

Report title: Regulation of Investigatory Powers Act 2000 : Review of Activity	
Report to: Audit, Governance and Standards Committee	
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County Divisions affected: All Essex	

1. Introduction

- 1.1 This report informs the Committee that **no applications** for authorisation to undertake Directed Surveillance or use a CHIS have been made since the last written report to the Committee in March 2020.

2. Recommendations

- 2.1 That the Committee notes that no applications for directed surveillance or the use of a CHIS have been made by anyone at ECC since the last report in March 2020.

3. Background

Regulation of Investigatory Powers Act 2000

- 3.1 The Council operates many statutory services which have an element of enforcement. Most such activities are undertaken within the trading standards service, but the need for investigations may arise within the highways service and, at least in theory, within social services. All these matters may involve serious wrongdoing.
- 3.2 As part of an investigation the Council may occasionally want to undertake surveillance or use an informant. The Regulation of Investigatory Powers Act 2000 states that these activities are always lawful if they are authorised in accordance with the Act. These activities did not previously have a statutory basis and although there was no law against these activities, there was an argument that the lack of a statutory basis mean that there was a risk of infringing the ‘right to respect for private and family life’ – a right which is enshrined in the European Convention on Human Rights and Fundamental Freedoms.

- 3.3 The Act originally provides for local authorities to undertake these activities if properly authorised, and if it is necessary and proportionate to prevent or detect serious crime. Serious crime means offences which carry a maximum penalty of 6 months imprisonment (or underage sale of alcohol or tobacco to minors). Since 2012 the council has been required to obtain approval from a magistrate before an authorisation takes effect.
- 3.4 The Council is subject to regular inspections by Surveillance Inspectors appointed by the Chief Surveillance Commissioner to ensure that the Council is properly authorising activities and also ensuring that frontline staff are aware of which activities need to be authorised.

The Council's Surveillance Activity

- 3.5 The Council does not generally undertake surveillance or use CHISs which needs to be authorised under the Act. The last written report to the committee was made in March 2020, when a report that no authorisations had been sought or granted. Similarly, between March 2020 and March 2021 no authorisations have been sought or granted. The Council has worked with the police on joint operations. In these cases the Police would be expected to obtain the authorisation as their processes are more streamlined and do not require approval from a magistrate. In these cases Council officers satisfy themselves that they are covered by an authorisation issued by the Police.
- 3.6 The Council takes the view that the 'test purchasing' activities it undertakes by sending a minor to shops to purchase alcohol or tobacco do not need to be authorised under RIPA. This is because the activities take place in a public place and are undertaken overtly. This view has not been tested in court and some authorities take a more cautious approach.
- 3.7 The Council provides regular training to staff who may need to undertake enforcement activities to ensure that they are aware what needs to be authorised.

4. Financial Implications

- 4.1 Use of RIPA has no financial implications

5 Legal Implications

- 5.1 The legal implications of RIPA are set out in section 3 of this report. The Council may have to pay damages if interferes with someone's right to respect for their family and private life without such interference being authorised under RIPA. However, the risk of this is very low

6 Equality and Diversity Implications

6.1 Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when ECC makes decisions it must have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. Equality and diversity matters have been considered in the production of the progress report.

7 List of Appendices

None

8 List of Background Papers

Covert surveillance and property interference Code of Practice, dated August 2018
Covert human intelligence sources Code of Practice, dated August 2018