



## Dorset Fire Authority

MEETING	Dorset Fire Authority
DATE OF MEETING	10 February 2015
OFFICER	Chief Fire Officer
SUBJECT OF THE REPORT	Surveillance and Access to Communications Inspections
EXECUTIVE SUMMARY	<p>During 2014, the Service received inspections from two Commissioners in relation to its compliance with the Regulation of Investigatory Powers Act (RIPA). The inspectors commended positive practices already in place, despite the legislation being rarely used. Both reports made some recommendations for improvements to further strengthen compliance with the legislation.</p> <p>The Office of Surveillance Commissioners (OSC) which is concerned with covert surveillance, recognised measures put in place since the last inspection. The report made six recommendations relating to administration, monitoring, procedure and training. These have all now been discharged or programmed in.</p> <p>The report from the Interception of Communications Commissioners Office (IOCCO), which is concerned with Access to Communications Data, identified a breach of the Act in 2012. This was due to the misinterpretation of our powers when investigating fraud as a criminal activity. Robust procedures have been in place for some time to avoid reoccurrence of this breach and the inspector deems this recommendation has been achieved. Additional recommendations have also now been discharged or programmed in.</p>
RISK ASSESSMENT	<p>Although inspections found lessons to be learnt, the policy and associated procedures are in place. This is acknowledged by the respective inspectors, and on this basis officers believe that the residual risk associated with complying with RIPA is deemed to be low.</p>

<b>COMMUNITY IMPACT ASSESSMENT</b> <i>Note: If the matrix indicates negative impacts on the community or staff, an equality impact assessment (EIA) will need to be completed.</i>	None for the purposes of this report.
<b>BUDGET IMPLICATIONS</b>	None for the purposes of this report.
<b>RECOMMENDATIONS</b>	It is recommended that Members note and comment upon the outcomes of the two inspections associated with our compliance of RIPA for Access to Communications Data and Covert Surveillance.
<b>BACKGROUND PAPERS</b>	OSC Inspection Report 21 October 2014, received November 2014. IOCCO Inspection Report 21 July 2014 (received October 2014). <i>(Reports available from the Head of Information Management. Tel (01305) 252641)</i>
<b>APPENDICES</b>	None
<b>REPORT ORIGINATOR AND CONTACT</b>	Derek James, Assistant Chief Officer Tel: (01305) 252606

## 1. Introduction

- 1.1 The Regulation of Investigatory Powers Act (RIPA) provides the regulatory framework for determining whether a range of covert investigatory techniques by public authorities is proportionate and necessary in compliance with Article 8 of the European Convention on Human Rights.
- 1.2 The Office of Surveillance Commissioners (OSC) is an independent body which oversees the use of covert surveillance and covert human intelligence sources by all designated public authorities.
- 1.3 The Interception of Communications Commissioner's Office (IOCCO) provides statutory independent oversight of the lawful interception of communications, the acquisition and disclosure of communications data. It undertakes a programme of inspections to all relevant public authorities authorised to intercept communications or acquire communications data under Part I Chapter II of RIPA.

## 2. Background

- 2.1 Both Commissioners' Offices (OSC and IOCCO) have carried out their inspections of the Service during late autumn and we received these final reports in November and October respectively.
- 2.2 The purpose of the OSC inspection was to review the management of covert surveillance under RIPA. This included:
  - ◆ Ensuring the recommendations from the previous inspection in 2011 were discharged;
  - ◆ That there is good record keeping in place;
  - ◆ That policy and procedures are established;
  - ◆ That clear roles are identified and that training is delivered.
- 2.3 The purpose of the IOCCO inspection was to ensure the system in place for acquiring communications data is sufficient for the purposes of the Act and that all relevant records have been kept. It was to ensure that all acquisitions of communications data have been carried out in accordance with the Human Rights Act and RIPA Code of Practice and to check that the data which has been acquired was necessary and proportionate to the conduct being authorised.

### 3. Key Findings

#### 3.1 Office of Surveillance Commissioners (OSC)

3.1.1 The OSC inspection commended the Service on the substantial improvements put in place since the last visit in 2011 to achieve full compliance of the legislation. The inspector appreciated that the Service has little need to resort to covert activity in view of its other powers in carrying out its duties and as such this position was 'particularly commendable'.

3.1.2 The inspector recognised that previous recommendations had been largely discharged and there was clear evidence that the RIPA system was effective. A detailed report of these findings was provided (*see Background paper 1*).

3.1.3 The report made six new recommendations, all of which have either been discharged or programmed in to be actioned as detailed in the table below.

