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Date: 8 July 2009

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Dear Sir

RIPA Consultation

Northampton Borough Council has considered the "Regulation of Investigative Powers Act 2000: Consolidating Orders and Codes of Practice" Consultation Document.

We set out below the questions the Government is asking together with our responses:

- 1. 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?**

The Council cannot comment on the inclusion in the RIPA framework of authorities and agencies other than local Authorities.

The Council does not believe that Local Authorities should be removed from the RIPA framework. Local Authorities have numerous statutory responsibilities and enforcement powers many of which have a direct impact on the public, for example Fly tipping offences. It is difficult to enforce such offences without covert surveillance. Removing RIPA protection will expose Local Authorities to Human Rights Act challenges the fear of which could ultimately result in less enforcement.

2. **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?**

If any public authorities are removed from the RIPA framework they should be empowered to partner with an authority within the framework to undertake essential surveillance and/or intelligence gathering. This should be underpinned by appropriate codes of practice.

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

The Council makes no comment on this point as we do not have sufficient information to be able to form an informed view.

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

The Council would support an arrangement whereby Authorised officers below senior executive level are formally appointed by the Chief Executive or Monitoring Officer of the Authority annually. However this would need to be underpinned by a requirement for up to date training and an annual appraisal of RIPA and Human Rights Act training. These requirements could be imposed by an amended code of practice.

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

The Council believes that Local Authority's Standards Committees should be given a role in overseeing the way Local Authorities use covert investigating techniques. This provides a more robust challenge.

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

In relation to the Government's other proposed changes, there were very few matters that were of concern to local authorities. However, the following comments are made about those proposed changes that do concern local authorities:

Department For Work and Pensions

It is proposed that covert techniques of conducting and the use of Covert Human Intelligent Sources should be removed.

If the uses of Covert Human Intelligent Sources were to be removed it would make it more difficult and take longer to obtain information, therefore take longer to bring forward any cases. An indirect result of this would be that any other types of fraud i.e. Housing Benefit or Council Tax Fraud would not be picked up and the accused could potentially be defrauding the local authority

out of a huge amount of taxpayer's money.

Gambling Commission

The Gambling Commission works with and governs local authorities with regards to gambling, gaming, lotteries etc. As the local authorities at a localised level, they are the ones that need to be made aware of any actions which conflict with the Gambling Objectives and they are the ones who will need to investigate these at a local level.

Local Authorities

To ensure efficiency and expedience, any authorisation that may be required should be delegated to localised level, in order to prevent loss of time.

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

Necessity and proportionality are discussed in both sections with reference to statutory grounds. The seriousness of intrusion needs to be balanced against the need for the surveillance and the harm it is attempting to prevent. Whilst it is important for the Codes of Practice to provide clear guidance on issues such as necessity and proportionality, a balance needs to be struck between the need to provide guidance and the need for any guidance to keep up with legal developments. For example, the law in this area will continue to develop through the European Court of Human Rights and domestic courts. Too much prescription could make the code out of date, and possibly unlawful. The Code should always point its readers to the general law in this area.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Francis Fernandes', written in a cursive style.

FRANCIS FERNANDES
Borough Solicitor and
Monitoring Officer

News and publications

Update on the 2009 consultation

4 November 2009

The Minister of State for Security, Counter-Terrorism, Crime and Policing (David Hanson): The Regulation of Investigatory Powers Act 2000 (RIPA) marked a major step in the protection of privacy.

Prior to RIPA, many of the more intrusive techniques which it regulates could be used by any public authority authorised at any level, for any purpose. There was no comprehensive system of independent oversight or a judicial complaints mechanism available in relation to all these techniques, and no means by which Parliament could prescribe the ranks of authorising officers or limit the purposes for which the techniques could be used. In this situation, RIPA ensured that only specified public authorities could continue to use certain key techniques to protect the public, and only if they could do so compatibly with the European Convention on Human Rights, particularly, the Article 8 right to respect for private and family life.

Nevertheless, a small number of local authorities have authorised techniques under RIPA in circumstances where we would say it was not necessary or proportionate for them to do so. In order to prevent this happening, the Home Office published on Friday 17 April a consultation paper entitled "[Regulation of Investigatory Powers: Consolidating Orders and Codes of Practice](#)" (new window). This paper set out proposals to ensure that techniques regulated in RIPA can continue to be used when they are necessary and proportionate, but that there is to be a small number of cases when they have been misused.

Today I am publishing a Summary of the Responses submitted as part of this consultation exercise. The summary explains how I intend to develop the proposals set out in the consultation paper in light of the responses. The Home Office received 222 responses to the consultation exercise. As explained in the summary, most of these were broadly supportive of the proposals in the consultation document. Subject to minor changes set out in the summary, I intend to take forward the proposals for secondary legislation described in the consultation paper as soon as possible.

