

26 January 2011

**Lobbying success ensures councils can continue using RIPA to fight serious crime**

On 26 January 2010, the Home Secretary announced the outcomes of the Review of Counter-Terrorism and Security Powers to Parliament and details are available on the Home Office web site, together with a report by Lord Macdonald of River Glaven, who provided independent oversight of the review.

Although much of the review focused on the use of control orders, stop and search powers and detention of terrorist suspects before charge, part of the review considered councils' use of the Regulation of Investigatory Powers Act 2000 (RIPA) to undertake covert surveillance and access communications data. The Coalition Government set out the intention to "ban the use of powers in RIPA by councils, unless they were signed off by a magistrate and required for stopping serious crime". Over the summer the Local Government Group has been involved in discussions with the Home Office at a Ministerial level and with civil servants, regarding the review of counter terrorism and councils' use of RIPA. Following this lobbying the review has recommended that:

- Councils will have to get a Magistrate's approval for use of covert directed surveillance, covert human intelligence sources (CHIS) and access to communications data (i.e. billing and subscriber information) in addition to getting authorisation from a local authority senior manager and the more general oversight by elected councillors. The LG Group has said that assurances must be given that this process will be swift and that investigations will not be hindered. In urgent cases, immediate access to a Judge must be granted and all applications must be heard in private to prevent on-going operations from being undermined.
- Councils' use of RIPA to authorise directed surveillance should be confined to cases where the offence under investigation carries a maximum custodial sentence of 6 months or more. The LG Group argued that this 'serious crime' threshold should not be the higher levels of 12 months or 3 years or more, as this would have significantly restricted council's ability to tackle a wide range of regulatory offences. Councils' use of RIPA to authorise directed surveillance should be confined to cases where the offence under investigation carries a maximum custodial sentence of 6 months or more. The LG Group argued that this 'serious crime' threshold should not be the higher levels of 12 months or 3 years or more, as this would have significantly restricted council's ability to tackle a wide range of regulatory offences. This threshold will mean that councils will be unable to use directed surveillance for a number of low level anti-social behaviour offences such as dog-fouling and littering. In the interim

period, before any changes are formally implemented, councils may wish to seriously consider whether it is appropriate to authorising directed surveillance for such activities.

- The LG Group also lobbied hard to ensure that councils would be able to continue using RIPA to tackle irresponsible retailers who persistently sell alcohol and tobacco to children even though these offences have monetary fines rather than custodial sentences. We are pleased that the review recognises the importance of directed surveillance in corroborating investigations into underage sales of alcohol and tobacco and has recommended that the Government should not seek to apply the serious crime threshold in these cases.
- The serious crime threshold should not be applied to access to communications data and use of a CHIS because of their more limited use and importance in specific types of investigation which do not attract a custodial sentence.

The expectation is that the Freedom Bill will introduce the Magistrates' Courts approval process and may be laid before parliament mid-February 2011 and the 'serious crime threshold' will be introduced in secondary legislation later in the year.

Responding to the Home Secretary's announcement on councils' future use of the Regulation of Investigatory Powers Act, Cllr Mehboob Khan, chair of the Local Government Association's Safer and Stronger Communities Board, said: "Councils should only be using covert surveillance as a last resort and any usage is always recorded and fully transparent. Hopefully this announcement will dispel the myth that all councils use RIPA for is to snoop. In certain cases, it is the only way that they can protect public safety and ensure criminals are brought to justice... Let's not forget that it is because of surveillance that councils are putting more benefits cheats and loan sharks behind bars, anti-social behaviour rates are down, serious enviro-crime is being tackled and would-be fraudsters are thinking twice about cheating the system."

A copy of the LG Group press release is available on the LGA website [here](#).

A copy of the Home Office press statement is available on their website [here](#).

## **Contact**

Donna Sidwell  
Policy Officer  
[donna.sidwell@local.gov.uk](mailto:donna.sidwell@local.gov.uk)