

Committee: Standards Committee

Date: 21 October 2015

Wards: All

Subject: Regulation of Investigatory Powers Act Authorisations

Lead officer: Graham Owen

Lead member: Councillor Peter McCabe, Chair of Standards Committee

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Recommendations:

- A. That members note the purposes for which investigations have been authorised under the Regulation of Investigatory Powers Act (RIPA) 2000.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To inform members about investigations authorised since June 2015 under RIPA.

2 DETAILS

- 2.1. The council has a number of statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them. These functions include investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), benefit fraud, contraventions of trading standards, licensing and food safety legislation.
- 2.2. Whilst the majority of investigations are carried out openly, some investigations must be carried out using covert surveillance techniques or involve the acquisition of communications data. Communications data is information about the times of calls or internet use and the location and identity of the callers, but not the content of the calls or details of the websites viewed.
- 2.3. RIPA regulates the authorisation and monitoring of these investigations to safeguard the public from unwarranted intrusion of privacy.
- 2.4. With effect from 1 November 2012, the Protection of Freedoms Act 2012 requires local authorities to obtain the approval of a magistrate for the use of covert surveillance.
- 2.5. In line with the revised Code of Practice, reports detailing the use of RIPA are submitted to Standards Committee on a quarterly basis.
- 2.6. Since June 2015, no covert surveillance has been authorised.
- 2.7. Since June 2015, there have been no requests for CCTV footage for RIPA investigations.
- 2.8. No RIPA no authorisations have been rejected by the Magistrates Court.

2.9. Since June 2015, no applications have been made for the acquisition of communications data.

2.10. The annual statistics return to report on the conduct and use of directed surveillance and covert human intelligence was returned to the Office of Surveillance Commissioners Office on 30 April 2015.

2.11 At the Standards Committees previous meeting members asked to be reassured that the low level of RIPA authorisations did not indicate a lack of enforcement activity in Merton in relation to fly tipping and littering. A comparison with a neighbouring borough was requested to benchmark the level of enforcement activity.

There are various offences that could be described as fly-tipping or associated with fly-tipping. The following figures are activity in Merton and a neighbouring Borough. The enforcement maybe carried out using covert methods, which requires a RIPA authorisation, or overt methods which does not.

Section 33 Environmental Protection Act 1990 – The standard fly-tipping offence (unauthorised deposit of waste).

Council: 0 Prosecutions

Merton: 8 Prosecutions

1. 07.05.13 Guilty Plea. £165 fine, £165 costs, and £20 victim surcharge
2. 07.05.13 Guilty Plea. £350 fine, £475 costs, and £35 Victim surcharge
3. 07.05.13 Guilty Plea. £200 Fine, £115 Costs, £20 Victim Surcharge
4. 07.01.14 Withdrawn following reps and payment of £50
5. 07.10.14 G Plea. Fine £500, costs £500, v/s £50
6. 09.12.14 Guilty plea. Sentence: fine £500, v/s £50 and prosecution costs of £400
7. 19.12.14 Convicted following trial. Sentence: fine £600, v/s £60 and prosecution costs of £1000
8. 13.01.15 Guilty plea. Sentence: fine £150, v/s £20 and prosecution costs of £200

Section 87 Environmental Protection Act 1990 – Littering offence (smaller items such as cigarette butts, carrier bags etc).

Council: 0 Prosecutions

Merton: 1 Prosecution

1. 07.01.14 Littering – cigarette £600 fine, £350 costs, £60vs

Section 34 Environmental Protection Act 1990 – Waste duty of care offences

This covers a multitude of different offending, the most common ones being such as:

- Failure to furnish waste transfer notes;

- Failing to take reasonable steps to prevent the escape of waste from their control;
- Failing to take reasonable steps to secure that waste is only transferred to an authorised person;
- Failing to take reasonable steps to transfer a written description of waste when it is transferred to another;

These offences often arise out of an investigation into a fly-tipping incident. These prosecutions are often undertaken where the actual offence of fly-tipping isn't/cannot be prosecuted either due to lack of proof or where the identity of the actual fly-tipper cannot be ascertained.

Council: 0 Prosecutions

Merton: 3 Prosecutions

1. 03.06.14 1x s.34(5) EPA 1990 – Failure to Furnish Waste Transfer Notes
Summons Withdrawn – belated payment of FPN
2. 04.11.14 2x 34 EPA 1990 – duty of care provisions 2x Guilty pleas: 1st
offence: Fine £500 2nd Offence: No separate penalty, Costs £200, VS £50
3. 07.04.15 Failure to Furnish Waste Transfer Notes – s.34(6) Environmental
Protection Act 1990 Guilty plea. £150 Fine, £450 Costs, £20 VS

Section 17 Greater London Council (General Powers) act 1972 – Failure to identify the driver/person in charge of a vehicle

Another associated offence that arises out of the course of an investigation into a fly-tip. Vehicles are frequently used to carry out the fly-tipping incident. Quiet often witnesses are able to record the registration number of the vehicle. A notice under this provision is then sent to the registered keeper of the vehicle requesting that they identify the person in charge of the vehicle t the time of the incident. It is an offence to fail to provide the requested information because if the information is not provided it is virtually impossible to identify the person who actually carried out the fly-tipping offence.

Council: 2 Prosecutions

1. 04.11.14 Proved in Absence. Fine £1,000, Costs £1,035, VS £100
2. 03.02.15 Proved in Absence. Fine £400, Costs £200, VS £40

Merton: 0 Prosecutions

Please note that Fixed Penalty Notices may be issued by the client departments for offences under s.87 and certain s.34 offences. If these FPNs are paid the Defendants cannot be prosecuted.

3 ALTERNATIVE OPTIONS

- 3.1. The report is for information only.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. No consultation has been undertaken regarding this report.

5 TIMETABLE

5.1. N/A.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. None.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. All investigation using covert surveillance techniques or involving the acquisition of communications data is in line with the Regulation of Investigatory Powers Act 2000.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. RIPA was introduced to regulate existing surveillance and investigations in order that they meet the requirements of Article 8 of the Human Rights Act. Article 8 states:

1) Everyone has the right 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 the rights and freedoms of others.

9 CRIME AND DISORDER IMPLICATIONS

9.1. RIPA investigations are authorised for the prevention or detection of crime or the prevention of disorder.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

11.1. None.

12 BACKGROUND PAPERS

12.1. None.