

AUDIT AND GOVERNANCE COMMITTEE

Date: Wednesday 3 December 2014
Time: 5.30 pm
Venue: Rennes Room, Civic Centre, Paris Street, Exeter

Members are invited to attend the above meeting to consider the items of business.

If you have an enquiry regarding any items on this agenda, please contact Sharon Sissons, Democratic Services Officer (Committees) on 01392 265115 or email sharon.sissons@exeter.gov.uk

Entry to the Civic Centre can be gained through the Customer Services Centre, Paris Street.

Membership -

Councillors Sheldon (Chair), Baldwin (Deputy Chair), Bowkett, Brock, Donovan, Henson, Laws, Lyons, Morris, Raybould and Williams

Agenda

Part I: Items suggested for discussion with the press and public present

1 Apologies

To receive apologies for absence from Committee Members.

2 Minutes

To sign the Minutes of the meeting held on 24 September 2014.

3 Declarations of Interest

Councillors are reminded of the need to declare any disclosable pecuniary interest that relate to business on the agenda and which have not already been included in the register of interests, before any discussion takes place on the item. Unless the interest is sensitive, you must also disclose the nature of the interest. In accordance with the Council's Code of Conduct, you must then leave the room and must not participate in any discussion of the item. Councillors requiring clarification should seek the advice of the Monitoring Officer prior to the day of the meeting.

4 Local Government (Access to Information) Act 1985 - Exclusion of Press and Public

RESOLVED that, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for consideration of Items 12 and 13 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1 and 3 of Part I, Schedule 12A of the Act.

- | | | | |
|----|--|--|-----------------|
| 5 | Review of Corporate Governance Risk Register | To consider the report of the Corporate Manager Policy, Communications and Community Engagement. | (Pages 5 - 8) |
| 6 | Audit and Governance Committee Update | To consider the report of the Council's Auditors Grant Thornton. | (Pages 9 - 16) |
| 7 | Annual Audit Letter - Grant Thornton | To consider the report of the Council's Auditors Grant Thornton. | (Pages 17 - 24) |
| 8 | Internal Audit Progress Report | To consider the report of the Audit Managers. | (Pages 25 - 34) |
| 9 | Measuring the Effectiveness of the Audit Committee - Self Assessment Checklist Update | To consider the report of the Audit Managers. | (Pages 35 - 40) |
| 10 | Regulation of Investigatory Powers Act 2000 RIPA) | To consider the report of the Monitoring Officer/Corporate Manager Legal Services. | (Pages 41 - 78) |
| 11 | Whistle Blowing Policy Update | To consider the report of the Monitoring Officer/Corporate Manager Legal Services. | (Pages 79 - 86) |

Part II: Items for consideration with the Press and Public Excluded

- | | | | |
|----|---|--|------------------|
| 12 | Review of Corporate Governance Risk Register (Appendix A) | To consider the report of the Corporate Manager Policy, Communications and Community Engagement. | (Pages 87 - 88) |
| 13 | Protecting the Public Purse from Fraud 2014 | To receive the Briefing Paper - Grant Thornton. | (Pages 89 - 102) |

Date of Next Meeting

The next **Audit and Governance Committee** will be held on Wednesday 11 March 2015 at 5.30 pm

Find out more about Exeter City Council by looking at our website <http://www.exeter.gov.uk> . This will give you the dates of all future Committee meetings and tell you how you can ask a question at a Scrutiny Committee meeting. Alternatively, contact the Democratic Services Officer (Committees) on 01392 265107 for further information.

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REPORT TO AUDIT AND GOVERNANCE COMMITTEE

Date of Meeting: 3rd December 2014

Report of: Corporate Manager (Policy, Communications and Community Engagement)

Title: Corporate Risk Register

Is this a Key Decision?

No

Is this an Executive or Council Function?

Risk Management is an important element of the Council's Code of Corporate Governance. Regular monitoring of the Council's corporate risks helps to ensure that the Council's business is conducted in accordance with the law and proper standards, that public money is safeguarded and properly accounted for and used economically, efficiently and effectively.

1. What is the report about?

The report advises the Committee of the Council's risk management progress and presents the updated Corporate Risk Register (Appendix A).

2. Recommendations:

That the Committee reviews the updated Corporate Risk Register.

3. Reasons for the recommendation:

To comply with the Council's Risk Management Policy which states that this Committee is responsible for monitoring the effectiveness of risk management throughout the Council and regularly reviewing the Corporate Risk Register.

4. What are the resource implications including non financial resources.

Assistant Directors, Corporate Managers and other officers, as appropriate, are asked to update the Corporate Risk Register on a quarterly basis. The register is also reviewed by the Chief Executive and Growth Director and the Deputy Chief Executive. This process is facilitated by the Policy, Communications and Community Engagement team.

5. Section 151 Officer comments:

Amongst the risks set out are a number of areas relating to finance. I am comfortable at the moment that the mitigations in place and proposed, will reduce the risk to the Council.

6. What are the legal aspects?

None

7. Monitoring Officer's comments:

No issues.

8. Report details:

The Corporate Risk Register provides details of those risks which could have a major impact on the city or the Council and need to be monitored and managed at a senior management/political level. Risks which could have an impact on a service, but which would not necessarily impact on a council-wide or city basis, are contained in the operational risk register and managed by Assistant Directors and Corporate Managers.

Assistant Directors, Corporate Managers, the Deputy Chief Executive and the Chief Executive and Growth Director have reviewed the Council's risks. The Corporate Risk Register has been updated to reflect this.

Removal of risks

The following risks will be removed from the Corporate Risk Register:

13/008 – *Void repair budget overspend.*

13/015 – *Loss of Arts Council of England Major Partner Museum (MPM) funding.*

13/020 – *Systems thinking is not captured across the Council.*

New risks

The following new risks have been identified:

- 13/032 - *Back log of land charge searches*
- 13/030 - *ICT Shared Service (Strata)*
- 13/38 and 13/40 – *impact of the economic climate and the imminent introduction of Universal Credit.*
- 13/034 – *Business Rate Growth*
- 13/042 – *RAMM Audit*
- 13/041 – *Channel Shift*

Risk Audit

Internal Audit has recently inspected the Council's risk management arrangements. A number of recommendations have been made to help improve the existing process and procedure. The report will be going before SMT for consideration. The key recommendations are detailed below:

- That every service has its own operational service risk register.
- That all staff are trained in the Council's risk management policy and procedures
- That Members become more involved in the risk identification process

A further update will be provided to the next Audit and Governance Committee, after SMT have considered and responded to the recommendations made.

9. How does the decision contribute to the Council's Corporate Plan?

This decision helps to ensure the delivery of the Council's purpose 'Well Run Council'.

10. What risks are there and how can they be reduced?

Any risks should be captured in either this document or the operational risk register. However, as a result of the recent Audit of the Council's Risk Management Policy and Procedure, a number of recommendations for improvement have been made (see Risk Audit above). A further update will be provided at the next Audit and Governance Committee.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

The decision to regularly review the Corporate Risk Register will ensure that any risks or issues identified under the above headings will be identified and managed at a senior level. Most of the risks contained within the Corporate Risk Register would have an impact on one or more of the headings identified above.

12. Are there any other options?

Options on how the risk management process and procedure can be improved are being considered in response to the recent audit.

Corporate Manager (Policy, Communications and Community Engagement)

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Contact for enquires:
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Audit and Governance Committee Update for Exeter City Council

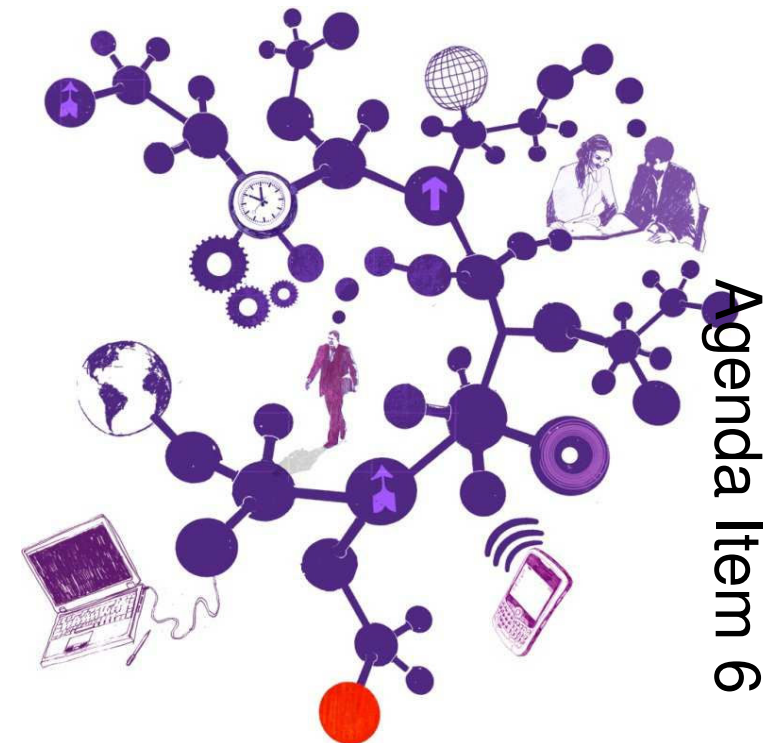
Year ended 31 March 2014

Committee Date: 3 December 2014

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Agenda Item 6

The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect your business or any weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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Introduction

This paper provides the Audit and Governance Committee with a report on progress in delivering our responsibilities as your external auditors.

Members of the Audit and Governance Committee can find further useful material on our website, www.grant-thornton.co.uk, where we have a section dedicated to our work in the public sector.

Progress at 3 November 2014

Work	Due By	Complete	Comments
<p>Interim accounts audit</p> <p>Our interim fieldwork visit includes:</p> <ul style="list-style-type: none"> • updating our review of the Council's control environment • updating our understanding of financial systems • review of Internal Audit reports on core financial systems • early work on emerging accounting issues • early substantive testing <p>initial risk assessment to support the Value for Money conclusion.</p>	30 April 2014	Yes	<p>Our interim audit work was completed in April 2014.</p> <p>We reported our findings to the Audit and Governance Committee on 25 June 2014.</p>
<p>2013-14 Accounts Audit Plan</p> <p>We are required to issue a detailed accounts audit plan to the Council setting out our proposed approach in order to give an opinion on the Council's 2013-14 financial statements.</p>	30 June 2014	Yes	<p>We presented our 2013/14 Accounts Audit Plan to the Audit and Governance Committee on 25 June 2014.</p>

Progress at 3 November 2014

Work	Due By	Complete	Comments
<p>2013-14 final accounts audit</p> <p>Including:</p> <ul style="list-style-type: none"> • audit of the 2013-14 financial statements • detailed work to support the VFM conclusion • proposed opinion on the Council's accounts • proposed Value for Money conclusion <p>Whole of Government Accounts (WGA) opinion</p>	30 September 2014	Yes	<p>We reported the outcome of our financial statements audit to the Audit and Governance Committee on 24 September 2014.</p> <p>We issued an unqualified opinion on your financial statements on 26 September 2014.</p> <p>The deadline for the WGA submission was 3 October 2014. We submitted our assurance statement on 26 September 2014.</p>
<p>2013-14 VFM Conclusion</p> <p>We are required to assess whether Exeter City Council has proper arrangements in place for:</p> <ul style="list-style-type: none"> • securing financial resilience • challenging how it secures economy, efficiency and effectiveness 	30 September 2014	Yes	<p>We reported the outcome of our VFM Conclusion work to the Audit and Governance Committee on 24 September 2014.</p> <p>We issued an unqualified VFM Conclusion on 26 September 2014.</p>
<p>2013-14 certification work</p> <p>This work is expected to cover:</p> <ul style="list-style-type: none"> • Housing benefits. • Housing capital receipts. <p>We are not required to certify the Council's non domestic rates return for 2013/14.</p>	30 November 2014	At the time of writing (3 November 2014) this was not yet due	<p>We presented our certification plan to the September 2014 Audit and Governance Committee.</p> <p>We have completed the certification of the housing capital receipts return and issued an unqualified audit report.</p> <p>Our work on the Council's Housing Benefits return is in progress and we will provide an update to the Audit and Governance Committee on 3 December 2014.</p>

