

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

22ND JUNE 2009

1. **CONSULTATION ON THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)**

Report of the Chief Fire Officer.

RECOMMENDED

THAT the response to this consultation contained in Appendix 1 of this report is approved and endorsed.

2. **PURPOSE OF REPORT**

This report is submitted to seek approval and endorsement of the consultation reply contained in Appendix 1 to Fire Service Circular (FSC) 29/2009 Regulation of Investigatory Powers Act 2000 (RIPA) requiring a response from Fire and Rescue Authorities (FRAs) to five questions posed.

3. **BACKGROUND**

- 3.1 This Circular draws FRAs' attention to the recent Home Office consultation on the Regulation of Investigatory Powers Act 2000 (RIPA). The consultation asks whether FRAs believe that they should maintain their status as 'listed bodies' for the purposes of the Act and, if so, requests robust evidence of how FRAs use/could use the Act. FRAs are requested to submit any responses to the consultation via Communities and Local Government (CLG).
- 3.2 The Home Office has published a public consultation on their review of the Regulation of Investigatory Powers Act (RIPA) 2000. As part of the consultation, local authorities, including FRAs in England are requested to provide information on their current use of RIPA to CLG by 30th June 2009.
- 3.3 The Home Office is particularly interested in views on whether or not FRAs should continue to be listed under RIPA and why; and, if they are to remain listed, at what level appropriate approvals should be sought.

3.4 The 5 questions posed and in summary are;

- (i) *Should FRAs remain listed as authorities under RIPA?*
- (ii) *Is there a need for the eight Local Authority Controlled Companies (LACCs) and LFEPA to be listed for the purposes of RIPA?*
- (iii) *How is Directed Surveillance used specifically to obtain private information?*
- (iv) *In what circumstances are RIPA authorisations granted for Covert Human Intelligent Sources?*
- (v) *Do current authorisation levels represent an appropriate level or should they be changed?*

3.5 The detailed questions and the responses are contained within Appendix 1.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is not required and has not been carried out. The matters contained in this report will not lead to or relate to a policy change.

5. **LEGAL IMPLICATIONS**

The course of action recommended in this report does not raise issues which should be drawn to the attention of the Authority's Monitoring Officer.

6. **FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report.

BACKGROUND PAPERS

FSC 29/2009

VIJ RANDENIYA
CHIEF FIRE OFFICER

Ref. AU929050914/KB/AMH

REGULATION OF INVESTIGATORY POWERS ACT 2000

A recent Communities and Local Government Circular 29/2009 asks questions on the continuing use of the Regulation of Investigatory Powers Act 2000 (RIPA) by Fire Authorities and whether they should remain as 'listed bodies' for the purposes of the act.

The circular clearly asks whether Fire Authorities should remain listed and this has to be looked at in the context of whether the power will ever be necessary.

The powers provided under RIPA have never been used by this Fire Authority; presently enquiries are all overt and more than adequate in providing the information necessary for a prosecution.

Fire Authorities are asked to provide concrete evidence of how direct surveillance is used to obtain information. For the reasons stated above this Authority is not able to provide such an evidence base.

A similar question is the need to provide concrete evidence of the circumstances in which RIPA authorisations are or may be granted.

Circumstances where RIPA authorisations might be appropriate were the possible need for postal surveillance where there is difficulty in proving occupancy of a House of Multiple Occupation (HMO) or where an owner denies its use as permanent accommodation; another may its use by operational personnel to monitor frequent malicious telephone calls from telephone boxes by filming.

However, both of these situations could be dealt with by the Fire Service seeking the assistance and agreement of the Police and Postal Services; without resorting to the use of RIPA.

Should Fire Authorities remain on the 'listed bodies' because they may need to use its powers; or does the evidence of the past show that those powers are unnecessary and the overt systems in place are more than adequate.

Question 1

Do you believe that FRAs are required to remain listed as authorities under RIPA? If so, you need to provide concrete examples of how the legislation is used specifically to obtain communications data. Please also include information on what the implications would be for the work of the FRA if the listing was removed.

To date RIPA has never been used by the West Midlands Fire Service (WMFS). Circumstances where RIPA authorisations might be appropriate were the possible need for postal surveillance where there is difficulty in proving occupancy of a House of Multiple Occupation (HMO) or where an owner denies its use as permanent accommodation; another could be its use by operational personnel to monitor frequent malicious telephone calls from telephone boxes by filming.

However, both of these situations could be dealt with by the Fire Service seeking the assistance and agreement of the Police and Postal Services; without resorting to the use of RIPA.

Therefore, based on the above there appears to be little justification in the Fire Authority remaining a listed Authority

Question 2

Do you foresee a need for the eight LACCs and LFEPA to be listed for the purposes of RIPA? Would these LACCs require ability to authorise?

- (a) *acquire and disclose communication data (CD)*
- (b) *'directed surveillance' (DS)*
- (c) *the conduct and use covert human intelligent sources (CHIS)*

Based on WMFRAs experience of using RIPA; it may be difficult to justify the need for the total use of RIPA by the nine Regional Control Centres (LACC's and LFEPA). However, as the Regional Control Centres will be dealing with a significant amount of communications data that they may require disclosure to FRA's and or Police Services for their respective regions; it would seem sensible for the Regional Control Centres to be listed and the position reviewed after they have been in operation for a period of 1 to 2 years.

Question 3

If FRAs are to remain listed as authorities under RIPA you need to provide concrete examples of how Directed Surveillance is used specifically to obtain private information. Please also include information on what the implications would be for the work of the FRA if the listing was removed.

Covert or CHIS is unrelated to any work carried out by this Authority, or it's Fire Safety Inspecting Officers. This Fire Authority conducts inspections that closely relate to directed surveillance; with the exception that the surveillance undertaken in pursuit of the Fire Safety Order is overt in nature rather than covert.

If the listing were to be removed this would have no bearing on the Authority's ability to investigate cases

Question 4

If FRAs are to remain listed as authorities under RIPA you need to provide concrete examples of the circumstance in which such authorisations are or may be granted. Please also include information on what the implications would be for the work of the FRA if the listing was removed.

As already stated in our response to question X, there may be a need for postal surveillance where there is difficulty in proving occupancy of a HMO or where an owner denies its use as shared accommodation; another may be its use by operational personnel to monitor frequent malicious telephone calls from telephone boxes by filming.

However, we consider that both of these situations could be dealt with by the Fire Service seeking the assistance and agreement of the Police and Postal Services; without resorting to the use of RIPA.

Question 5

If FRAs are to retain their listing under RIPA, the Home Office have asked what the appropriate level for authorisation is. Are current authorisations levels appropriate?

We consider that the existing level of authorisations would provide the necessary and sufficient check and balance to prevent the system being used inappropriately. To raise the level of approval/signature may prove to be difficult to implement and could lead to an increase in bureaucracy.

Additional Comment

It is suggested that Fire Authorities should remain on the 'listed bodies' simply because they 'may need to use its powers'; however, to date the evidence has shown that the use of these powers in this Authority has not been necessary. It is suggested that the adoption of overt systems could satisfy the needs of the FRAs.