	<b>Recommendation</b>	<b>Response</b>	<b>Status</b>
1	Ensure that the Central Record Matrix accords with the Code of Practice for Covert Surveillance and establish a computer link with relevant documentation	A review of the Code of Practice has taken place and relevant changes made to the procedure. Being a small Service with one member of staff responsible for processing authorisations, information is available. However, for continuity this has been formalised within the electronic document store accessible by all RIPA authorising officers.	Completed
2	Clarify the authorisation process for surveillance.	We are a small Service who rarely needs to rely on this legislation. There is one individual who processes requests and local procedures exist. However, these have now been incorporated in to the corporate procedure for clarity and continuity.	Completed
3	Ensure regular oversight is exercised by SRO.	The RIPA co-ordinator and SRO have and will continue to meet monthly to review any RIPA issues.	Completed
4	CFO to receive RIPA training.	The CFO will be included in the refresher training programmed for 2015.	Programmed
5	Train officers to manage CHIS requests.	The original training included this but we will ensure the refresher training in 2015 covers CHIS management in more detail	Programmed

	<b>Recommendation</b>	<b>Response</b>	<b>Status</b>
6	Make amendments to the RIPA procedure to reflect the above recommendations and administration of requests.	Changes have been made to the existing procedure as recommended.	Completed

### 3.2 **Interception of Communications Commissioners Office (IOCCO)**

- 3.2.1 This was the first inspection conducted by the IOCCO. Their report (see *Background paper 2*) identified a single breach of the legislation in 2012 relating to Access to Communications Data. The Service approved a request to access subscriber information of a telephone number using its powers under the Act for the prevention and detection of crime. This was to support a disciplinary investigation where a member of staff was allegedly working whilst on paid sick leave. Having at that time recently completed the Home Office accredited training facilitated by a commercial legal practice, all Designated Persons who were responsible for authorising requests considered this to be a matter of fraud which could be handled under the legislation, ie it being criminal activity. Legal opinion was not obtained from the Clerk to the Fire Authority because all trained officers were confident in the justification for the application to be approved.
- 3.2.2 The request was approved and issued to the Communications Service Provider (CSP) who subsequently provided the information. This was the only occasion that the Service has used its powers under the Act. The information obtained was not subsequently used as evidence for the disciplinary hearing.
- 3.2.3 Since this time, we have not used the legislation and, following refresher training in February 2014, we strengthened our policy to allow requests under RIPA to be authorised only in cases relating to our statutory fire safety responsibilities.
- 3.2.4 Our procedures are operating well which has been demonstrated by our internal refusal of two requests from officers for covert surveillance for the purposes of fraud.
- 3.2.5 The inspector recognised these measures we had put in place to stop a breach of the Act reoccurring and was satisfied that this recommendation has been achieved. Immediately after the inspection, we formally notified the IOCCO of the error committed three years previously.
- 3.2.6 The inspection also identified three areas for improvement. The original authorisation form used in 2012 to request the data from the service provider needed to be adapted. This improvement has now been incorporated into the procedure with a Notice template. A template Senior Point of Contact (SPOC) log has also been introduced to record all actions following receipt of a request for communications data. Refresher training to ensure compliance with the Act will be delivered to all Designated Persons in 2015.

3.2.7 The recommendations, our management response and status are detailed in the table below.

	<b>Recommendation</b>	<b>Response</b>	<b>Status</b>
1	Ensure that communications data powers under section 22 (2)(b) are only used in cases where it has a clear statutory duty and responsibility to conduct a criminal investigation, and where the investigating officer intends the matter to be subject of a prosecution within a criminal court.	For some time the procedure correctly identifies the circumstances where RIPA activity can take place and this was done in March 2014. The inspector has deemed this recommendation to be achieved.	Completed
2	Introduce SPOC logs for each application to ensure a full audit trail of all actions taken by the Authorising Officer.	A monitoring spreadsheet exists to summarise requests and their status. A SPOC log has been developed to record detailed actions against a specific request.	Completed
3	Ensure that a formal Notice is issued by Designated Persons to Service Providers to access communications data.	A Notice template is included within the procedure.	Completed
4	DPs should be reminded that the powers under section 2(2)(b) and (d) are only used where the public authority has a statutory duty to investigate or to act in an emergency (such as to investigate the cause of a fire or hoax calls).	Training will be delivered to DPs during 2015. This will be included.	Programmed

## 4. Conclusion

4.1 Whilst regrettably some three years ago a request under Part I Chapter II of the Act for Access to Communications Data was in breach of the Act due to a misinterpretation of fraud as a criminal activity, Members should be assured that all procedures and practices fully comply with the legislation and have done so for some time. This has been subsequently reflected in a formal response from the IOCCO.

- 4.2 The risk posed to the Authority following both inspections is deemed as low with all actions discharged or programmed for completion alongside existing commitments.

**DARRAN GUNTER**

Chief Fire Officer

2 February 2015