Progress at 3 November 2014

Work	Due By	Complete	Comments
2013-14 Annual Audit Letter	31 October 2014	Yes	<p>Our Annual Audit Letter summarises the findings of our audit work in the year.</p> <p>This was agreed with the Council before being submitted to the Audit Commission.</p> <p>The Annual Audit Letter will be published on the Council's website and the Audit Commission's website.</p>
2014-15 Audit	N/A	N/A	<p>Looking ahead to 2014/15, we expect to commence our planning in January 2015. We will agree dates for our visits with your finance team.</p> <p>We will present our audit plan to the Council's Audit and Governance Committee once our audit planning has been completed.</p>



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The Annual Audit Letter for Exeter City Council

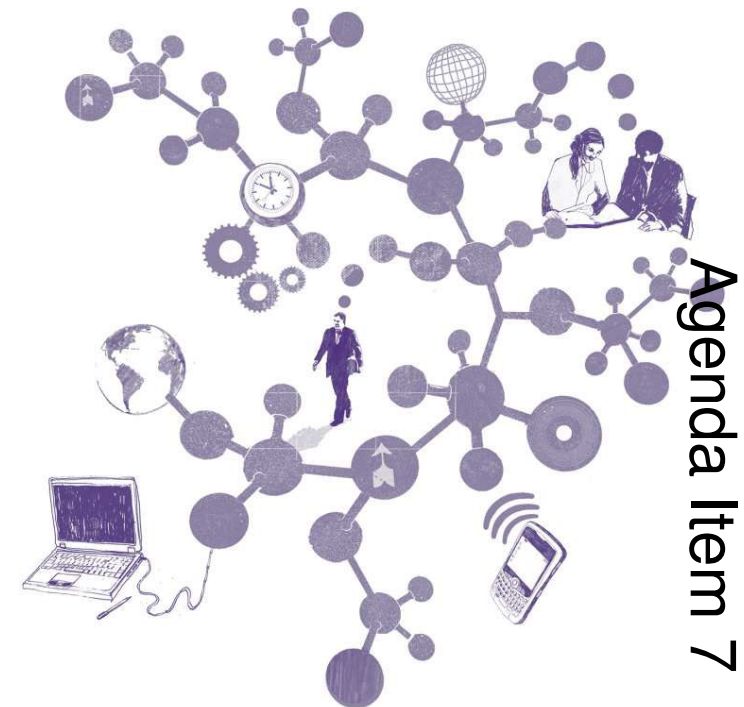
Year ended 31 March 2014

14 October 2014

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Key messages

Our Annual Audit Letter summarises the key findings arising from the work that we have carried out at Exeter City Council ('the Council') for the year ended 31 March 2014.

The Letter is intended to communicate key messages to the Council and external stakeholders, including members of the public. Our annual work programme, which includes nationally prescribed and locally determined work, has been undertaken in accordance with the Audit Plan that we issued on 9 June 2014 and was conducted in accordance with the Audit Commission's Code of Audit Practice, International Standards on Auditing (UK and Ireland) and other guidance issued by the Audit Commission.

<p>Financial statements audit (including audit opinion)</p>	<p>We reported the findings arising from our audit of the financial statements to the Audit and Governance Committee in our Audit Findings Report on 24 September 2014. The key messages reported were:</p> <ul style="list-style-type: none">• The Council prepared its financial statements in accordance with the national timetable (30 June 2014) and made a full set of working papers available to us at the start of the audit.• There were a number of adjustments to the Council's draft financial statements although none of these were material. Overall, the standard of the Council's financial statements showed an improvement compared to the previous year. <p>We issued an unqualified opinion on the Council's 2013/14 financial statements on 26 September 2014, meeting the deadline set by the Department for Communities and Local Government. Our opinion confirms that the financial statements give a true and fair view of the Council's financial position and of the income and expenditure recorded by the Council. This opinion also covers the group financial statements.</p>
<p>Value for Money (VfM) conclusion</p>	<p>We issued an unqualified VfM conclusion for 2013/14 on 26 September 2014.</p> <p>On the basis of our work, and having regard to the guidance on the specified criteria published by the Audit Commission, we are satisfied that in all significant respects the Council put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ending 31 March 2014.</p>

Key messages

Whole of Government Accounts	We reviewed the consolidation pack which the Council prepared to support the production of Whole of Government Accounts. We reported that the Council's pack was consistent with the audited financial statements.
Certification of grant claims and returns	<p>As noted in our certification plan, there are only two returns applicable to Exeter City Council in 2013/14. We certified the Pooled Capital Receipts Return in September 2014, without qualification, ahead of the National deadline.</p> <p>The remaining return is for Housing Benefits and the deadline for the completion of this work is 30 November 2014. We will report our findings to the Council once this work has been completed.</p>
Audit fee	Our fee for 2013/14 was £76,283, excluding VAT which was in line with our planned fee for the year. Further detail is included within appendix B.

Appendix A: Key issues and recommendations

This appendix summarises the significant recommendations made during the 2013/14 audit. These have been agreed with the Council and were included in our Audit Findings Report.

No.	Issue and recommendation	Priority	Management response/ responsible office/ due date
1.	<p>The Council is required to prepare a set of financial statements that meets CIPFA's requirements. The simplest way to ensure this is for the Council to self-assess its financial statements using a disclosure checklist.</p> <p>Recommendation: Complete a disclosure checklist as part of the financial statements closedown process.</p>	High	<p>Management response: Agree that completion of the checklist would be advantageous for the Council to satisfy itself that its accounts met all of the necessary requirements. However this is a lengthy document which will require additional resources during a time-pressured period of closing the accounts. We will endeavour to complete the checklist in parallel with closing the accounts, resources permitting, but will certainly use it as a guide for implementing changes to the financial statements to meet CIPFA requirements.</p> <p>Responsible officer: Technical Accounting Manager</p> <p>Due date: 30 June 2015</p>
2.	<p>Journals are not approved before being processed.</p> <p>Recommendation: The Council should introduce a sample-based approach to journal review and authorisation covering all journals.</p>	High	<p>Management response: Following the restructure of Accountancy Services and the appointment of an Accountant with responsibility for system development support in July, we have given priority to investigating the functionality of the financial system for journal authorisation and workflow arrangements. It is hoped that a new journal authorisation process will be implemented in order to improve internal controls.</p> <p>Responsible officer: Assistant Director, Finance</p> <p>Due date: 31 December 2014</p>

Appendix B: Reports issued and fees

We confirm below the fee charged for the audit and the provision of non-audit services.

Fees

	Per Audit plan £	Actual fees £
Council audit	76,283	76,283
Grant certification	13,380	TBC
Total audit fees	89,663	TBC

Our certification work will not be completed until November 2014. We will advise the Council's Audit and Governance Committee of the final fee for this work at that time.

There is an additional fee of £940 in respect of work on material business rates balances. This additional work was necessary as auditors are no longer required to carry out work to certify NDR3 claims. The additional fee is 50% of the average fee previously charged for NNDR3 certifications for District Councils and is subject to agreement by the Audit Commission.

Fees for other services

Service	Fees £
Review of IT Shared Service Arrangements – Phases 1 and 2. This is a joint review for Exeter City Council, East Devon District Council and Teignbridge District Council. The total fee for these two phases of the work was £17,998, the cost of which was shared equally across the three Councils. The fee identified here represents Exeter City Council's share of the work delivered.	£5,999

Reports issued

Report	Date issued
Audit Plan (including interim audit work)	June 2014
Audit Findings Report	September 2014
Certification Plan	September 2014
Annual Audit Letter	October 2014
Certification Report	Due December 2014



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REPORT TO AUDIT & GOVERNANCE

Date of Meeting: 3rd DECEMBER 2014

Report of: AUDIT MANAGERS

Title: INTERNAL AUDIT PROGRESS REPORT 2nd QUARTER 1st JULY TO 30th SEPTEMBER 2014

Is this a Key Decision?

No

* One that affects finances over £1m or significantly affects two or more wards. If this is a key decision then the item must be on the appropriate forward plan of key decisions.

Is this an Executive or Council Function? COUNCIL

1. What is the report about?

To report on internal audit work carried out during the period 1st July to 30th September 2014, to advise on overall progress against the Audit Plan and to report any emerging issues requiring consideration.

2. Recommendations:

2.1 That the Internal Audit Progress Report for the second quarter of the year 2014/15 be noted.

2.2 Members decide whether the audit report recommendation not accepted by management, as detailed in 8.2, is an acceptable risks to the Council.

3. Reasons for the recommendation:

3.1 One of the roles of this committee is to review quarterly internal audit reports and the main issues arising and seek assurance from management that action has been taken, where necessary.

4. What are the resource implications including non financial resources.

4.1 None.

5. Section 151 Officer comments:

5.1 Any financial implications arising out of the Museums recommendation, will be considered against the risk outlined once the cost of a valuation is known.

6. What are the legal aspects?

None. This report is essentially about risk management.

7. Monitoring Officer's comments:

No comment to make.

8. Report details:

This Committee is responsible for the implementation and active monitoring of audit processes and actions, which includes performance against the annual audit plan, reviewing quarterly internal audit progress reports and seeking responses and assurance from management regarding audit recommendations that have not been accepted or those not implemented within a reasonable timescale. The 2014/15 Audit Plan was approved at this Committee on 12th March 2014.

The purpose of Internal Audit is to provide an independent and objective review of the adequacy and effectiveness of the Council's arrangements for internal control, risk management and governance. The activities we audit are given an assurance rating as follows:

Excellent	★★★★★	The areas reviewed were found to be well controlled, internal controls are in place and operating effectively. Risks against achieving objectives are well managed.
Good	★★★★	Most of the areas reviewed were found to be adequately controlled. Generally risks are well managed but a few areas for improvement have been identified.
Some improvement required	★★★	There is a basic control framework in place, but not all risks are well managed and a number of controls are required to be strengthened.
Significant improvement required	★★	Most of the areas reviewed were not found to be adequately controlled. Risks are not well managed and require controls to be strengthened to ensure the achievement of system objectives.
Fundamental weakness	★	Controls are seriously lacking or ineffective in their operation. No assurance can be given that the system's objectives will be achieved.

8.1 Work Undertaken

Internal Audit's objective is to examine the Council's financial and non-financial systems to check that there are adequate internal controls in place to prevent loss due to frauds, errors and inefficiency, and due attention is paid to corporate governance and risk management.

A summary of progress against the annual audit plan to date is shown at Appendix A, together with the current status of each area for review and the outcomes of the review, where completed.

The table is based on the audit plan and the systems grouped into the twelve strategic purposes as per the Corporate Plan.

