

For General Release

REPORT TO:	ETHICS COMMITTEE 25 FEBRUARY 2014
AGENDA ITEM:	6
SUBJECT:	REGULATION OF INVESTIGATORY POWERS ACT 2000
LEAD OFFICER:	Julie Belvir, Director of Democratic and Legal Services and Monitoring Officer
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: Monitoring compliance with the Regulation of Investigatory Powers Act supports the Council's approach to corporate governance.	
FINANCIAL IMPACT The recommendation contained in this report has no financial implications	
KEY DECISION REFERENCE NO: This is not a key decision.	

1. RECOMMENDATIONS

- 1.1 That the Committee endorse the updated Corporate Policy and Procedures in respect of the Regulation of Investigatory Powers Act 2000 at Appendix A; and
- 1.2 Note the use of the Regulation of Investigatory Powers Act 2000 by the Council over the past calendar year.

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to seek the Committee's endorsement of the updated Corporate Policy and Procedures in respect of the Regulation of Investigatory Powers Act 2000 (RIPA) at Appendix A (the Policy) and to inform them of the of how the powers available to the Council under RIPA have been used over the last calendar year (1 January 2013 - 31 December 2013).

3. DETAIL

RIPA Powers

- 3.1 RIPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist the detection and prevention of crime in relation to an authorities core functions. Evidence obtained by any covert surveillance could be subject to challenges under Article 8 of the European Convention on Human Rights (ECHR) - the right to respect for private and family life. However, properly authorised covert surveillance under RIPA makes lawful what might otherwise be a breach of Article 8 of the ECHR and protects the Council from any civil liability.
- 3.2 Using RIPA, but only for the purpose of investigating crime and disorder, the Council is able to:
- Carry out covert directed surveillance;
 - Use covert human intelligence sources;
 - Acquire data relating to communications (e.g. telephone subscriber information).
- 3.3 'Covert' in this context means carried out in a manner calculated to ensure that those subject to the surveillance are unaware that it is or may be taking place. It usually involves personal observation, the use of CCTV, or accessing communications data such as mobile phone number subscriber or website details (see paragraph 3.5 below). However, even using these powers, the Council cannot carry out intrusive surveillance, such as putting a hidden camera in a suspect's home to observe them, or listening to or obtaining the contents of telephone call or emails; such intrusive surveillance can only be carried out by the Police and government security services.
- 3.3 Further, even where the covert investigations are for the purpose of preventing crime and disorder, the Council must also show that the surveillance is necessary and proportionate and can be balanced against an individual's right to their private and family life. The proper consideration of these issues is evidenced in each case by use of an authorisation process that follows a template issued by the either Office of the Surveillance Commissioner or Interception of Communications Commissioner's Office. There are also templates for the review and cancellation of authorisations. The process for the giving of such authorisations is detailed in paragraph 4 below.
- 3.4 Covert Human Intelligence Sources (CHIS) are individuals who by the nature of the situation they are in are able to provide information in a covert manner to aid an investigation. The use of CHIS is very tightly controlled under RIPA and historically the Council has not made use of this aspect of RIPA.
- 3.5 It should also be noted that in respect of communications data, no information regarding the actual content of the communication can be obtained by a local authority. All that is obtained and provided is information regarding who pays the bill for a phone, website or where an item of post originated etc. This type

of information is most often obtained as part of a Trading Standards investigation where, for example, they are trying to identify and/or locate a trader in counterfeit goods operating from a website, or rogue trader who has billed (often a vulnerable) person for work and where the only point of contact is via a mobile phone number.

3.6 In respect of the use of the powers under RIPA the Council has had in place a Corporate Policy and Procedure to ensure their proper use. In the light of legislative and organisational changes the Policy has been reviewed and an updated. While the Director of Democratic and Legal Services has lead officer responsibility for RIPA, the Ethics Committee's endorsement of the updated Policy is sought.

3.7 **Protection of Freedoms Act**

Following the review of Counter-Terrorism and Security Powers, changes were made via the Protection of Freedoms Act 2012, to how local authorities can use the powers available under RIPA.

- Councils now require judicial approval from a Magistrate/District Judge for use of covert directed surveillance, covert human intelligence sources (CHIS) and access to communications data (i.e. billing and subscriber information).
- The use of RIPA to authorising directed surveillance is now limited to cases where the offence under investigation carries the possibility of minimum custodial sentence of 6 months or more being passed on conviction. Except where access to communications is sought or for test purchasing exercises (investigations into underage sales of alcohol and tobacco).

3.8 **Authorisation Arrangements**

Overall supervision of the Council's use of RIPA lies with the Director of Democratic and Legal Services as Solicitor to the Council. Day to day monitoring of and advice on authorisations, to ensure that the issues of necessity and proportionality are fully considered and to ensure that all applications meet the necessarily high standard that is required, is provided by the Head of Corporate Law. In accordance with statutory requirements, this team also maintains the Council's Central Register of covert surveillance applications.

Currently there are 3 Council officers nominated by their Executive Directors who are able to authorise an application for the use of the powers available under RIPA. These officers are either at director level, or those senior managers who services undertake specific enforcement activities and/or investigations.

4.0 Use of RIPA 1 January 2013 - 31 December 2013

The authorisations that have been approved under RIPA for the previous calendar year (1 January 2013 - 31 December 2013) are set out below:

- Directed Surveillance Operations - 2
- Acquisition of Communications Data - 9

These have been used to investigate serious offences - fraud (Housing Benefit / Council Tax), fly tipping and trading standards investigations) and when working on joint investigations with other agencies such as the Department of Work and Pensions.

5.0 Office of the Surveillance Commissioner and Interception of Communications Commissioner Inspections

5.1 The Council's use of these powers is subject to inspection and audit by the OSC in respect of covert surveillance authorisations under RIPA and the Interception of Communications Commissioner (IOCCO) in respect of communications data. During these inspections authorisations and procedures are closely examined and Authorising Officers are interviewed by the inspectors.

6.0 Equalities Impact

6.1 An initial equality analysis completed regarding the revisions to the Policy and Procedures, has concluded that a full equality analysis does not need to be undertaken as the policy is not likely to have an impact on any single protected groups.

6.2 The revised Policy and Procedure reflects Home Office guidance regarding the use of and application for authority to undertake, covert surveillance which is unchanged. The only change to the procedure is in relation to the requirements for Judicial Approval of surveillance authorisations, which aims to provide greater protection to the rights and liberties of the individual who may find themselves subject to a criminal investigation involving the use of covert surveillance

6.3 As such, the only individuals in the community who would be directly affected would be those who are subject to an investigation in respect of a criminal offence, and only after full reference to Human Rights considerations and following a judicial hearing. The Policy is designed to complement and support existing departmental and corporate enforcement policies, which have due to their nature already taken into account detailed equalities considerations for each individual service area.

7.0 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

7.1 There are no direct financial or other implications arising from this report.

8.0 CRIME AND DISORDER REDUCTION IMPACT

9.1 Crime and disorder reduction implications are detailed with the report.

10. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

10.1 To ensure that the Council's policy is up to date including statutory changes brought as a result of the Protection of Freedoms Act 2012.

11. OPTIONS CONSIDERED AND REJECTED

11.1 It is obviously important to ensure that the Council's is compliant with statutory changes brought as a result of the Protection of Freedoms Act 2012. The use of the powers available under RIPA, require the Council to have robust policies and procedures in place, to ensure that meet the current regulatory framework.

CONTACT OFFICER:

Julie Belvir, Council Solicitor and
Monitoring Officer, Director of
Democratic & Legal Services

BACKGROUND PAPERS

None