council is only able to lawfully carry out covert surveillance activity on the grounds of prevention and detection of crime and disorder. By complying with RIPA and the statutory Codes of Practice this activity will be carried out without unlawfully contravening the requirements of the European Convention on Human Rights and the Human Rights Act 1998. All activity under RIPA will therefore assist the County Council, where it is both necessary and proportionate to do so, in its aim to prevent and detect crime.

### **4. Climate Change:**

How does what is being proposed impact on our carbon footprint / energy consumption?

The activities reported within this report have no effect on climate change

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

The activities reported within this report have no effect on climate change



## **Policy Statement**

Hampshire County Council will not undertake any activity defined within the Regulation of Investigatory Powers Act 2000 without prior authorisation, from a trained, senior officer who is empowered to grant such consents; and subject to Sections 37 and 38 of the Protections of Freedoms Act 2012 and any pertaining regulations relating to the approval of such authorisations by a Magistrate.

The Director of Culture, Communities and Business Services has been appointed the Senior Responsible Officer and, as such, has been given authority to appoint Authorising Officers (for surveillance activities) and Designated Persons (for the purposes of access to communications data) under the Act.

The Authorising Officer or Designated Person will not authorise the use of surveillance techniques, human intelligence sources or access to communications data unless the authorisation can be shown to be necessary for the purpose of preventing or detecting serious crime or of preventing disorder, in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012.

In addition, the Authorising Officer or Designated Person must believe that the surveillance or obtaining of communications data is necessary and proportionate to what it seeks to achieve. In making this judgment, the officer will consider whether the information can be obtained using other methods and whether efforts have been made to reduce the impact of the surveillance on other people, who are not the subject of the operation. Furthermore, in respect of covert surveillance of Social Networking Sites (SNS) the Authorising Officer will pay due regard to Note 289 in the Procedures and Guidance document published by the Office of the Surveillance Commissioner in July 2016.

Applications for authorisation of surveillance, the use of a Covert Human Intelligence Sources or the obtaining of communications data will be made in writing on the appropriate form.

Intrusive surveillance operations are defined as activities using covert surveillance techniques, on residential premises, or in any private vehicle, which involves the use of a surveillance device, or an individual, in such a vehicle or on such premises. Hampshire County Council officers are NOT legally entitled to authorise these types of operations.

However public bodies are permitted to record telephone conversations, where one party consents to the recording being made and appropriate surveillance authorisation has been granted. The party who consents to the recording of the telephone conversation could either be an officer of the County Council or a third party. On occasions, officers of the County Council do need to record telephone conversations, to secure evidence.

It is the policy of this authority to be open and transparent in the way that it works and delivers its services. To that end, a well-publicised Corporate Complaints procedure is in place and information on how to make a complaint to

the Investigatory Powers Tribunal will be provided on request to the Senior Responsible Officer.

The County Councils use of its powers under the Regulation of Investigatory Powers Act 2000 will be subject to regular scrutiny by the County Councils Audit Committee.