



Report to Cabinet

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Subject: Regulation of Investigatory Powers Act 2000 (RIPA) Annual Audit

1. Purpose of this Report

To report to Cabinet on the annual audit of RIPA authorisations from April 2010 – March 2011, in accordance with the current policy and to obtain approval for amendment to the Council's RIPA Policy and Procedure.

2. Background

- 2.1 Under RIPA Local Authorities have the power to authorise directed surveillance (usually covert cameras) and the use of Covert Human Intelligence Sources (CHIS – essentially undercover officers conducting surveillance) if the authorisation is necessary for the prevention and detection of crime or preventing disorder and if the surveillance is proportionate to the aims it seeks to achieve. The authorisations can only be given by Heads of Service or the Chief Executive and the entire process has been overseen by the Head of Legal and Democratic Services as the "responsible officer."
- 2.2 The Council's current RIPA Policy and Procedure document was approved by Cabinet, on 2 September 2010. The Policy states;

Elected members of the Council will review the authority's use of the 2000 Act and the Authority's Policy and Guidance documents at least once a year. . They will 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 is fit for purpose. The members will not however be involved in making decisions on specific authorisations.

In line with this clause, it was agreed by Cabinet on 2 September 2010 that the quarterly reports could be made to the Portfolio Holder for Safe and Sustainable Neighbourhoods Portfolio as the majority of RIPA usage falls under the remit of this Portfolio.

- 2.3 A full internal audit of the Council's use of RIPA between April 2010 and March 2011 at the financial year end has been undertaken by the Head of Legal and Democratic Services and this is the first annual report to Cabinet since the Policy was approved in September 2010. In accordance with the amended Policy the first quarterly report was sent to the Portfolio Holder in March 2011, covering the period from September 2010- March 2011.

3. Report on Annual Audit April 2010 – March 2011

- 3.1 Authorisations for covert directed surveillance to be used in specific investigations can be granted under powers given to local authorities by the RIPA 2000. 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.
- 3.2 The authorisations are granted at Gedling by Heads of Service, most regularly by the Head of Planning and Environment for investigations conducted by Public Protection in conjunction with the Police.
- 3.3 An annual audit of authorisations for directed surveillance made under the Regulation of Investigatory Powers Act 2000 for April 2010-March 2011 has been carried out. The results were forwarded to the Head of Legal and Democratic Services as Monitoring Officer and the responsible officer for overseeing and managing the use of RIPA.
- 3.4 Throughout this period there were a total of 11 applications for Directed Surveillance authorised. No applications were ongoing at the end of March 2011 and had all been cancelled before this date. There were no authorisations of Covert Human Intelligence Sources (CHIS).
- 3.5 All eleven applications came from Planning and Environment and the majority were authorised, reviewed and cancelled by the Head of Planning and Environment as Authorising Officer. On one occasion, the Chief Executive authorised an application for directed surveillance and on a separate occasion a cancellation was granted by the Chief Executive. On one occasion the cancellation form was signed by the previous Chief Executive. All applications related to the deployment of CCTV cameras with the exception of one application which also involved the deployment of noise monitoring equipment in addition to a CCTV camera.
- 3.6 Eight of the eleven applications arose following a request to the Council from the Police. One of the applications was in order to assist a police operation although the Council were receiving ongoing complaints about the same issue and therefore this could be classed as a 'joint application.' Two of the applications related to complaints made directly to the Council.
- 3.7 There were no authorisations given by Mark Kimberley for officer surveillance on Benefit Fraud investigation.
- 3.8 Generally the Council maintains a high standard in relation to its RIPA processes, however there are few areas where Officers fall a little short. Predominantly, this relates to missing information or dates. These issues need to be addressed, although there are control measures in place, in that the legal section check the forms when they are received to be put on the central

register. The legal section also monitors the authorisations on the central register to ensure they are reviewed, renewed and cancelled and will chase departments to ensure that this is done. In addition, all officers involved in the RIPA process received training in relation to the current policy document and legislation on 1st March 2011, which should prevent any future recurrence.

- 3.9 Another issue that has come to light during the audit is that the officers have used out of date forms. Currently Appendix B of the Policy Document contains the blank forms to be used by officers when applying for, authorising, reviewing, renewing and cancelling directed surveillance or the use of CHIS. These forms are regularly updated to ensure that officers are using the most up to date forms issued by the Home Office in accordance with RIPA and the Codes of Practice. However, it appears that the Home Office do update the forms on their website but do not necessarily inform anyone of the changes.
- 3.10 To overcome this problem it has been agreed that it would be prudent for the officers to use the link to 'RIPA forms' on the Home Office website each time they need to complete an authorisation to ensure that the latest version of the forms is being used. All relevant officers have been sent an e-mail to this effect and it is expected that this problem will not arise again. It was agreed by Cabinet on the 2 September 2010 that any such amendments to the documents appended to the Policy could be approved by the Head of Legal and Democratic Services and notified to Cabinet in the annual report.
- 3.11 It appears that the majority of requests for surveillance are received from the local police, 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.

4. Policy Changes

- 4.1 The 2010 Codes of Practice 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. In light of the recent departure of Sue Sale it is proposed that the Council Solicitor and Monitoring Officer be named in the Policy as the "responsible officer".
- 4.2 It was agreed in the Cabinet meeting in September 2010 that a quarterly report should be sent to the Portfolio Holder for Safe and Sustainable Neighbourhoods and the Policy was amended accordingly to reflect this. Following the change in administration and new portfolios, it is proposed that the Policy be amended so that the quarterly reports will now be sent to the Portfolio Holder for Communications and Public Protection.

5. Future of RIPA

- 5.1 In July of 2010 the Government ordered a review of Counter-Terrorism and Security Powers. This review included a review of local authorities' use of their powers under RIPA. The findings of this review were published in January

2011 and the following changes to local authorities' use of RIPA were proposed;

- Magistrates' Court approval will be required before local authorities can conduct any activity under RIPA
- Directed Surveillance will only be authorised for "serious crimes"
- The serious crime threshold will be set at offences resulting in a term of imprisonment of six months or more
- The serious crime threshold will not apply to investigations into underage sales of alcohol and tobacco.

5.2 The Protection of Freedoms Bill published in February 2011 supports these recommendations by providing that any authorisation given by a local authority under RIPA must have judicial approval by the Magistrates' Court.

5.3 It is not clear at present when these legislative changes will come into force but what is clear is that the Council's use of RIPA is likely to change dramatically once the changes do come in. Anti-Social behaviour will not pass the "serious crimes" threshold unless the perpetrator is committing serious crimes as part of the anti-social behaviour. If serious crimes are being committed it is likely that the Police will be seeking the appropriate authorisations rather than the Council. It seems there are changing times ahead for RIPA but at present the Council's Policy and Procedures remain fit for purpose.

6. Resource Implications

None

7. Recommendations

7.1 The Policy is amended to identify the Council Solicitor and Monitoring Officer as the "responsible officer" for the purposes of overseeing and managing the RIPA process.

7.2 The Policy is amended so that quarterly RIPA reports are sent to the Portfolio holder for Communications and Public Protection.

7.3 Members note the content of the Annual RIPA audit for April 2010 – March 2011 and the amendments to the documents appended to the Policy previously agreed by the Head of Service under delegated powers.