The secondary legislation, and the related codes of practice, will include measures to:

- a) clarify the test of necessity and proportionality so techniques will not be used for trivial purposes such as investigating dog fouling or people putting bins out a day early
- b) raise the rank of authorising officer for RIPA techniques in local authorities to senior executive at a minimum of 'Director' level
- c) give elected councillors a role in overseeing the way local authorities use covert investigatory techniques
- d) require constituents' communications with MPs on constituency business to be treated as confidential information, and therefore subject to authorisation by a higher rank of officer
- e) treat covert surveillance of legal consultations as 'intrusive' rather than 'directed' surveillance, meaning that it can only be carried out by a very limited number of public authorities, primarily the police and intelligence agencies, and only with independent approval
- f) clarify how provisions currently in the Policing and Crime Bill will reduce bureaucracy relating to RIPA in police collaborative units comprising two or more forces

Following a proposal by the Local Government Association, I intend to require each local authority to be responsible for ensuring that all authorising officers are of an appropriate standard. This

have to be filled by a member of the corporate management team to whom authorising officers will re

A number of respondents suggested that the key to effective and appropriate use of RIPA techniques rather than the rank of authorising officers. With this in mind, I have asked my officials to work with for Communities and Local Government, the Local Government Association and the Local Authorities Regulatory Services to establish a package of accredited training for local authority authorising officers, and, in addition, to prepare bespoke written guidance on how local authorities use RIPA.

It is absolutely clear that a wide range of public authorities need to be able to authorise key techniques in order to protect us from those who would do us harm. It is equally clear that public authorities must respect privacy and only use techniques under RIPA when it is necessary and proportionate to do so. I believe the measures outlined in the Summary of Responses will ensure that both objectives can be met.

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Press Release Search

Government announces new measures to strengthen the use of the Regulation of Investigatory Powers Act

4 November 2009

The level of authorisation required by local authorities to sign off investigatory techniques will be raised to prevent them being used for trivial matters under new plans announced by the Policing Minister David Hanson.

Following a public consultation of the Regulation of Investigatory Powers Act (RIPA), a senior executive will be required to approve how and when the techniques are used to protect the public and fight crime.

Under the new measures, elected councillors in each local authority are also required to oversee the use of RIPA. In addition, training for local authority authorising officers and bespoke written guidance on how local authorities should use RIPA will be issued.

New codes of practice make it clear to all public authorities who can make authorisations under RIPA that they should be used for minor matters.

The Home Office received 222 responses to the consultation ([new window](#)) launched in April and will now bring forward legislation to implement the changes. The orders and the related codes of practice will include:

- clarify the test of necessity and proportionality so techniques will not be used to investigate dog owners for putting bins out a day early
- raise the rank of authorising officer for RIPA techniques in local authorities to senior executive 'director' level
- give elected councillors a role in overseeing the way local authorities use covert investigatory techniques
- require constituents' communications with MPs on constituency business to be treated as confidential information, and therefore subject to authorisation by a higher rank of officer
- treat covert surveillance of legal consultations as 'intrusive' rather than 'directed' surveillance, and can only be carried out by a very limited number of public authorities.

Many of the investigations that rely on the techniques regulated by RIPA are vital to protecting public safety from serious crime and terrorism - and they can also make a real difference to people's everyday lives. From stopping rogue traders or trapping fly tippers who dump tonnes of rubbish on an industrial scale.

Statement from the Policing Minister

David Hanson MP said, 'We made it clear that we would not tolerate the misuse of RIPA and these new measures ensure that we are taking the necessary action to stop the small number of cases where this has happened.'

'There is no doubt that a wide range of public authorities need to be able to authorise surveillance under RIPA to protect us from those who would do us harm. But it is equally clear that public authorities must respect privacy and only use techniques under RIPA when it is necessary and proportionate to do so.'

'The measures outlined in the summary of responses will ensure that this balance is achieved.'

The codes of practice replace the existing codes of practice on covert surveillance and covert human intelligence sources. They provide greater clarity on when the use of RIPA techniques would be proportionate. They also ensure that RIPA should not be used in relation to trivial offences and they provide examples so everyone can understand the rules.

when these techniques should be used.

Notes to editors

Read the [RIPA consultation and responses](#) (new window).

The review of RIPA invited views on:

- which public authorities should be able to authorise key investigatory techniques, such as the use of communications data or covert surveillance in public places, under RIPA
- the purposes for which these investigatory techniques should be used
- the option of raising the rank of the local authority employee authorising the use of investigatory techniques to senior executive
- whether elected councillors should also play a role in the authorisation.

For more information, please contact Home Office Press Office newsdesk on 020 7035 3535.

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