



Report to Cabinet

Date: 8 July 2010

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Subject: Regulation of Investigatory Powers Act 2000 (RIPA)

1. Purpose of this Report

To obtain approval for amendment to the Council's RIPA Policy and Procedure following legislative changes to RIPA and new Home Office Guidance issued in April 2010.

In accordance with the amended policy, if approved, to report to Cabinet on the annual audit of RIPA authorisations from April 2009 – March 2010.

2. Background

The Council's current RIPA Policy and Procedure was adopted by Cabinet, on 2 March 2006.

Amendments were made to the Policy and Procedure in July 2006 following recommendations made by the Office of the Surveillance Commissioner 's (OSC) Inspector.

A new Procedures and Guidance document was issued by the OSC in December 2008 and for the first time made available to public authorities. Cabinet approved the inclusion of this document as an Appendix to the Council's RIPA policy and procedure document on 28 May 2009.

On 10 June 2009 the Council were inspected by the OSC and further amendments to the RIPA policy were approved by Cabinet as a result of that inspection on 9 July 2009.

On April 6 2010 new Codes of Practice were introduced by the Home Office in relation to the use of Directed Surveillance(usually covert cameras) and CHIS(undercover officer surveillance) under RIPA. In addition, amendments to RIPA have been made through various statutory instruments; perhaps the most significant of which is The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 which also came into force in April 2010.

3. Policy Changes

It is proposed that the current RIPA policy be amended and updated in line with the new Codes of Practice and legislation. The amended policy was discussed and approved by other local authorities at the RIPA District Working Group meeting held on 19th April 2010.

The new Codes of Practice, bring in some “best practice” guidance in terms of member involvement with RIPA authorisations. They state as follows;

Elected members of a local authority should review the authority’s use of the 2000 Act and set policy at least once a year. They should also consider internal reports on the use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority’s policy and that the policy remains fit for purpose. They should not however be involved in making decisions on specific authorisations.

This is the first time member involvement with RIPA has been recommended as good practice and this will change the way the RIPA process is conducted.

There is already an annual audit of RIPA authorisations undertaken on behalf of the Head of Democratic and Community Services. This audit has already been conducted for April 2009 –March 2010 and the conclusions have been presented to SMT. It is now proposed, in line with the new Codes of Practice, that the RIPA policy be amended to provide that an annual report is prepared for Cabinet which will provide Cabinet with details of the annual RIPA audit. The report will also provide an update on changes to RIPA legislation and make recommendations as to necessary policy changes.

In addition, it is proposed, in line with the Codes of Practice, that the RIPA policy be amended to provide that a quarterly report be put before the Portfolio Holder for Safe and Sustainable Neighbourhoods or the Leader of the Council updating them on the number of RIPA authorisations ongoing and any issues arising.

The Codes also indicate that it is good practice for a senior responsible officer to be appointed to oversee and manage the use of RIPA in the authority. This individual should not be an authorising officer but should be a member of the corporate leadership team. The process has always been overseen by a member of the legal team on behalf of Sue Sale as Head of Democratic and Community Services and monitoring officer, it is proposed that this arrangement continue and the Head of Democratic and Community Services be named in the policy as the responsible officer, delegating the day to day supervision of the RIPA process to the legal team.

In light of these new Codes and the Proposals above the Councils RIPA policy has been amended. A copy of the amended policy is provided at Appendix 1. It is suggested that the new Codes of Practice be appended to the Policy.

4. Amendments to appendices to Policy Document

The current RIPA authorisation forms are appended to RIPA policy. These forms are often altered and updated by the Home Office, there may also be minor changes to the Codes of Practice in due course. Historically, any minor changes to forms or materials appended to the main policy have come back to Cabinet for approval. It is now proposed that any minor changes to materials appended to the Policy be made with the approval of the Head of Democratic and Community Services. Any major changes to the main Policy document will be brought before Cabinet for approval. Cabinet will be updated of any minor changes in the annual report.

5. **Report on Annual Audit April 2009 – March 2010**

Authorisations for covert directed surveillance to be used in specific investigations can be granted under powers given to local authorities by the RIPA 2000.

The authorisations are granted at Gedling by Heads of Service, most regularly by Peter Baguley for investigations conducted by Environmental Protection in conjunction with the police.

Directed Surveillance can only be authorised if it is necessary and proportionate to the investigation, in other words when all else has failed. The authorisations can only be granted initially for 3 months, they must be regularly reviewed and should be cancelled as soon as they are no longer necessary or proportionate.

An annual audit of authorisations for directed surveillance made under the Regulation of Investigatory Powers Act 2000 for April 2009-March 2010 has been carried out. The results were forwarded to the Head of Democratic and Community Services as monitoring officer and supervisor of RIPA authorisations.

Throughout this period there were a total of 17 applications for Directed surveillance authorised. At the end of March 2010, 3 of these applications remained ongoing although all have subsequently been cancelled.

All applications related to Directed Surveillance, there were no authorisations of Covert Human Intelligence Sources (CHIS).

16 of the applications came from Planning and Environment. All applications from Planning and Environment related to the deployment of CCTV cameras.

There was one authorisation given by Mark Kimberley for officer surveillance on a Benefit Fraud investigation.

In June 2009 there was an Inspection of the Council's RIPA processes and procedures by an Inspector from the Office of the Surveillance Commissioner. The report from that inspection was a positive one and generally the Council maintains a high standard in relation to its RIPA processes, certainly any

recommendations made by the Inspector have been followed. There were however areas that the Inspector indicated the Council could improve upon, particularly in relation to cancellation of RIPA authorisations. The Inspector recommended that the officers provide more detail about the product that is obtained through surveillance and what happens to that product once the RIPA authorisation has been cancelled. Following the audit it seems this is still an area where officers fall a little short.

Generally the standard of authorisations is good. Officers should continue to consider in every instance whether surveillance is necessary and proportionate and also whether actually it should be the police who are obtaining authorisation rather than the Council.

There are some issues regarding missing review dates and delayed cancellations but RIPA training for officers should resolve any future problems.

3. **Resource Implications**

None

4. **Recommendations**

The amended Policy and Procedure attached at **Appendix 1** be adopted by the Council with the new Codes of Practice appended to it, thereby implementing an annual reporting system to Cabinet on RIPA authorisations, changes in legislation and policy and quarterly reports to Portfolio Holder for Safe and Sustainable Neighbourhoods or the Leader of the Council. The new policy would also identify the Head of Democratic and Community Services as the “responsible officer” overseeing the RIPA process.

Any amendments or updates required to materials appended to the main Policy document including updates to the RIPA Codes of Practice or RIPA authorisation forms be approved by Head of Democratic and Community Services and reported back to Cabinet in the annual RIPA report.

Members note the content of the Annual RIPA audit for April 2009 – March 2010.

APPENDIX 1