
REGULATION OF INVESTIGATORY POWERS ACT 2000 – ANNUAL REVIEW

To: **Cabinet - 20 June 2013**

Main Portfolio Area: **Business, Corporate and Regulatory Services**

By: **Harvey Patterson, Corporate & Regulatory Services Manager**

Classification: **Unrestricted**

Summary: **To consider and approve an amended RIPA Policy & Procedures Guidance Note for 2013/14 and to receive the annual report on the use of RIPA in 2012/13.**

For Decision

1.0 Introduction and Background

- 1.1 The Regulation of Investigatory Powers Act 2000 ('RIPA') provides a statutory mechanism (i.e. in accordance with the law) for authorising covert surveillance operations or the use of a 'Covert Human Intelligence Source' (CHIS) (an under cover agent). It now also permits the Council in certain circumstances to compel telecommunications and postal companies including internet service providers to obtain and release to the Council communications data in their possession or control.
- 1.2 By requiring covert surveillance operations or the proposed use of a CHIS to be authorised in advance and kept under review by a limited number of senior officers, RIPA seeks to ensure that any interference with an individual's right to privacy under Article 8 of the Convention on Human Rights and Fundamental Freedoms, is both necessary and proportionate.
- 1.3 RIPA, as amended by the Protection of Freedom Act 2012 also imposes three further important restrictions on the Council. Firstly, it provides that the Council cannot under any circumstances engage in the most intrusive form of covert surveillance (called 'intrusive surveillance') - operations which involve the presence of a person or a listening device in residential premises or a private vehicle. Therefore, by definition, the Council can only carry out covert, non intrusive surveillance (called 'directed surveillance'). Secondly, the only lawful basis on which the Council can conduct a surveillance operation is for the prevention or detection of a criminal offence that attracts a sentence of imprisonment of six months or more or a criminal offence that relates to the under age sale of alcohol or tobacco. Consequently, covert surveillance carried out to e.g. detect a breach of planning control, would be unlawful. Thirdly, every authorisation given pursuant to RIPA to carry out directed surveillance or for the use of CHIS must also be approved by the Magistrates Court before it can be acted on - as must any renewal of an authorisation.

2.0 Officer of the Surveillance Commissioner

- 2.1 The Office of the Surveillance Commissioner ('OSC') is responsible for RIPA compliance and the Commissioner reports annually to parliament on the use of the powers by the police, security services and authorised public bodies including local government. The Council is normally subject to an audit inspection by an Assistant Surveillance Commissioner every three years and typically the audit involves a review of the Council's adopted Policy & Procedures Guidance Note, a review of the Central Register of Authorisations and the Assistant Commissioner speaking to one or more Authorising

Officers. The Assistant Commissioner then produces a report of his findings and the authority is asked by the Surveillance Commissioner to confirm that it intends to implement any recommendations contained in the report.

3.0 Council Inspection

3.1 The Council has been informed by the OSC that his Honour David Hudson will visit the Council Offices on 27 June 2013 to conduct a RIPA inspection. His report will be shared with Councillor Fenner as the responsible portfolio-holder and any significant recommendations in his report will be reported to Cabinet.

4.0 Authorisations in 2012 and Policy for 2013/14

4.1 The current adopted RIPA Policy and Procedures Guidance Note commits the Senior Responsible Officer to inform the Cabinet annually of the use of RIPA authorisations by Council Officers and for Cabinet to approve any amendments to the Policy.

4.2 The Council has never sought to use a CHIS but has in the past granted authorisations for directed surveillance to prevent or detect crime or prevent disorder. However, as a matter of record the Council did not grant any authorisations for directed surveillance or for the use of a CHIS in 2012, nor did it in 2011. This reflects the fact that nearly all enforcement activity by Council Officers is overt and does not require prior authorisation. However, there will be occasions when Council officers may be engaged in directed surveillance as part of a joint operation with e.g. the Police or Department for Work and Pensions and will be covered by authorisations obtained by these bodies.

4.3 So far as Policy for 2013/14 is concerned, Cabinet is asked to consider and approve the draft RIPA Policy & Procedures Note for 2013/14 attached at **Annex 1**. The proposed amendments to the Policy are italicised and underlined and in essence reflect recent changes in the Council's Senior Management Structure as well as highlighting the need to obtain judicial approval of authorisations. The draft Policy will be considered by Senior Management Team on 18 June 2013.

5.0 Corporate Implications

5.1 Financial and VAT

5.1.1 None specific.

5.2 Legal

5.2.1 Failure to comply with RIPA could result in the exclusion by a court of evidence needed to convict a criminal. Failure to comply with RIPA also risks claims from individuals seeking compensation for alleged breaches of privacy.

5.3 Corporate

5.3.1 Failure to use RIPA in a proportionate way could result in reputational damage to the Council.

5.4 Equalities Duty

5.4.1 It is considered that the Policy does not adversely affect persons with protected characteristics.

6.0 Recommendations

6.1 That Cabinet notes the report;

6.2 That Cabinet approves the draft RIPA Policy & Procedures Guidance Note for 2013/14 attached as Annex 1;

6.3 That the approved RIPA Policy & Procedures Guidance Note for 2013/14 be published on the Council's intranet;

7.0 Decision Making Process

7.1 Cabinet has the authority to finally approve the RIPA Policy & Procedures Guidance Note.

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Annex List

Annex 1	Draft/RIPA Policy & Procedures Guidance Note for 2013/14
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Background Papers

Title	Details of where to access copy
N/A	N/A

Corporate Consultation Undertaken

Finance	N/A
Legal	N/A
SMT	18/06/2013