A further summary of the outcomes of audits completed can be found at Appendix B.

Progress against the annual audit plan is on target.

8.2. Issues for consideration

Two reports issued by Internal Audit during this quarter contain recommendations not accepted by management, the details of which are below.

There are no instances of management accepting a recommendation which was not subsequently implemented within a reasonable timescale.

a) Safeguarding

Internal audit recommended that the completion of the e-learning safeguarding training should be made mandatory to all staff (including those at the Museum). Where e-learning is not practical (e.g. Cleansing and Waste Collection employees), tool box talks or basic classroom based training should be provided instead.

Management did not agree with this recommendation and advised that:
"They did not understand the basis for making the e-learning mandatory for all employees. There are many employees who will never encounter situations during their employed role which could give rise to the need or desire for recognition of safeguarding issues. Roles should be prioritised with High requiring classroom based learning, Medium requiring e-learning or tool-box / basic classroom based training. Low having the option of e-learning".

b) Museums

The recommendation not accepted by RAMM management related to valuations in the accessions register. Internal Audit recommended that:

- a) Wherever possible, objects on the Accessions register should be assigned a value.
- b) On an annual basis, the total sum assured for museum objects should be reviewed to check that there is adequate cover. Reports from the Accessions Register on the total value of objects should be referred to when carrying out this review.

RAMM Management did not agree with this recommendation, stating that:

- a) *"Valuing objects is a specialist area covered by auction houses and valuers. Curators do not have the time, access or resources to keep pace with market prices meaning that individual valuation would require a huge amount of research time. Bringing in professional auction house valuers would be a very expensive undertaking for the Council and would need additional funding. Valuations are, however, produced for high value items."*
- b) *"See response above. An inflationary increase to the sum assured is probably the best way of dealing with this."*

However, this matter was reported to the Senior Management Team (SMT), through the normal reporting procedure and SMT have requested that this recommendation is actioned.

9. How does the decision contribute to the Council's Corporate Plan?

Good governance contributes to the Council's purpose of a "Well Run Council".

10. What risks are there and how can they be reduced?

Not applicable.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

Not applicable.

12. Are there any other options?

Not applicable.

Helen Putt & Helen Kelvey
Audit Managers

Local Government (Access to Information) Act 1972 (as amended)
Background papers used in compiling this report:-
None

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**EXETER CITY COUNCIL
AUDIT AND GOVERNANCE COMMITTEE**

PROGRESS OF 2014/15 AUDIT PLAN AS AT 30/09/14

Audit Area	Budget Days	Actual Days	Report Status	Direction of travel since last audit	Assurance Rating	Number of findings		
						High	Med	Low

Leader

'A stronger city'

External Funding & Grants	5	1.1	To start Q4					
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Enabling Services

'A well run Council'

'Maintain our property assets of the city'

Main Accounting 2014-15	25	12.1						
- Budget setting			In progress					
Income Management/Sundry Debt	35	11.4	To start Q4					
Procurement	30	1.3	To start Q3					
Creditors	50	29.9						
Quarter 1			In progress					
Treasury Management	5	5.2	In progress					
People Management	35	29.2	In progress					
ICT – Shared service	30	8.1	Ongoing					
Business Continuity	15	0.1	To start Q3					
Risk Management	10	7.1	In progress					
Contracts	5	0	To start Q3					
Counter Fraud/Anti-Fraud	15	16.7	Completed	N/A	N/A Self assessment	-	-	-
Corporate governance	15	2.7	Ongoing					
Information Governance	10	5.8	Ongoing					
Equalities & Diversity	10	0	To start Q4					
Safeguarding	15	16.8	Completed	No previous report	Some improvement required	0	8	2
Partnerships	5	0.3	To start Q3					
External Audit	5	0.7	Ongoing					

Customer Access

'Help me with my housing and financial problem'

Housing Benefit Subsidy	50	20.3	14/15 To start Q4					
Council Tax	30	7.5	In progress					
NDR	12	0.2	In progress					

One View of Debt (OVD)	25	0.2	To start Q3					
Housing - Tenants	25	20.5	In progress					

Housing

'Provide suitable housing'

'Be a good landlord'

Housing - Property	15	1.4	To start Q4					
Private Sector Housing	10	0	To start Q3					

Environment, Health & Wellbeing

'Keep place looking good'

'Keep me/my environment safe and healthy'

Health & Safety	10	13.5	In progress					
Licensing	5	7.6	Completed	No previous report	Some improvement required	1	4	5

Economy and Culture

'Provide great things for me to see and do'

'Help me run a successful business'

Culture/Events (Rugby World Cup)	2	0	Ongoing					
Museums	11	16.4	Completed	No previous report	Some improvement required	0	5	10

City Development

'Deliver good development'

Planning	5	0.5	To start Q4					
New Homes Bonus	8	8.6	Completed	No previous report	Excellent	0	0	0
CIL/Section 106	8	0	To start Q4					

Public Realm

'Keep place looking good'

Car Parks	10	0	To start Q4					
CCTV	5	5.6	Completed	No previous report	Good	0	4	2
Homecall	5	5.4	Completed	No previous report	Good	0	3	1

Contingency (special/frauds) including unplanned work	40	10.1						
Follow-ups	10	8.7						
PSIAS Peer Review	2	2.1						
Total	597	277.1						

**EXETER CITY COUNCIL
AUDIT AND GOVERNANCE COMMITTEE**

Internal Audit Summary of Work Completed June to September 2014/15

Audit Area	Summary
<p>Counter Fraud/Anti Fraud</p>	<p>Exeter City Council has identified fraud and corruption as a risk in its Corporate risk register and therefore has undertaken a proper assessment of its fraud and corruption risks. In addition, the Public Sector Internal Audit Standards (Ref: 2120 Risk Management) requires Internal Audit activity to evaluate both the potential for fraud and how the organisation itself manages fraud.</p> <p>The scope of this review included conducting a self assessment of the Council's counter fraud capability against two Government body checklists. The first from the National Fraud Authority's 'Fighting Fraud Locally' document and the second from the Audit Commission's 'Protecting the Public Purse' document.</p> <p>The assessment included an exercise to identify:</p> <ul style="list-style-type: none"> • the Council's fraud and corruption risks • the Council's counter fraud capability • weaknesses in counter fraud capability that need to be addressed <p>and then produce an action plan.</p> <p>All actions identified in the action plan have now either been implemented or are being implemented.</p>
<p>Safeguarding</p> <p>Assurance rating: Some improvement required ★★★</p>	<p>Safeguarding and promoting the welfare of children (or vulnerable adults) is defined by statutory guidance as:</p> <ul style="list-style-type: none"> • protecting children from maltreatment • preventing impairment of children's health or development • ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully <p>Exeter City Council has obligations under the Children's Act 2004 to safeguard and promote the welfare of children, therefore the audit sought to review the key controls and procedures undertaken by the Council for the safeguarding of children and vulnerable adults by checking compliance with s.11 of the Children's Act 2004 and other legislation.</p> <p>A total of 8 medium and 2 low risk recommendations were made and all but 1 were accepted by management. The recommendation that was not accepted related to:</p> <p>The completion of the e-learning safeguarding training should be made mandatory to all staff (including those at the Museum).</p>

	<p>Where e-learning is not practical (e.g. Cleansing and Waste Collection employees), tool box talks or basic classroom based training should be provided instead.</p> <p>Management did not agree with this recommendation and advised that: <i>“They did not understand the basis for making the e-learning mandatory for all employees. There are many employees who will never encounter situations during their employed role which could give rise to the need or desire for recognition of safeguarding issues. Roles should be prioritised with High requiring classroom based learning, Medium requiring e-learning or tool-box / basic classroom based training. Low having the option of e-learning”.</i></p>
<p>Taxi Licensing</p> <p>Assurance rating: Some improvement required ★★★</p>	<p>The Licensing Section is responsible for the issuing and enforcement of a wide range of different licences including:</p> <ul style="list-style-type: none"> • Alcohol and entertainment licences • Taxis and private hire vehicles • Street trading • Gambling • Animal – Riding Establishments, Pet Shops, Breeding and Boarding <p>All taxis and their drivers must be licensed. The government is responsible for setting out the overall legislative framework within which licensing authorities carry out their licensing responsibilities and under which drivers and operators actually work. There are two main acts, which cover hackney carriage and private hire:</p> <ul style="list-style-type: none"> • Town Police Clauses Act 1847 • and the above act as amended by the Local Government (Miscellaneous Provisions) Act 1976 <p>The licensing conditions that are applied to taxi and PHV drivers and the local conditions of vehicle fitness are for each council to decide.</p> <p>The audit sought to check compliance with the legislation and the Department for Transport’s best practice guidance for local licensing authorities.</p> <p>A total of 1 high, 4 medium and 5 low risk recommendations were made all of which were accepted by management.</p>
<p>Museums (RAMM)</p> <p>Assurance rating: Some improvement required ★★★</p>	<p>RAMM is a museum and art gallery which holds significant and diverse collections in:</p> <ul style="list-style-type: none"> • Antiquities • Natural history (Geology/Biology/Botany) • World cultures (or Ethnology) • Fine and decorative art (including costumes) <p>Altogether the museum holds over one million objects, of which a small percentage is on permanent public display and the rest is held in storage facility called ‘The Ark’.</p> <p>It is a 'Major Partner Museum' (MPM) under the Arts Council England administered programme of strategic investment. This means that for 2012-15 the museum sector receives approximately £20 million funding from the Major Grants programme and £1.19 million funding from the Museum Development Fund to develop its services. RAMM as one of the sixteen Major Partner Museums nationally receiving funding in partnership with Plymouth City Museum & Art Gallery (PCMAG). The RAMM/PCMAG</p>

	<p>received just under £3.4m (2012-15), approximately split between the organisations 50:50.</p> <p>The audit sought to review the effectiveness of the internal controls in place and the procedures in operation within the Museums Service. In addition, checks were undertaken to ensure that financial regulations were being complied with.</p> <p>A total of 5 medium and 10 low risk recommendations were made and all but 1 of the recommendations were accepted by management.</p> <p>The recommendation not accepted by management related to valuations in the accessions register. Internal Audit recommended that:</p> <p>a) Wherever possible, objects on the Accessions register should be assigned a value.</p> <p>b) On an annual basis, the total sum assured for museum objects should be reviewed to check that there is adequate cover. Reports from the Accessions Register on the total value of objects should be referred to when carrying out this review.</p> <p>RAMM Management did not agree with this recommendation, however, this matter was reported to the Senior Management Team (SMT), through the normal reporting procedure and SMT have requested that this recommendation is actioned.</p>
<p>New Homes Bonus</p> <p>Assurance rating: Excellent ★★★★★</p>	<p>The New Homes Bonus (NHB) was introduced in April 2011 and is intended to be a permanent incentive paid in respect of new build, conversions and long-term empty properties brought back into effective use. It is a grant paid to all English authorities in recognition of net additions to effective housing stock in their area. Payments for each eligible property are calculated per home based on the national average Council Tax Band for that home. As the NHB is an enduring incentive, for each net addition the NHB is paid each year for six years. A flat rate of £350 per year is also paid for each affordable home delivered. Data is collected annually in October from the Council Tax Base, which measures changes from year to year, with the Bonus being paid in the following financial year.</p> <p>The grant is not ring-fenced which means that local authorities are free to decide how to spend it. The Government have agreed a set of Principles for the use of the grant that support strategic planning and long term infrastructure. Bonus funds can be spent on either revenue or capital, strategic projects, or placed in a local authority's reserves. Local authorities are expected to consult communities about how they will spend the money, especially in areas where housing stock has increased. There is no time limit on when the funds have to be spent.</p> <p>The audit sought to check compliance with Government NHB policy and that there were adequate internal controls in place.</p> <p>This system was found to be operating very well and no audit recommendations were necessary.</p>
<p>CCTV</p> <p>Assurance rating: Good ★★★</p>	<p>The City Centre is monitored by CCTV cameras operated in partnership between the City Council, Devon County Council and the Devon & Cornwall Police, together with the support of the Community Safety Partnership. The system is registered with the Information Commissioner's Office and regulated under the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000.</p> <p>The objectives of the scheme are:</p>

