

CONSULTATION ON REGULATION OF INVESTIGATORY POWERS ACT (RIPA)

To: **Cabinet**

Date: **7 July 2009**

From: **Executive Director: Environment Services**

Electoral division(s): **ALL**

Forward Plan ref: **Not applicable** *Key Decision:* **No**

Purpose: **This report sets out the County Council's response to the current RIPA consultation and enables Cabinet to provide any input into the response and approve it.**

Recommendation: **It is recommended that:**

- i) **Cabinet agrees the County Council's response to the current RIPA consultation.**
- ii) **That authority is delegated to the Deputy Leader in consultation with the Cabinet Member for Economy and Environment and the Executive Director, Environment Services to agree any changes required as a result of this Cabinet meeting.**

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1. BACKGROUND

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) regulates a number of investigative procedures.
- 1.2 The main purpose of the RIPA is to ensure that surveillance undertaken is a justified infringement of Article 8 of the European Convention on Human Rights (ECHR), which states that:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.*

RIPA is a pro-human rights law that, rather than 'giving' powers, controls activities that need to be regulated. It puts in place the proper mechanism to consider the key issues of necessity and proportionality. In fact, RIPA did not create any new powers or techniques at all; nor did it permit any public authority to use powers which it could not have used previously.

- 1.3 The investigative procedures include:

- a. The interception of communications
- b. The acquisition and disclosure of data relating to communications
- c. The carrying out of surveillance
- d. The use of covert human intelligence sources
- e. And the acquisition of the means by which electronic data protected by encryption or passwords may be decrypted or accesses

RIPA legislates for, and regulates the use of, a range of covert techniques for a range of purposes. The more intrusive of these powers (such as interception) are limited to law enforcement and intelligence agencies.

Other less intrusive powers such as directed surveillance or access to communications data can be used by local authorities for the prevention or detection of crime or the prevention of disorder.

- 1.4 For each of these investigatory procedures, the Act ensures that the law covers:

- the purposes for which the procedures may be used;
- which public authorities can use the procedures;
- who should authorise each use of the procedure within each authority;
- the use that can be made of the material gained;
- independent judicial oversight;

- a means of redress for the individual.

- 1.5 The provisions of Article 8.2 of the ECHR have been incorporated into English law by the enactment of Part II of RIPA. The effect of Part II of RIPA is to provide protection to the local authority itself and to the individual officer, against any claim for breach of privacy, provided that they are able to demonstrate that they have fully complied with the procedures prescribed by RIPA.
- 1.6 Recent adverse publicity has called into question the use of RIPA by Local Authorities. This concern led to a review of the Council's use of RIPA by the Deputy Leader. This review resulted in a report to Cabinet on 21 April 2009.
- 1.7 The Home Office launched a consultation on the use of RIPA powers, and in particular the consultation of current codes of practice and orders on the 17 April 2009. This consultation ends on the 10 July 2009.

2. RESPONSE TO CONSULTATION

- 2.1 RIPA seeks to regulate activity through codes of practice and orders. The consultation outlines proposals for consolidating these. In particular it seeks responses to a number of questions. These questions and our proposed response are set out in Appendix 1.
- 2.2 The closing date for response to the consultation is 10 July. Unfortunately these timescales have not permitted taking the final draft through the Policy Development Group (PDG). However an early indication of the likely response was taken to Growth and Environment PDG on the 13 May and an electronic version of the response circulated for comments on the 15 June. In line with the feedback received, this response contains a robust defence of the Council's ability to continue to authorise activities under RIPA and a strong suggestion that the Home Office should formally follow the County Council's lead and introduce a requirement for all authorising officers to undergo training.

3. SIGNIFICANT IMPLICATIONS

3.1 Resources and Performance

There are no significant implications for any of the headings within this category

3.2 Statutory Requirements and Partnership Working

There are no significant implications for any of the headings within this category. However we are in the process of implementing the findings of the review mentioned in 1.6 above. In particular the training suggested has already been put in place and a thorough review of the policy framework as it relates to investigations is in hand.

3.3 Climate Change

There are no significant implications for any of the headings within this category

3.4 Access and Inclusion

There are no significant implications for any of the headings within this category

3.5 Engagement and Consultation

There are no significant implications for any of the headings within this category

4. Recommendations

4.1 It is recommend that

- i) Cabinet agree the County Council's response to the current RIPA consultation.
- ii) That authority is delegated to the Cabinet Member for Economy, Environment and Climate Change, in consultation with the Deputy Leader and the Executive Director, Environment Services to agree any changes required as a result of this Cabinet meeting.

Source Documents	Location
Cabinet Paper of Review of RIPA	http://cccs086.cambridgeshire.gov.uk/db/council2.nsf/selector?OpenForm&Seq=1
Growth and Environment PDG Paper	http://cccs086.cambridgeshire.gov.uk/db/council2.nsf/af8076762df199c580256b14003ef043/6ae7ff16ee10fcc3802575af002d6f97?OpenDocument
Council RIPA Policies	http://camweb.ccc.cambridgeshire.gov.uk/ocs/gov/legal/advice/RIPA.htm
Consultation Documents	http://www.homeoffice.gov.uk/documents/cons-2009-ripa

APPENDIX 1

Regulation of Investigatory Powers Act 2000 – Cambridgeshire County Council's response to consultation

We welcome the opportunity to respond to the important debate about the use of RIPA. Our responses to the questions posed by the consultation are outlined below.

