

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

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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:

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