	<ul style="list-style-type: none">• To help deter and detect crime and provide evidence material for court proceedings• To help reduce the fear of crime• To assist in the overall management of Exeter City Centre• To enhance community safety, assist in developing the economic well being of the Exeter area and encourage greater use of the city centre• To assist the Local Authorities in their enforcement and regulatory functions within the Exeter area• To assist in traffic management and encourage safer and more sustainable use of all modes of transport and provide travel information to the media and public• To assist in supporting civil proceedings• To monitor all modes of travel to enable improvement and better management of the public highway <p>The Council's control centre is staffed 24/7 by operators trained and licensed by the Security Industry Authority for public space surveillance</p> <p>The audit sought to check compliance with the Information Commissioner's Office (ICO) CCTV Code of Practice (revised edition 2008) and the Home Office Surveillance Camera Code of Practice (June 2013).</p> <p>A total of 4 medium and 2 low risk recommendations were made and all were accepted by management.</p>
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REPORT TO AUDIT AND GOVERNANCE COMMITTEE

Date of Meeting: 3 December 2014

Report of: AUDIT MANAGERS

Title: MEASURING THE EFFECTIVENESS OF THE AUDIT COMMITTEE

Is this a Key Decision? No

Is this an Executive or Council Function? Council

1. What is the report about?

The Audit & Governance Committee should periodically evaluate its performance against the responsibilities set out in the terms of reference to demonstrate the Council's commitment to improving its governance.

2. Recommendations:

It is recommended that the CIPFA Self Assessment Checklist – '*Measuring the Effectiveness of the Audit Committee*' attached at Appendix A be completed by members of this committee and returned to the Audit Manager for collation of the results. The results should be reported to full Council, as well as being used by this committee for improvement.

3. Reasons for the recommendation:

To provide assurance that the Audit and Governance Committee is operating effectively.

4. What are the resource implications including non financial resources.

Member time in undertaking the self assessment and Audit Manager collating results/reporting results to next meeting.

5. Section 151 Officer comments:

There are no financial implications to the report.

6. What are the legal aspects?

No comment to make

7. Monitoring Officer's comments:

No comment to make

8. Report details:

An effective Audit Committee gives all stakeholders additional confidence in the Council's risk management, internal controls and compliance systems, internal audit functions and financial reports. It:

- raises greater awareness of the need for internal control and the implementation of audit recommendations
- increases public confidence in the objectivity and fairness of financial and other reporting
- reinforces the importance and independence of internal and external audit provides additional assurance through a process of independent and objective review

The first meeting of the Audit and Governance Committee took place on 26th June 2013. As this committee has now been in existence for over 12 months, it would seem appropriate that time is taken to reflect on the effectiveness of the committee and to potentially identify areas for improvement.

In addition, The Audit & Governance Committee should periodically evaluate its performance against the responsibilities set out in the terms of reference to demonstrate the Council's commitment to improving its governance. This assessment can take place on an individual basis and/or collectively. The results of the evaluation should be reported to full Council as well as being used by the committee for improvement. (This issue was reported at section 2.9 of the Corporate Governance audit report dated 26th February 2014 and circulated to all members of the Audit and Governance Committee).

The terms of reference of this committee are in accordance with CIPFA's publication '*Audit Committees: Practical guidance for Local Authorities*' and this guidance also provides a self assessment checklist, '*Measuring the Effectiveness of the Audit Committee*' provided for this purpose. Please see Appendix A.

9. How does the decision contribute to the Council's Corporate Plan?

Adopting best practice in corporate governance contributes to the Council's purpose 'A Well Run Council'

10. What risks are there and how can they be reduced?

Non-compliance with Code of Corporate Governance requirements. Completion of the self assessment will reduce this risk.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

None.

12. Are there any other options?

None.

**Helen Kelvey/Helen Putt
Audit Managers**

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Contact for enquires:

Democratic Services (Committees)

Room 2.3

01392 265275

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Measuring the Effectiveness of the Audit Committee – Self-assessment Checklist

Issue	Yes	No	N/A	Comment
Terms of Reference				
Does the audit committee have written terms of reference?				
Have the terms of reference been approved by full council?				
Do the terms of reference follow the CIPFA model?				
Does the audit committee periodically assess its own effectiveness?				
Membership				
Has the membership of the committee been formally agreed and a quorum set?				
Is the Chair free of executive or scrutiny functions?				
Are members sufficiently independent of the other key committees of the council?				
Have all members' skills and experiences been assessed and training given for identified gaps?				
Is induction training provided to members?				
Is more advanced training available as required?				
Can the committee access other committees as necessary?				
Meetings				
Does the committee meet regularly?				
Are meetings free and open without political influences being displayed?				
Are decisions reached promptly?				
Are agenda papers circulated in advance of meetings to allow adequate preparation by members?				
Does the authority's s151 officer or deputy attend all meetings?				
Are the key officers available to support the committee?				
Are separate, private meetings held with the external auditor and internal Audit Manager?				
Internal Audit Process				
Does the audit committee approve the annual audit plan ensuring that risk assessments have been carried out when formulating the plan?				
Does the audit committee regularly monitor performance against the plan and approve any revisions to the plan?				

Does the audit committee review quarterly reports from the Audit Manager and ensure that officers are acting on and monitoring action taken to implement internal audit recommendations?				
Does the audit committee receive a report from the Audit Manager on agreed recommendations not implemented within a reasonable timescale?				
Is the annual report, from the Audit Manager presented to the committee?				
External Audit Process				
Are reports on the work of external audit and other inspection agencies presented to the committee?				
Does the committee input into the external audit programme?				
Does the audit committee ensure that officers are monitoring action taken to implement external audit recommendations?				
Does the committee take a role in overseeing: <ul style="list-style-type: none"> • risk management strategies? • annual governance statements? • anti-fraud arrangements? • whistleblowing strategies? • members and employee codes of conduct? • member/officer relationships protocols? • the Council's constitution? 				

REPORT TO AUDIT AND GOVERNANCE COMMITTEE

Date of Meeting: 3 December 2014

Report of: Corporate Manger - Legal Services

Title: RIPA policy and Authorisation update

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 To remind members of the obligations under the Regulation of Investigatory Powers Act 2000 (“RIPA”) and the Council’s RIPA Policy.
- 1.2 When taking enforcement action, the Council’s enforcing officers may on occasion consider it necessary to undertake covert surveillance work in order to undertake the Council’s statutory duties or “core work”. For example, covert surveillance may be necessary to:
 - observe individuals who may be suspected of benefit fraud.
 - Enforce planning legislation or any condition imposed on a planning permission.
- 1.3 RIPA requires the Council to have in place procedures to ensure that when required, surveillance is necessary and is properly authorised. Surveillance is usually a last resort that an investigator will use to prove or disprove an allegation. RIPA sets out a statutory mechanism for authorising covert surveillance and the use of covert human intelligence sources.
- 1.4 RIPA requires that formal “Authorisation” from a senior officer must be obtained before carrying out covert surveillance, monitoring and other evidence-gathering activities.
- 1.5 Any such Authorisation granted must be supported by an Order approving the grant or renewal of such Authorisation from a JP (either a District Judge or lay magistrate) before it can take effect.

2. Recommendations:

- 2.1 To reaffirm the Council’s RIPA policy and agree the new format as set out in Appendix 1 to this report.
- 2.2 To delegate to the Monitoring Officer the authority to update and amend the policy as necessary.
- 2.3 Members note that no application for covert surveillance has been made to the Council’s approved “Authorising officers” and as a consequence no application to the Magistrates Court requesting approval of any such grant has been made.

3. Reasons for the recommendation:

- 3.1 To comply with the statutory provisions under RIPA and the following Home Office Guidance:
 - Protection of freedoms Act 2012 – Changes to provisions under the regulation of Investigatory powers Act 2011 (RIPA)

- Guidance to Local Authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance.

4 What are the resource implications including non financial resources.

4.1 There are no resource implications relating to this report.

5. Section 151 Officer Comments:

5.1 Although there are no financial resources required to implement the policy. The policy itself forms an important part of the Council's protection against acting illegally and any potential financial consequences that may arise as a result.

6. What are the legal aspects?

6.1 RIPA seeks to ensure that any interference with an individual's rights under Article 8 is necessary and proportionate and therefore, there is a balance between public interest and an individual's human rights.

6.2 Covert surveillance will only be undertaken where there is no reasonable and effective alternative means of achieving the desired objective.

6.3 RIPA must be complied with, regardless of whether the information obtained is to be used as evidence in court proceedings. Failure to comply with RIPA doesn't just mean that the evidence cannot be used in court; it means that the whole procedure is illegal.

7. Monitoring Officer's comments:

7.1 Article 8 of the European Convention on Human Rights provides:
"Everyone has the right to respect for his private and family life, his home and his correspondence."

7.2 There can be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society for the purpose of the prevention of disorder or crime.

7.3 The right to non interference with an Article 8 right is not absolute. It is a qualified right. This means that in certain circumstances the Council *may* interfere with the right if the interference is:

- in accordance with the law
- necessary, and
- proportionate

8. How does the decision contribute to the Council's Corporate Plan?

8.1 It is necessary to meet the council's objective "to run well".

9. What risks are there and how can they be reduced?

9.1 The Council runs the risk that covert surveillance is undertaken without proper authorisation rendering the process illegal and any evidence obtained inadmissible.

9.2 The Council also run the risk that the authorising officers agree an application without proper regard to whether the surveillance requested is lawful, necessary and proportionate.

9.2 Both risks identified above have been reduced by requiring all enforcement as well as Authorising Officers to undertake compulsory RIPA training which is due to take place on the 13 and 14 November 2014.

10. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

10.1 The RIPA policy will assist the Council's officers to make decisions on an objective, reasonable and proportionate basis.

11. Are there any other options?

No

Baan AL-Khafaji

Corporate Manager – Legal Services & Monitoring Officer

1. Home office Guidance- Covert Surveillance and Property Interference.
2. Home office Guidance- Protection of Freedoms Act 2012- changes to the provisions under the Regulation of Investigatory Powers 2000 (October 2012)
3. Office of surveillance commissioners- procedures and Guidance (December 2012)

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

Contact for enquires:
Democratic Services (Committees)
Room 2.3
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Exeter City Council

Regulation of Investigatory Powers Act 2000 Joint Policy

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Introduction

Overview

The Regulation of Investigatory Powers Act 2000 (RIPA) means that formal authorisation from a senior officer must be obtained before carrying out certain surveillance, monitoring and other evidence-gathering activities. The Council may not carry out any other types of surveillance at all.