We would strongly defend Local Authorities use of their powers and would make the point that RIPA did not create new powers, it simply created a framework for investigators to utilise these powers in a way that did not breach an individual's human rights. The vast majority of authorities use these powers in a proportionate and necessary manner. The following is where Cambridgeshire have used covert techniques since 2005:

05/06 – 9 cases of directed surveillance for the purposes of preventing and detecting crime. All cases related to Trading Standards activities.

06/07 – 9 cases of directed surveillance for the purposes of preventing and detecting crime. Five cases related to Trading Standards investigations and four to the investigation of illegal employment of children.

07/08 – 8 cases of directed surveillance for the purposes of preventing and detecting crime. Three cases related to Trading Standards investigations, two cases to paedophile related investigations, one case related to a possible insurance fraud and two related to the security of council property.

08/09 – 4 cases of directed surveillance for the purposes of preventing and detecting crime. One case related to a Trading Standards investigation, one to a possible breach of planning permission and two to the investigation of possible illegal employment of children.

Given the wide ranging powers that are given to Local Authorities across a range of areas such as safeguarding children and the power in certain circumstances to close premises down, it would seem somewhat inconsistent for Local Authorities not to be able to use covert means to gather intelligence. Increasingly our communities are, rightly, looking for the public bodies to shape places where we would all want to live and to respond to their needs and aspirations. Many of these needs fall outside the remit of the police and to exclude Local Authorities from RIPA would leave us unable to deal with genuine concerns.

Local Authorities are reliant on national organisations such as the Local Government Association (LGA) and Home Office to lead a sensible national debate about RIPA and its use. Media sound bites at the expense of local authorities or knee jerk reactions do shape public opinion and a more considered approach needs to be adopted. This is especially true where politicians use examples to highlight the misuse of RIPA which the Surveillance Commissioner believes is proportionate; dog fouling is a prime example.

Taking into account the reasons for requiring the use of covert investigatory techniques under RIPA set out for each public authority, should any of them nevertheless be removed from the RIPA framework?

Given the vast majority of partnership and joint working that takes place to protect our citizens and communities we would not support the removal of any public body from the RIPA framework.

If any public authorities should be removed from the RIPA framework, what, if any, alternative tools should they be given to enable them to do their jobs?

Given the vast majority of partnership and joint working that takes place to protect our citizens and communities we would not support the removal of any public body from the RIPA framework.

What more should we do to reduce bureaucracy for the police so they can use RIPA more easily to protect the public against criminals?

This falls outside the remit of Local Authorities but we would hope that the Local Authorities are not given bureaucratic burdens that affect our means of protecting the public.

Should the rank at which local authorities authorise the use of covert investigatory techniques be raised to senior executive?

The Home Office's focus on what rank within a Local Authority (LA) is appropriate to authorise covert techniques shows very little understanding of LA structures. All police officers carry warrants and have investigative knowledge and experience, regardless of their rank. If the rank was set at senior executive within LAs it would be unlikely that these officers would have sufficient knowledge or experience of the investigatory process to make judgements on whether a covert technique is the most appropriate means of pursuing an investigation. For example the vast majority (if not all) Trading Standards Services' use of covert techniques is authorised by the Head of Service (or below) and this methodology has been seen to be proportionate by the public and the Surveillance Commissioner. This is as a direct result of the background and training of Trading Standards Managers, which indicates links need to be maintained with the competence of officers rather than any rank they may hold in the Authority.

As a result of a recent internal review of how this Authority uses RIPA we have introduced a requirement that any authorising officer must attend a training course before they can authorise under RIPA. This ensures that they have the appropriate skills and competence to discharge this responsibility. To ensure that they maintain this knowledge we are also introducing mandatory refresher training. We would suggest that the Home Office establishes a requirement that any authorising officer must attend a statutory one day course before they can authorise any covert techniques.

Should elected councillors be given a role in overseeing the way local authorities use covert investigatory techniques?

Elected members have the democratic mandate to represent their communities. They set policy and priorities. It is the role of officers to implement those policies and deliver against those priorities. The role of elected members should be one of scrutiny and we would suggest that each Local Authority must have their use of RIPA scrutinised by Elected Members on an annual basis. Their role should not extend to direct involvement in operational matters.

Are the Government's other proposed changes in the Consolidating Orders appropriate?

We have no objections to the other proposed changes.

Do the revised Codes of Practice provide sufficient clarity on when it is necessary and proportionate to use techniques regulated in RIPA?

We would welcome greater clarity on the guidance given to Local Authorities however please see our previous comments on the need for the Home Office to lead an apolitical debate, rather than use anecdote and sound bite to attack local authorities. This is at odds to the more measured approach on the Home Office Website (Misconceptions about RIPA pages)