

Report to Cabinet

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

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1. Purpose of the Report

To report to Cabinet on the annual audit of RIPA authorisations from April 2011 – March 2012, in accordance with the current policy and to update cabinet on the proposed changes to the RIPA regime.

2. Background

- 2.1 Under The Regulation of Investigatory Powers Act 2000 (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 since the beginning of 2012 Corporate Directors, and the entire process has been overseen by the Council Solicitor and Monitoring Officer 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 Communications and Public Protection (formerly 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 2011 and March 2012 at the financial year end has been undertaken by the Council Solicitor and Monitoring Officer and this is the third annual report to Cabinet since the Policy was approved in September 2010. In accordance with the amended Policy quarterly reports have been sent to the Portfolio Holder in July 2011, October 2011, January 2012 and April 2012 covering the periods from 1 April 2011-30 June 2011, 1 July 2011- 30 September 2011, 1 October 2011- 31 December 2011 and 1 January 2012-31 March 2012.

3. Report on Annual Audit April 2011 – March 2012

- 3.1 Authorisations for covert directed surveillance to be used in specific investigations can be granted under powers given to local authorities by RIPA. 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 by Corporate Directors, most regularly 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 2011-March 2012 has been carried out. The results were forwarded to the Council Solicitor and Monitoring Officer as the responsible officer for overseeing and managing the use of RIPA.
- 3.4 Throughout this period there were a total of 5 applications for Directed Surveillance authorised. No applications were ongoing at the end of March 2012 and had all been cancelled before this date. There were no authorisations of Covert Human Intelligence Sources (CHIS).
- 3.5 Four of the applications came from Planning and Environment and were authorised, reviewed and cancelled by the Head of Planning and Environment as Authorising Officer or (since January 2012) cancelled by a

- Corporate Director. All applications related to the deployment of CCTV cameras.
- 3.6 Three out of the four applications arose following a request to the Council from the Police, although the Council had also separately received complaints of anti-social behaviour in relation to these applications. One of the applications was solely as the result of a request from the Police. None of the four applications related to complaints solely made directly to the Council.
 - 3.7 There was one application from the Benefit Liaison Section for officer surveillance on a Benefit Fraud investigation which was authorised reviewed and cancelled by the Head of Corporate Services.
 - 3.8 It was noted on review by the Legal Section that there were two authorisations missing from the consecutive list of numbering. Upon investigation it was confirmed by the Applicant that although these two authorisation numbers had been allocated, the applications were never submitted to the Head of Planning and Environment as the situation had improved and therefore authorisation was no longer necessary.
 - 3.9 Generally the Council maintains a high standard in relation to its RIPA processes, however there are a few areas for improvement. 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 department check the forms when they are received to be put on the central register. The legal department also monitors the authorisations on the central register to ensure they are reviewed, renewed and cancelled within the time limits, and will chase departments to ensure that this is done. Training is provided on an annual basis to update all officers involved in the RIPA process; this is aimed to prevent any future recurrence of the issues raised in the audit. The last training in relation to changes in policy and legislation was provided on 1 March 2011; this is now due to be updated but is on hold due to the upcoming changes in legislation which will be detailed later in this report.
 - 3.10 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.

3.11 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 Council Solicitor and Monitoring Officer (formerly Head of Legal and Democratic Services) and notified to Cabinet in the annual report.

3.12 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. Future of RIPA

4.1 It was reported in the last annual report in July 2011 that 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.

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

4.3 The Protection of Freedoms Act 2012 was given Royal Assent on 1st May 2012. Section 38 of the Act relates to "Judicial Approval for Directed Surveillance and Covert Human Intelligence Sources." This requires the Authority to apply to a Justice of the Peace (Magistrates Court) for approval of any authorisations for directed surveillance given under RIPA 2000. This section of the Act has not yet come into force and at the present time there is no commencement date for this section.

- 4.4 On 11th June 2012 the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources (Amendment) Order 2012 was published. This piece of secondary legislation is due to come into force on 1st November 2012 and will dramatically affect the way this Authority utilises its powers under RIPA.

The legislation places restrictions on Local Authorities granting authorisations under s.28 of RIPA 2000 (directed surveillance). Authorisation under the new regulations can only be granted if the surveillance is for the purpose of preventing or detecting conduct which-

- constitutes one or more criminal offences, or
- is, or corresponds to any conduct which, if it took place in England and Wales, would constitute one or more criminal offences.

The criminal offences must-

- be an offence which is punishable, whether on summary conviction or on indictment by a maximum term of at least 6 months of imprisonment, or
- an offence under-
 - i. section 146 of the Licensing Act 2003 (sale of alcohol to children);
 - ii. section 147 of the Licensing act 2003 (allowing the sale of alcohol to children);
 - iii. section 147A of the Licensing Act 2003 (persistently selling alcohol to children);
 - iv. section 7 of the Children and Young Persons Act 1933 (sale of tobacco, etc, to persons under eighteen).

- 4.5 At present the majority of the Council's authorisations under RIPA relate to directed surveillance usually using covert cameras to capture incidents of anti-social behaviour. Under the new legislation surveillance could not be authorised for such activity. There are some offences that the Council investigate that could attract a custodial sentence of 6 months or more, for example high level Benefit Fraud or fly-tipping but generally this legislation will limit quite significantly the ways in which the authority can investigate using RIPA from 1st November 2012.

5. Resource Implications

None

6. Recommendation

- 6.1 Members note the content of this report.