It is important to remember that RIPA must always be complied with, regardless of whether the information obtained is to be used as evidence in court proceedings. Failure to comply with RIPA doesn't just mean that the evidence cannot be used in court; it means that the whole procedure is illegal and that the officers concerned do not benefit from the above protection.

What is this document for and why is it needed?

Councils' are allowed and required to carry out investigations in relation to their duties. Such investigations may require surveillance or information gathering of a covert nature.

Article 8 of the European Convention on Human Rights provides:

Article 8.1: Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 8.2: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society:

- In the interests of national security,
- Public safety or the economic well-being of the country,
- For the prevention of disorder or crime,
- For the protection of health or morals, or for the protection of rights and freedoms of others.

This right is not absolute, it is a qualified right. This means that in certain circumstances the Council *may* interfere with the right if the interference is:

- in accordance with the law
- necessary, and
- proportionate

Covert Surveillance and information gathering may constitute an interference with the right to respect for private and family life. To ensure that such an action is not unlawful under the Human Rights Act 1998, the Council needs to meet the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA).

In simple terms, RIPA requires the Council to have in place procedures to ensure that when required, surveillance is necessary and is properly authorised. Surveillance is

usually a last resort that an investigator will use to prove or disprove an allegation. RIPA sets out a statutory mechanism for authorising covert surveillance and the use of covert human intelligence sources (see below). RIPA seeks to ensure that any interference with an individual's rights under Article 8 is necessary and proportionate and that, therefore, there is a balance between public interest and an individual's human rights. Covert surveillance will only be undertaken where there is no reasonable and effective alternative means of achieving the desired objective.

What is meant by necessary?

It is essential to consider whether an investigation requiring surveillance or information gathering can be done overtly rather than covertly. What would the result be if you carried out the investigation overtly?

If an investigation can be reasonably carried out by any means other than by using covert surveillance, then the use of covert surveillance is not necessary.

It must then be considered whether it is necessary to conduct covert surveillance or use covert human intelligence sources in the circumstances of the particular case for the **purpose of preventing or detecting crime where the offence is punishable by imprisonment of a term of six months or more.**

What is meant by proportionate?

This is an important concept, and it means that any interference with a person's rights must be proportionate to the intended objective. The action must be aimed at pursuing a legitimate aim. Interference will not be justified if the means used to achieve the aim are excessive in all the circumstances.

The use of surveillance must be designed to do no more than meet the objective in question; it must not be unfair or arbitrary, and the impact on the individual (or group of people) concerned must not be too severe. In deciding whether the use or action is proportionate, the risk of intrusion into the privacy of persons other than those who are the object of the investigation must be considered, and the measures proposed to minimise such intrusion must be properly assessed. You must be satisfied that, on balance, the principle of the subject's right to privacy is outweighed by the purpose of the investigation. Clearly, the more serious the matter being investigated, the more likely that surveillance will be proportionate.

The proportionality test will also require you to consider whether there are any other appropriate means of obtaining the information and whether there is a risk of collateral intrusion. The least intrusive method will be proportionate. Some of the things you may also wish to consider in terms of proportionality are whether covert surveillance is the only option, what other options have been considered, the intended length of the investigation, the number of officers to be deployed in the investigation.

The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means.

What is covered by the Regulation of Investigatory Powers Act 2000?

The main purpose of the Regulation of Investigatory Powers Act 2000 is to ensure that the relevant investigatory powers are used in accordance with human rights. The Act sets out these powers in more detail. Part II of the Act sets out the powers available to local authorities.

The Council is able to carry out investigations using covert surveillance and/or by using a covert human intelligence source under RIPA following the formal authorisation procedures and codes of practice as set out in this document. RIPA applies to the Council's core functions.

Please ask the RIPA Co-ordinating Officer for advice if you are unsure as to whether RIPA will apply.

RIPA not only covers the surveillance of members of the public but would also cover the observation of staff and members as part of an internal investigation.

Do we need to follow these rules?

Although RIPA does not impose a requirement for local authorities to comply with it, it is essential for the Council to do so to ensure that:

- it is less vulnerable to a challenge under the Human Rights Act and
- any material gathered is admissible by the civil and criminal courts.

Following the requirements of RIPA and acting in accordance with this Policy, will therefore protect the Council against potential challenges to its decisions and procedures. Not following the procedures specified in this document could also lead to a complaint of maladministration or a complaint to the independent Tribunal set up under RIPA, details of which are to be found at the end of this document.

What is the relevant legislation?

- The Regulation of Investigatory Powers Act 2000
- The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010
- Protection of Freedom Act 2012

Authorisation may only be granted if it is necessary for the reason permitted by RIPA. For local authorities the only statutory reason is **for the purposes of preventing or detecting a criminal offence where that offence is punishable (whether on summary or indictment) by a minimum term of at least 6 months imprisonment.**

This means that directed surveillance cannot be used for minor offences.

What is the Council's Policy on RIPA?

This document is the Council's policy on RIPA. As such, it should be adhered to unless it is in conflict with either of the Government Codes of Practice which have been made under RIPA. The Codes of Practice are admissible as evidence in court and **must** be complied with.

Copies of the Codes of Practice are available on the Home Office site: www.homeoffice.gov.uk. These are:

- Covert Surveillance Code Of Practice
- Covert Human Intelligence Sources Code Of Practice

When will this document be reviewed?

This document shall be subject to review once a year. An earlier review may take place should circumstances in the law so require it. Minor amendments may be made from time to time.

Who is responsible for reviewing and monitoring this document and the use of RIPA?

The Council's **Audit and Governance Committee** is responsible for the overview of the RIPA policy and the Councils' use of RIPA. The Committee will not be involved in making decisions on specific authorisations.

The RIPA Co-ordinating Officer is responsible for the RIPA Policy, the Central Register of authorisations, and for making regular reports on the use of RIPA to the Councils Audit and Governance Committee.

How do I find out more?

General guidance on RIPA may be found on the Home Office site: <http://www.homeoffice.gov.uk/>

Please contact the Council's Monitoring Officer if you require any further advice on RIPA, this document or any of the related legislative provisions.

Surveillance

What is Surveillance?

“Surveillance” includes

- monitoring, observing, listening to persons, watching or following their movements, listening to their conversations and other such activities or communications
- recording anything mentioned above in the course of authorised surveillance
- surveillance, by or with, the assistance of appropriate surveillance device(s)
- the interception of a communication in the course of its transmission by means of a postal service or telecommunication system if it is one sent by, or intended for, a person who has consented to the interception of the communication.

Surveillance can be overt or covert.

Overt Surveillance

Most of the surveillance carried out by the Council will be done overtly.

General observations made by officers in the course of their duties constitute overt surveillance.

Warning the person about the surveillance (preferably in writing) constitutes overt surveillance. Consideration should be given to how long the warning should last. This must be a reasonable length of time (three months may be appropriate in many cases), but each case must be assessed as to what is reasonable having regard to the circumstances. Whatever period is chosen, this **must** be set out in the written warning. At the expiry of the period, further written warning should be given otherwise the surveillance will become covert.

Overt surveillance does **not** require authorisation under RIPA.

Covert Surveillance

“Covert Surveillance” means surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.

Covert surveillance does require authorisation under RIPA.

What are the different types of covert surveillance?

RIPA regulates two types of covert surveillance:

- Directed Surveillance, and
- Intrusive Surveillance;

RIPA also regulates the use of Covert Human Intelligence Sources.

Directed Surveillance

Directed surveillance is defined as surveillance which is:

- covert,
- not intrusive (see definition below)
- undertaken for the purposes of a specific investigation or specific operation;
- carried out in such a manner as is likely to result in the obtaining of private information about a person (whether or not that person is the target of the investigation or operation); and
- undertaken in a planned manner, and not as an immediate response to events or circumstances.

Intrusive surveillance

Intrusive surveillance is surveillance of any activities on any **residential premises** or in any private vehicle by a person (other than a Covert Human Intelligence Source) on those premises or in that vehicle or is carried out by means of a surveillance device on the premises or in the vehicle or which provides information of the same quality and details as if it was on the premises or in the vehicle

However, directed surveillance authorisation may be granted for parts of residential premises, such as gardens or driveways which can be observed from the public highway. Further guidance on this point may be obtained from the Council Monitoring Officer.

It is important to get this right because:

COUNCIL OFFICERS CANNOT CARRY OUT INTRUSIVE SURVEILLANCE

Covert Human Intelligence Sources

The term Covert Human Intelligence Sources is used to describe people who are more commonly known as informants or officers working “undercover”. Throughout this document these people are referred to as “Sources”

This does not include members of the public who volunteer information to the Council as part of their normal civic duties or to contact numbers set up to receive information.

A person is a Source if he/she:

- establishes or maintains a covert personal or other relationship for the purposes of:
 - o obtaining information; or
 - o providing access to information to another person; or
 - discloses information obtained by the use or existence of that covert relationship
- RIPA authorisation is required for using a Source.

There are special rules for using juvenile or vulnerable persons as sources, and only the Head of Paid Service can authorise such surveillance.

Further advice should be sought from the Council's Monitoring Officer in such cases.

Interception of Communications

Local authorities can carry out interception of communications in a restricted number of circumstances.

These are:

In the course of normal business practice

The Councils are permitted without authorisation under RIPA to lawfully intercept its employees' e-mail or telephone communications and monitor their internet access for the purposes of prevention or detection of crime or the detection of unauthorised use of these systems.

The Councils' policies on use of the internet and e-mail are set out on the Council's intranet.

Interception with the consent of both parties.

Such interception does not require RIPA authorisation, but should be properly recorded.

Interception with the consent of only one of the parties.

Such interception would require RIPA authorisation because it would fall within the definition of surveillance (either directed or using a Source). The main type of interception envisaged here is the recording of telephone calls where either the caller or the receiver has given consent to the recording.

Where as part of an already authorised Directed Surveillance or use of a Source a telephone conversation is to be recorded by the Officer or the Source then no special or additional authorisation is required.

Interception without the consent of either of the parties

The recording of telephone calls between two parties when neither party is aware of the recording **CANNOT BE UNDERTAKEN**, except under a Warrant granted by the Secretary of State under Part 1 of RIPA. Such warrants are only granted by the Secretary of State and it is not envisaged that such activity would fall within the remit of local authority investigations.

Procedures

What is the procedure for obtaining authorisation under RIPA?

Directed surveillance and the use of a Source can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation.

All directed surveillance and use of a Source operations shall be:

- Applied for in writing or verbally in cases of urgency
- Approved
- Monitored
- Renewed when necessary
- Cease when no longer authorised

All the above actions will be carried out in accordance with this document and the relevant Codes of Practice and will be recorded on the Standard Forms listed below:

The Standard Forms are available from the Home Office web-site www.homeoffice.gov.uk

Directed Surveillance

- Application for directed surveillance authorisation
- Review of directed surveillance authorisation
- Application for cancellation of directed surveillance authorisation
- Application for renewal of directed surveillance authorisation

Use of a Source

- Application for conduct-use of a CHIS authorisation
- Review of use of a CHIS authorisation:
- Application for renewal of use of a CHIS authorisation
- Application for cancellation of conduct-use of a CHIS authorisation

Copies of all these documents will be retained and kept on the investigation file as part of the evidence to show that the information gained by directed surveillance or the use of a Source has been obtained legally.

This document provides guidance on the Procedures required to be undertaken by the Investigating Officer and the Authorising Officer for the different stages specified above.

• **The Senior Responsible Officer's Duties**

Who is the Senior Responsible Officer?

The Councils' Senior Responsible Officer is listed in the annex to this document.

What are my duties?

In accordance with the recommendations of the Codes of Practice, you are responsible for the following areas:-

- The integrity of the process in place within the Council for the management of Covert Human Intelligence Sources and Directed Surveillance.
- Compliance with Part II of RIPA and the Codes of Practice.
- Oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors.
- Engagement with the OSC inspectors when they conduct their inspections.
- Oversight of the implementation of any post-inspection action plan approved by the relevant oversight Commissioner.
- Ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations in the inspection reports by the Office of the Surveillance Commissioner.

• The Investigating Officer's Duties under RIPA.

The Application

The application for authorisation is the responsibility of the Investigating Officer.

What do I need to do?

You will need to consider:

- Whether covert surveillance is needed.
- Whether directed surveillance or use of a Source is needed.
- Whether directed surveillance or use of a Source is necessary for statutory reasons.
- Whether directed surveillance or use of a Source is proportionate.
- The risk of collateral intrusion.
- Safety and welfare arrangements (use of Source only).

These are discussed in more detail below.

What do I need to consider?

1. Whether covert surveillance is needed?

Consideration must be given as to whether covert surveillance is needed. You are advised to discuss the need to undertake directed surveillance or the use of a Source with your line manager before seeking authorisation. All options for the use of overt means **must** be fully explored. Remember: if the investigation can be carried out by overt means, then covert surveillance is not necessary.

2. Whether directed surveillance or use of a Source is needed?

You must establish which type of "surveillance" is required for the investigation or operation having regard to the guidance contained in this document. The type of surveillance you require affects which application forms you need to complete. Additional considerations are needed for using a Source. Further detail is found below. Combined authorisations for both directed surveillance and the use of a Source may be applied for where appropriate.

Remember that sometimes the use of 'Social Media' may amount to a directed surveillance. If you are thinking of doing this, then please contact the Council's Monitoring officer for advice as to whether you require a RIPA authorisation.

3. Whether directed surveillance or use of a Source is necessary for the statutory reason?

Authorisation may only be granted if it is necessary for the reason permitted by RIPA.

For local authorities the only statutory reason is for the purposes of preventing or detecting a criminal offence where that offence is punishable (whether on summary or indictment) by a minimum term of at least 6 months imprisonment.

You must set out this ground in your application form and provide details of the reasons why it is necessary to use covert surveillance.

4. Whether directed surveillance or use of a Source is proportionate?

You must consider why it is proportionate to use covert methods to collect evidence. Please see the definitions set out on page 2 “what is proportionate?” Remember, the use of covert methods must do no more than meet your objective. The proportionality test will also require you to consider whether there are any other appropriate means of obtaining the information and whether there is a risk of collateral intrusion (see consideration below). The least intrusive method will be proportionate. The following aspects of proportionality must be considered and evidenced:-

- (a) Balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence
- (b) Explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others
- (c) Considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result
- (d) Evidencing, as far as reasonably practicable, what other methods have been considered and why these were not implemented.

5. The risk of collateral intrusion?

Collateral intrusion is the risk of intrusion into the privacy of persons other than the target. You are required to assess the risk of collateral intrusion. Details of any potential collateral intrusion should be specified. Measures must be taken wherever practicable to avoid or minimise collateral intrusion and a plan should be included in your application specifying how the potential for collateral intrusions will be minimised. You should give as much detail as possible, insufficient information may lead to the rejection of the application.

6. Surveillance from private premises?

It is preferable for surveillance to be carried out from a public place, such as a public highway. However, there may be circumstances where private premises may be required for the carrying out of surveillance. In which case, it is essential that you obtain the consent of the owner and/or occupier of the premises prior to authorisation being sought.

You should seek further guidance from the Council's Monitoring Officer on this point.

7. Safety and welfare arrangements – use of a Source?

You must provide a risk assessment as to the likely risks to be faced by an officer or other person both during the conduct of the investigation and after the cancellation of the authorisation. Details must also be included setting out the arrangements for the safety of the Source, this should include:

- (a) The name of the Officer who has day to day responsibility for:
- Dealing with the Source.
 - Directing the day to day activities of the Source.
 - Recording the information supplied by the Source.
 - The Source's security and welfare.
- (b) The name of the Officer responsible for recording and monitoring the use made of the Source.
- (c) Arrangements for ensuring the security of the records which identify the Source.
- (d) Records relating to the Source meet the requirements of the Statutory Instrument: The Regulation of Investigatory Powers (Source Records) Regulations 2000 (SI 2000 No. 2725) – please see either the Home Office website: www.homeoffice.gov.uk or the Office of Public Sector Information website: www.opsi.gov.uk

How do I apply?

All applications must be made in writing on the standard forms as set out in this document.

The relevant forms are:

- (1) An application for directed surveillance authorisation, and/or
- (2) An application for use of a Source.

The considerations set out above, form part of the application form.

The application form must be fully completed and passed to the Authorising Officer. The annex to this document contains details of the Council's Authorising Officers.

NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.

What if authorisation is urgent?

The 2012 Home Office Guidance states that in most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. Therefore local councils may need to work with the police if faced with an emergency.

NB. Urgent authorisation may not be necessary if, under section 26(2) of the Act, an officer suddenly sees something relevant to his duties and takes an immediate note, observation of follow-up activity (within reason).

Monitoring

How long will an authorisation last for?

The authorisation for Directed Surveillance will last for **three months** from the date of authorisation unless renewed.

The authorisation for use of a Source will last for **12 months** from the date of authorisation (i.e. date of Magistrates' Order) unless renewed.

Review dates for the authorisation will be set by the Authorising Officer.

I now have my authority for surveillance, is there anything else I should be aware of?

It will be the responsibility of the Investigating Officer to ensure that any Directed Surveillance or use of a Source is only undertaken under an appropriate and valid authorisation.

During the surveillance, you should ensure:

- Surveillance is carried out in accordance with the approval
- Collateral intrusion is minimised as far as possible
- Intrusive surveillance is not carried out
- All information obtained is recorded contemporaneously or as soon as possible thereafter

During the use of a Source, you should also ensure:

- That the source is aware that:
 - o Only the tasks authorised are carried out
 - o Third party collateral intrusion is minimised as far as possible
 - o Intrusive surveillance is not carried out
 - o Entrapment is not committed
 - o They must regularly report to you

You should also be mindful of the date when authorisations and renewals will cease to have effect. Please see the notes on Renewals and Cancellation below.

What do I do if circumstances change during the investigation?

You must inform the Authorising Officer if the investigation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation or if there is another change in circumstances usually brought about by unforeseen action.

When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised (for minor amendments only) or whether it should be cancelled and a new authorisation obtained. The relevant forms should be used.

Particular care should be taken when using a Source to ensure that authorisation is sufficient. It is difficult to predict what might occur each time a meeting with a Source takes place. If unforeseen action takes place, the occurrence should be recorded as soon as possible after the event and the sufficiency of the authorisation must be considered.

You must bring to the attention of the Authorising Officer any concerns about the personal circumstances of the Source in relation to: the validity of the risk assessment; the conduct of the source; the safety and welfare of the Source.

Renewals

Why are renewals important?

Once the authorisation expires, surveillance must cease unless a renewal has been applied for and approved. Renewals must be authorised prior to the expiry of the original authorisation but will run from the date and time of expiry of the original authorisation.

What should I do?

If it appears that the directed surveillance or use of a Source is needed beyond the authorisation date, you must seek a renewal of the authorisation.

You must consider whether covert methods are still necessary and proportionate.

An application for renewal for either Directed Surveillance and/or use of Source should be made on the relevant form and passed to the Authorising Officer for consideration.

Authorisation for renewal may be sought verbally, but only in exceptional circumstances.

NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.

Cancellations

Why are cancellations important?

All authorisations, including renewals, must be cancelled if the reason why Directed Surveillance or use of a Source was required no longer exists or is no longer proportionate. This will occur in most instances when the purpose for which surveillance was required has

been achieved and officers must be mindful of the need to cancel any authorisation which has been issued. A cancellation should be issued at the expiry date if not before.

How do I cancel an authorisation?

To cancel an authorisation, you should complete the Cancellation of Authorisation form and submit it to the Authorising Officer for endorsement.

Authorising Officer Responsibilities under RIPA

The Approval

Who are the Authorising Officers?

The Council's Authorising Officers are listed in the annex to this document.

If the investigation may involve the acquisition of confidential or religious material, or require an authorisation for using juveniles or vulnerable persons as sources, the Authorising Officer is, by law, the Chief Executive (or in his absence the Deputy Chief Executive).

Authorising Officers should not be responsible for authorising investigations or operations in which they are directly involved. If this is the case, the application form for authorisation should be noted to this effect.

NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.

What are my responsibilities?

Responsibility for authorising the carrying out of directed surveillance or using a Source rests with the Authorising Officer and requires the personal authority of the Authorising Officer.

You must be satisfied that a defensible case can be made for surveillance. Authorisation is a safeguard against the abuse of power by public authorities. Full consideration of necessity and proportionality will make the action less vulnerable to challenge under the Human Rights Act 1998.

What do I need to consider?

You are required to consider the application for authorisation in relation to the following:

1. Is the directed surveillance or use of a Source necessary?

Firstly, you must consider whether it is necessary to carry out the investigation by covert methods. This is an important consideration and must be recorded on the form.

Please see "what is meant by necessary?" on Pages 1 and 2 of the Policy.

Secondly, as authorisation may only be granted if it is necessary for the reason permitted by RIPA. You should consider, having regard to the outline of the case provided by the Investigating Officer, whether authorisation is necessary for the purposes of preventing and detecting crime or of preventing disorder

Is the directed surveillance or use of a Source proportionate?

This involves balancing the intrusiveness of the activity on the target and others who may be affected by it (see “consideration: risk of collateral intrusion” below) against the need for the activity in operational terms. Please refer to “what is proportionate?” on page 2 of this Policy.

Consideration: The risk of collateral intrusion

You must take into account the risk of interfering with the privacy of persons other than the target (collateral intrusion). Full details of potential collateral intrusion and the steps to be taken to minimise such intrusion must be included in the form. If there are insufficient details further information should be sought. Collateral intrusion forms part of the proportionality test and is therefore very important. Remember: the least intrusive method should be chosen otherwise the surveillance activity will not be proportionate.

Consideration: confidential material

In cases where through the use of directed surveillance or the use of a Source it is likely that knowledge of confidential information will be acquired, authorisation may only be granted by the Chief Executive.

Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material.

Authorisation involving the acquisition of confidential information should only be given in exceptional and compelling circumstances having full regard to the proportionality issues involved.

Further details about the type of information covered under this category are to be found in the Chapter 3 of the relevant Code of Practice. Further advice may be sought from the Council’s Legal Section.

Consideration: Safety and welfare arrangements of a Source

When authorising the conduct or use of a Source, you must be satisfied:

- That the conduct and/or use of the Source is proportionate to what is sought to be achieved;
- That arrangements exist for the management and oversight of the Source, particularly the health and safety of the Source including:
 - o Identifying the person who will have day to day responsibility for dealing with the Source
 - o Security and welfare arrangements of the Source both during and after the investigation/operation.
 - o Monitoring and recording the information supplied by the Source

- o Ensuring records disclosing the identity of the Source will not be made available to persons except where there is a need for access to them
- o Records relating to the Source meet the requirements of the Statutory Instrument: The Regulation of Investigatory Powers (Source Records) Regulations 2000 (SI 2000 No. 2725) – please see either the Home Office website: www.homeoffice.gov.uk or the Office of Public Sector Information website: www.opsi.gov.uk

Consideration: local community

You should consider whether there any particular sensitivities in the local community where surveillance will be taking place.

Having taken all these factors into consideration, you may either approve the application or refuse it.

What do I do if I have refused the application?

You must complete the form and give your reasons for refusal. Then follow the procedures below (“I have completed the form what do I do with it?”)

What do I do if I have approved the application?

You need to follow the rest of the procedure set out below.

Regular review should be undertaken to assess the need for surveillance or use of a Source to continue and whether it is still proportionate. Where the surveillance or use of a Source provides access to confidential information or involves collateral intrusion, review should be more frequent.

You will therefore need to consider a Review Date(s). Both types of authorisation require you to specify a date when the authorisation should be reviewed (the Review Date) and the frequency of the review thereafter. This must be stated on the form.

What do I do if the authorisation is urgent?

The 2012 Home Office Guidance states that in most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. Therefore local councils may need to work with the police if faced with an emergency. NB. Urgent authorisation may not be necessary if, under section 26(2) of the Act, an officer suddenly sees something relevant to his duties and takes an immediate note, observation of follow-up activity (within reason).

What do I do with the completed form?

You must send the completed application form(s) to the RIPA Co-ordinating Officer as soon as you are able. This includes any forms in which you have refused authorisation. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

Monitoring

How long will an authorisation last for?

The authorisation for **Directed Surveillance** will last for **three months** from the date of authorisation unless renewed.

The authorisation for use of a **Source** will last for **12 months** from the date of authorisation unless renewed.

It is important to set a review date which gives the opportunity to cancel if the authorisation is no longer required. If the surveillance is still required, set another review date (see below)

I have now given the authority for surveillance, what should I do next?

After authorisation the Authorising Officer is responsible for continuing to oversee the progress of the investigation. You must ensure that whatever was authorised does actually happen, and that actions do not exceed the boundaries of the authorisation.

Progress of the investigation or operation should be reviewed in accordance with the review dates set by the authorisation using the relevant review form. In any case, as soon as the investigation or operation objectives have been achieved the authority should be cancelled.

You will regularly monitor the surveillance to ensure:

- Surveillance is being carried out in accordance with the authority given
- There is still a need for the approved surveillance or use of the Source
- The surveillance is achieving the intended results
- The risks of collateral intrusion are still minimal
- The risks associated with the surveillance or use of the Source are within an acceptable level
- The security and/or welfare of the Source has not been jeopardised. You must consider any concerns raised by the Investigating Officer relating to the personal circumstances of the Source.

You should record the outcome of such monitoring and take whatever action is appropriate.

Renewals

Why are renewals important?

Once the authorisation expires, surveillance must cease unless a renewal has been applied for and approved.

NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.

What are my responsibilities in respect of renewals?

You may renew an authorisation before it expires if it is necessary for the authorisation to continue for the purpose for which it was given.

You must consider the application for renewal in relation to the original purpose for which authorisation was granted, taking into account any change in circumstances. You should be satisfied that:

- There is a need to renew the authorisation (applying the test of necessity)
- That such a renewal is likely to contribute to the investigation or operation (it is proportionate to the aim)
- That the information could not be reasonably obtained by other less intrusive means.
- The risk of collateral intrusion is minimal – you should consider what collateral intrusion has occurred
- The risks associated with the use of a Source have not increased beyond an acceptable level

The outcome of a consideration for renewal may lead to:

- Approval
- A new application
- Refusal

Approval

If you decide to approve a renewal you will need to provide details of why in your opinion you believe the renewal is justified, and state the date and time when the renewed authorisation will commence and expire on the application form.

The maximum time that renewal of authorisation can be approved for, is three months at a time for directed surveillance and 12 months for the use of a Source, but you may consider shorter periods if this is more appropriate to the circumstances.

You should also set Review Dates and continue to monitor the progress of the investigation or operation.

A new application for authorisation

If the reason for requiring the authorisation has changed from the purpose for which it was originally granted, then the outstanding authorisation should be cancelled and new authorisation sought by way of a new application. You will need to note the refusal to renew the application on the renewal form setting out the reasons for your decision. You will also need to follow the procedures for cancellation see below and advise the Investigating Officer to seek new authorisation.

Refusal

If in your opinion surveillance is no longer required, or justified, or proportionate, the renewal should be refused and the authorisation cancelled. See the paragraph on cancellation below. You will need to note on the renewal form your reasons for refusal.

What do I do with the completed form?

You must send the completed renewal form to the RIPA Co-ordinating Officer as soon as you are able. This includes forms where you have refused a renewal. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

Cancellations

Why are cancellations important?

All authorisations, including renewals, must be cancelled if the reason why directed surveillance or use of a Source was required no longer exists or is no longer proportionate. This will occur in most instances when the purpose for which surveillance was required has been achieved and officers must be mindful of the need to cancel any authorisation which has been issued. A cancellation should be issued at the expiry date if not before.

What are my responsibilities in respect of cancellations?

The responsibility to ensure that authorisations are cancelled rests with the Authorising Officer. If you think cancellation should have been applied for, then you should make enquiries of the Investigating Officer as part of your monitoring of the authorisation. On receipt of the cancellation form from the Investigating Officer, you must consider the reasons for cancellation and if acceptable endorse the form.

As soon as the decision is taken that directed surveillance or use of a Source should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject. The date and time when such an instruction was given should be recorded on the cancellation form.

Where necessary the safety and welfare of the Source should continue to be taken into account after the authorisation has been cancelled.

What do I do with the completed form?

You must send the completed renewal form to the RIPA Co-ordinating Officer as soon as you are able. This includes forms where you have refused a renewal. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

Working with or through other Agencies

What do I do if I want to instruct another organisation to carry out surveillance?

When some other agency has been instructed on behalf of the Council to undertake some action under RIPA, this Document and the forms in it, must be used in the normal way and the agency advised as necessary of the various requirements. They must be made aware explicitly what they are authorised to do.

What do I do if I want to carry out an investigation with another organisation?

It is possible for two public authorities to carry out a joint directed surveillance investigation or use of a Source. It must be decided which of the authorities is to take the lead role. The Authorising Officer from the lead organisation must make the decisions on the necessity and proportionality of the surveillance or use of a Source. The Investigating Officer must make it clear on the application form that it is a joint investigation and provide details of Officers involved from both authorities.

Where joint surveillance is authorised by the lead organisation, it is good practice for the Investigation Officer of the other organisation to advise their Authorising Officer of the surveillance activity. It is important for each organisation's Authorising Officer to be aware of all surveillance activity being undertaken by their own Investigating Officers, regardless of which organisation authorised the activity.

Record-Keeping

What records must I keep?

The Council must keep a detailed record of all authorisations, renewals, cancellations and rejections in Departments and a Central Register of all these forms will be maintained and monitored by the RIPA Co-ordinating Officer.

In all cases, the relevant department should maintain the following documentation:

- a copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- The Magistrates' Order
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the Authorising Officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction was given by the Authorising Officer.
- A record of the use made of any Source

How long must I keep these records?

The Council will retain records in accordance with the Council's Record Management Policy. Retention of a record will therefore depend on an assessment of the need to retain the record.

How should the records relating to a Source be maintained?

Records kept relating to an investigation or operation using a Source should be maintained in such a way as to preserve the confidentiality of the Source and the information provided by the Source.

Material obtained from Directed Surveillance and/or use of a Source operations

How should material be handled and stored?

Material, or product, such as: written records (including notebook records); video and audio tape; photographs and negatives; and electronic files, obtained under authorisation for Directed Surveillance or use of a Source investigations or operations should be handled, stored and disseminated according to the following guidance.

Where material obtained during the course of an investigation may be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with the established disclosure requirements having regard to the Criminal Procedure and Investigations Act 1996 and Civil Procedure Rules.

Where material is obtained which is not related to a criminal or other investigation, or to any person who is the subject of the investigation, and there is no reason to suspect that it will be relevant to any future civil or criminal proceedings, it should be assessed for retention or destruction under the Council's Record Management Policy.

What about confidential material?

This is privileged information from, for example, lawyers, doctors, priests etc. Where such persons are involved, and there is a possibility that you maybe obtaining confidential material, then further additional precautions must be taken. If this is the case, please seek appropriate advice from the Monitoring Officer or from the statutory RIPA Code of Practice.

Complaints

The Regulation of Investigatory Powers Act has established an Independent Tribunal. This Tribunal is made up of senior members of the judiciary and the legal profession and is independent of the Government. The Tribunal has full powers to investigate and decide any cases within its jurisdiction. It also has the power to award compensation.

Details of the relevant complaints procedure can be obtained from the following address:

Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ

Other actions that could be taken against the Council for failing to meet the requirements of RIPA are civil proceedings under the Human Rights Act 1998 or a complaint to the Ombudsman.

Annex

AUTHORISING OFFICERS

The following Officers shall be designated Authorising Officers on behalf of Exeter City Council under the Regulation of Investigatory Powers Act 2000.

CORPORATE MANAGER LEGAL – Baan AL-Khafaji

Assistant Director Environment - Robert Norley

NB. Only the Chief Executive has the authority to grant authorisation for the acquisition of confidential information or where the authorisation would involve juvenile or vulnerable CHIS.

SENIOR RESPONSIBLE OFFICER

The following Officer shall be designated Senior Responsible Officer on behalf of the Councils' under the Codes of Practice.

DEPUTY CHIEF EXECUTIVE - Mark Parkinson

RIPA CO-ORDINATING OFFICER

Audit- Helen Kelvey/Helen Put

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REPORT TO AUDIT AND GOVERNANCE COMMITTEE

Date of Meeting: 3rd DECEMBER 2014

Report of: CORPORATE MANAGER LEGAL

Title: WHISTLEBLOWING POLICY UPDATE

Is this a Key Decision? No

Is this an Executive or Council Function? Council

1. What is the report about?

To propose a revision of the Council's Whistleblowing Policy.

2. Recommendations:

To approve the revised Whistleblowing Policy dated July 2014.

3. Reasons for the recommendation:

The Council's Whistleblowing Policy needs to be updated to take into account changes as a result of the Enterprise and Regulatory and Reform Act 2013.

4. What are the resource implications including non financial resources.

None

5. Section 151 Officer comments:

The report raises no issues for the Section 151 Officer to consider.

6. What are the legal aspects?

The Policy is framed by the Enterprise and Regulatory and Reform Act 2013.

7. Monitoring Officer's comments:

The Monitoring Officer has no comments to raise on the contents of the report.

8. Report details:

From the 25th June 2014 the Enterprise and Regulatory Reform Act 2013 amended the Public Interest Disclosure Act 1998 to require public interest disclosures (otherwise known as whistleblowing) to include public interest. Despite the existence of the words 'public interest' in the title of the Public Interest Disclosure Act 1998, a disclosure that protected an employee from any come-back from his or her employer did not need a public interest element.

This opened up the possibility that almost any grievance raised by an employee about their employment could provide them with protection. However, from 25th June, a whistleblowing

disclosure will only qualify for protection if the worker reasonably believes that it is made “in the public interest”, i.e. it goes beyond a simply personal grievance.

The Council’s Whistleblowing Policy needed to be updated to bring it in line with this legislation and the opportunity was taken to review the policy as a whole. The Policy now also covers guidance on Councillors making disclosures under this policy.

A copy of the policy is included at Appendix A.

9. How does the decision contribute to the Council’s Corporate Plan?

Good governance contributes to the Council’s purpose of a “Well Run Council”.

10. What risks are there and how can they be reduced?

None.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

Not applicable.

12. Are there any other options?

Not applicable.

Baan Al-Khafaji
Corporate Manager Legal and Monitoring Officer

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Contact for enquires:
Democratic Services (Committees)
Room 2.3
01392 265275

Whistle Blowing Policy and Procedure

POLICY

1. Aim of the Policy

- 1.1 Exeter City Council is committed to high standards of conduct and good practice and wants all malpractice to be identified and dealt with. All employees and others, who help to deliver its services, are expected to help with this.
- 1.2 Many of us at some time or another will have had concerns about something not seeming right at work. Normally these concerns should be raised with your manager to be dealt with. However, there are occasions when you may be worried about raising such issues, perhaps feeling it is none of your business or it is only a suspicion or you may also feel that raising such matters would be disloyal to your colleagues or manager and in doing so your job could be put at risk. You may even have raised the matter previously but the person you spoke to did nothing about it, and you are not sure what to do next.
- 1.3 To address these issues the Council has established this policy to enable you to raise your concerns and provide you with protection from detriment such as victimisation or discipline.
- 1.4 This policy encourages you to raise genuine, serious concerns as “whistleblowers” to the Council or ‘regulators’ (the Local Government Ombudsman, Audit Commission, Standards Board for England, or Police), and provides a procedure for doing so. Exeter City Council will take any action necessary in proportion to the nature of the complaint.
- 1.5 The Policy explains how to raise a concern, otherwise known as making a public interest disclosure. Concerns raised under this policy must be made in good faith and you should reasonably believe that it is in the public interest.

2. Who does the policy apply to and who is protected by the policy?

- 2.1 This policy applies to you, and you are protected under it, if you work for the Council as:
 - An employee
 - A Councillor
 - An agency employee
 - A trainee
 - A worker who provides services to or on behalf of Exeter City Council, e.g. contractors, consultants etc
 - Volunteers, work experience placements etc
- 2.2 If you are a Councillor, you may refer whistle-blowing concerns in accordance with this policy on behalf of yourself or one of your constituents if you are asked to do so by a third party. However, you may not rely on the use of this policy as an alternative to raising any questions or concerns you may have that should otherwise be managed through the proper democratic processes of the Council. In addition, if you raise whistle-blowing concerns as a result of matters that have come to your attention in your capacity as a Councillor, you may not rely on this policy to remain anonymous in any investigation that may then follow.
- 2.3 Please note that:
 - should you have an employment grievance, then this policy will not apply, and instead you should use the Council’s Grievance Procedure which is published on the intranet or obtainable from Human Resources
 - you should not raise your concerns outside of the Council before you have raised them internally, because by doing so you may weaken the protection given to you by the Public Interest Disclosure Act 1998.

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- 2.4 Anonymous concerns/complaints will always be considered as far as it is reasonable and practicable to do so but it is often difficult to attach equal weight to anonymous allegations due to the investigator's difficulty in confirming or following up evidence.

3 What kinds of concerns/disclosures are covered?

- 3.1 The Public Interest Disclosure Act 1998 specifies 'Qualifying Disclosures' as follows:

- a criminal offence;
- a breach of a legal obligation;
- a miscarriage of justice;
- a danger to the health and safety of any individual;
- damage to the environment; or
- deliberate covering up of information tending to show any of the above five matters.

4 What is expected of you?

- 4.1 If you make a disclosure to someone within the Council, you are expected to:

- Make the disclosure in good faith and reasonably believe that it is made in the public interest
- Have a reasonable grounds for suspicion about the malpractice; and
- Not make the complaint for personal gain or make malicious or vindictive complaints as this could result in disciplinary action

5 How are you protected?

- 5.1 If you act in good faith and in the public interest and comply with the expectations above, you will be protected from discrimination as a result of raising a concern. In particular, you will be protected from harassment or victimisation (this does not mean that no action will be taken against you if you were involved in a fraudulent activity). This may include agreement to alternative working arrangements during any consequential investigation into the allegations.
- 5.2 The Council will not tolerate the harassment or victimisation of anyone who raises a concern. The Council recognises, however, that there may be occasions when you want to raise a concern in confidence rather than approach your manager direct. Where this is the case, your identity will be protected and not disclosed without your consent. Should a situation arise where the matter concerned cannot be resolved without revealing your identity (for example, because your evidence is needed in court), then the person investigating the matter will discuss with you how to proceed.

6 How to raise your concerns

- 6.1 Please raise your concern with your line manager or assistant director/corporate manager first, either orally or in writing.
- 6.2 If, for whatever reason, you do not wish to raise the concern with your line manager or assistant director/corporate manager please contact either:

The Council's statutory monitoring officer, Baan Al-Khafaji, Corporate Manager Legal
Civic Centre, Paris Street, Exeter, EX1 1JN
Telephone: (01392) 265874 or

Internal Audit
Civic Centre, Paris Street, Exeter, EX1 1JN
Telephone: (01392) 265631

- 6.3 You can always contact a trade union representative for advice and assistance on how best to proceed.
- 6.4 If you:

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- consider the matter is so serious that you do not wish to discuss it with any of the above, or
- still have concerns after raising your concern with any of those listed at 6.2 above then please contact the Chief Executive, & Growth Director Civic Centre, Paris Street, Exeter, EX1 1JN. Telephone: (01329) 265188

- 6.5 The protection offered under this policy also applies to disclosures made outside of the Council/regulators where one or more of the following conditions apply:
- The person raising the concern reasonably believes that they would suffer detriment if they made the disclosure to the Council or to a 'regulator'; or
 - None of the regulators covers the matter and they reasonably believe the evidence is likely to be concealed or destroyed;
 - or they have already made the disclosure to the Council or to a regulator

6.5 The procedure for dealing with disclosures is detailed at Appendix A.

7 Independent advice

- 7.1 If you are unsure about using this policy or want independent advice, you can contact the independent charity, Public Concern At Work (telephone 020 7404 6609). Their advisers will give you free confidential advice at any stage about how to raise a concern at work, and will support and advise you on the law and how best to proceed.

8 If you are dissatisfied with the way your concern is dealt with

- 8.1 If you are unhappy with the response or feedback you get from the investigating person, then you can always raise your concern with the Chief Executive & Growth Director or seek advice from Public Concern At Work.

Appendix A

PROCEDURE FOR DEALING WITH A DISCLOSURE

Concerns of financial impropriety:

Where the concern involves financial irregularity, the matter must be referred to Internal Audit for investigation in accordance with the Council's Anti-Fraud, Anti-Bribery and Anti-Corruption Policy. Once the investigation is concluded, Internal Audit must report the outcome of the investigation (including any recommendations for improving areas of weakness) to the Council's Monitoring Officer and the relevant assistant director/corporate manager.

Making a disclosure

Concerns raised/disclosures will be dealt with under the following stages. Not all disclosures will follow the full sequence of Stages. The action taken by the Council will be reasonable and proportionate, depending on the nature of the concern.

Stage 1 – Informal resolution

The person receiving the disclosure should decide with the person raising the concern, on the basis of the information provided, how the matter can best be resolved. This may include informal resolution or formal consideration

If possible, all concerns should be resolved by the relevant manager informally. The person raising the concern may do this orally or in writing and they should give as much information as possible about:

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- The nature of the problem
- The background (with dates if possible)
- Who is involved
- The reasons for the concern

If you are raising a concern and are unable to raise the matter with your Line Manager you are advised to speak to another manager, Internal Audit or a member of the Human Resources Team who should consider whether the matter can be resolved informally as set out above or referred for formal consideration as detailed below.

Stage 2 – Formal procedure

Where the matter cannot be resolved informally because this is not appropriate or informal resolution has not been satisfactory a formal disclosure should be made to the Monitoring Officer – Corporate Manager Legal, Internal Audit or the Chief Executive and Growth Director.

The person who has received the disclosure will take or instigate any necessary urgent action to protect the individual, public interest, evidence etc.

At this stage, the person raising the concern (the 'Whistle-blower'), will be asked whether he or she wishes their identity to be disclosed and will be reassured with regard to protection from possible reprisals or victimisation

Stage 3 – Initial response to a formal disclosure

The person receiving the disclosure should acknowledge the concern in writing within 5 working days giving details of:

- The name of the person who is handling the investigation, this could be management or it could be someone external, for example the Council's external auditors, depending on the nature of the concern
- How he/she can be contacted
- Details of assistance that may be required

The person named as the investigating officer above must:

- investigate the matter personally or appoint an appropriate officer to do so
- advise the monitoring officer of the details of the allegation

The Whistle-blower will be notified of the intended response to the disclosure and the reasons for it.

Stage 4 – Management investigation

Where the decision has been made to carry out a management investigation, a senior manager or other person will be appointed as an investigating officer. This should be someone with expertise in the area in which the concern has been raised.

The investigation will be carried out under the strictest confidentiality. The investigation is essentially a 'fact finding' exercise, to establish what further action may be necessary and make recommendations accordingly.

The Investigating Officer, or their appointed representative, must:

- conduct the investigation
- follow the Council's Management Guide to Disciplinary Procedures, which includes the requirement to follow the principles of natural justice.
- comply with the requirements of the Human Rights Act 1998
- where anonymity is requested, ensure that every effort is made to guarantee such confidentiality
- propose an action plan for necessary improvements

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- report the outcome of the investigation to the Council's Monitoring Officer and relevant assistant director/corporate manager
- update the whistle-blower of progress to date

The investigation may serve as the information gathering part of Exeter City Council's disciplinary procedure. In such cases this will be made clear to any people who may be subject to such investigation.

Stage 5 – Responding to management investigation

If the result of the investigation is that there is a case to be answered by any individual, the recognised procedure will be followed.

The amount of contact between the officers considering the issues and the employee/councillor raising the concern will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information may be sought from the whistle-blower.

Where there is no case to answer, but the whistle-blower held a genuine concern and acted in accordance with the expectations as detailed in this policy, Exeter City Council will ensure that they suffer no reprisals or victimisation, as far as is reasonably practicable. Considerations will include Exeter City Council's duty to provide a healthy and safe working environment for all.

Stage 6 – Confirmation of the outcome

So far as legally possible and subject to rights of confidentiality, the whistleblower will be informed of the outcome of the investigation and how the matter has been resolved.

If the whistle-blower is unhappy with the response or feedback from the investigating person, then the concern can be raised with the Chief Executive & Growth Director or advice sought from Public Concern At Work.

Employees who take a concern outside the Council should ensure that they do not disclose confidential information, except in accordance with this procedure

Recording and reporting

The Monitoring Officer will keep a central register of all whistle-blowing complaints received and submit an annual report to the Audit and Governance Committee setting out the number of complaints received and the outcome of each investigation conducted, together with any action plan for improvements put forward by the Investigating Officer.

Responsibility for implementing this Policy

The responsibility for ensuring that Exeter City Council adheres to this Policy rests with all Managers.

Legislation

Legislation relevant to this policy includes:

- Public Interest Disclosure Act 1998
- The Enterprise and Regulatory Reform Act 2013

Other related policies and procedures

Anti-Fraud, Anti-Bribery and Anti-Corruption Policy
 Anti-Money Laundering Policy
 Grievance Policy
 Disciplinary Policy

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