

Audit Committee – 18 January 2011

Regulation of Investigatory Powers Act (RIPA) 2000

Summary of report:

To provide Audit Committee with a summary of surveillance activities undertaken by the council under the Regulation of Investigatory Powers Act (RIPA) 2000; and to notify the committee of the change in senior responsible officer.

Background papers:

Regulation of Investigatory Powers Act (RIPA) 2000 activity records.

Recommendation:

1. Note the surveillance activities undertaken by the council under the Regulation of Investigatory Powers Act (RIPA) 2000 for the period 1 September 2010 to 31 December 2010.
2. Note the change in senior responsible officer from Rory Borealis, Executive Director (Resources) to Jamie Morris, Executive Director (Neighbourhood Services).



Jamie Morris – Executive Director (Neighbourhood Services)

5 January 2011

Background

Where there is an interference by a local authority with the right to respect for private and family life guaranteed under Article 8 of the European Convention on Human Rights and where there is no other source of lawful authority, the consequence of not obtaining an authorisation under the 2000 Act may be that the action is unlawful by virtue of section 6 of the Human Rights Act 1998.

The Home Office has strongly recommended that local authorities seek an authorisation where the surveillance is likely to interfere with a person's Article 8 rights to privacy by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. Obtaining an authorisation ensures that the action is carried out in accordance with law and subject to stringent safeguards against abuse.

Directed surveillance authorisations under Part II of the Regulation of Investigatory Powers Act (RIPA) 2000 may be granted in relation to covert surveillance undertaken in relation to a specific investigation or operation which is likely to result in the obtaining of private information about a person, and which is other than an immediate response to events or circumstances.

The council's procedure on directed surveillance dated 2009, sets out the extent of the council's use of the Regulation of Investigatory Powers Act (RIPA) 2000 and who can authorise such activity. This procedure is currently under review following the introduction of new codes of practice and a recent Office of the Surveillance Commissioner's Inspection.

On 6 April 2010, the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 and revised Codes of Practice for covert surveillance/property interference and covert human intelligence sources came into force. This included the requirement for Councillors to consider regular internal reports on use of the Regulation of Investigatory Powers Act (RIPA) 2000 to ensure that it is being used consistently with the council's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.

Change in Senior Responsible Officer

The codes of practice also recommended that a senior responsible officer be appointed with responsibility for the integrity and oversight of key aspects of the Regulation of Investigatory Powers Act (RIPA) 2000 regime in the Authority. Corporate Management Team of 3 June 2010 initially agreed that Rory Borealis, Executive Director (Resources) would undertake this role. CMT of 25 November 2010 have since agreed that this responsibility be transferred to Jamie Morris, Executive Director (Neighbourhood Services). It is the intention of the newly appointed senior responsible officer, that the outcomes of their future monitoring, will be reported to subsequent meetings of the Audit Committee where Regulation of Investigatory Powers Act (RIPA) 2000 activity is considered.

Regulation of Investigatory Powers Act (RIPA) 2000 Activity 1 April 2007 – 31 December 2010

The first report presenting RIPA activity between 1 April 2007 and 31 August 2010 was presented to Audit Committee of 28 September 2010. The table at **Appendix 1** details this activity data for reference and includes the latest data for the period 1 September 2010 to 31 December 2010. The table includes the general purpose or reason for which RIPA authority was granted and the number of authority's granted for each purpose or reason for the period. It is not possible to give further details as this may breach confidentiality legislation, interfere with the proper investigation of potential offenders or disclose other operational information which could hinder past, current or future activities, investigatory techniques or investigations.

Office of the Surveillance Commissioner

The council was last subject to an Office of the Surveillance Commissioner's inspection on 6 March 2010. The inspection concluded that the council is operating an efficient

system for using covert surveillance. An action plan was completed following the inspection. On presentation of the last RIPA report to Audit Committee, members requested to see a copy of the action plan. The latest action plan is detailed at **Appendix 2**.

Resource and legal considerations:

Material obtained through covert surveillance may be used as evidence in criminal proceedings. The proper authorisation of surveillance should ensure the admissibility of such evidence under the common law, S78 of the Police and Criminal Evidence Act 1984 and the Human Rights Act 1998.

Citizen impact:

Report scrutiny assists in demonstrating that the council and its officers are protected and provides an assurance to stakeholders about the security of the council's operations.

Performance and risk management issues:

Failure to implement these requirements may lead to adverse reports on future inspection and examination by the courts.

This report provides another layer of monitoring of the use of the Regulation of Investigatory Powers Act (RIPA) 2000 and therefore accountability of the officers is heightened.

Equality Implications:

None arising from this report.

Consultation:

This report is produced in accordance with the agreed work programme for the Audit Committee as agreed at its meeting on 14 June 2010 in the report 'The Roles and Responsibilities of the Audit Committee'.

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Appendix 1

Regulation of Investigatory Powers Act (RIPA) 2000 Activity 1 April 2007 – 31 December 2010

	1 April 2007 – 31 March 2008	1 April 2008 – 31 March 2009	1 April 2009 – 31 March 2010	1 April 2010 – 31 August 2010	1 September 2010 - 31 December 2010
Housing benefit and / or council tax benefit investigation	57	38	34	7	9
Anti social behaviour enforcement	152	57	36	11	7
Trading standards – age restricted test purchasing (knives, cigarettes, alcohol, fireworks), taxis playing for hire, counterfeit goods, fly tipping, litter enforcement	19	23	19	6	5
Miscellaneous – staff working privately while absent on sick leave; insurance claims from injured parties	4	1	7	1	0
Total	232	119	96	25	21

OSC Inspection Visit Report – Action Plan 04.01.11 Update

Ref	Recommendation	Response	Responsibility & Timescale
12.	The RIPA guide should be revised anyway, to reflect the new Codes of Practice; but it ought to say more about CHIS; this form of covert surveillance cannot be ignored.	<p>The RIPA 2000 corporate procedure on directed surveillance will be reviewed to incorporate the new RIPA Part 2 Orders and Codes of Practice which came into force on 6 April 2010. The changes will be highlighted in a report to CMT.</p> <p>This review will also include:</p> <ul style="list-style-type: none"> • appointing a senior responsible officer (SRO). CMT will be asked to consider where this role best fits as part of the CMT report detailing the new code being drafted. • Implementation of the new role for councillors: in their reviewing the council's use of RIPA and setting the policy once a year; and considering reports on RIPA on at least a quarterly basis. <p>The corporate procedure will be amended to allow the authority to use CHIS's should the appropriate circumstances arise and detail the procedures which should be followed.</p> <p>Refresher training will provided to all relevant officers, on the requirements of the new codes and will also reinforce the concept of proportionality. This training will then be rolled</p>	<p>A report was presented by the Area Manager – Trading Standards & Licensing (JB) to CMT on 3 June 2010.</p> <p>A revised corporate policy and procedure will be drafted for approval by Council in July 2011. Responsibility: Area Manager – Trading Standards & Licensing (JB) Timescale: 31 July 2011.</p> <p>Responsibility: Head of Public Safety (JS). Timescale: 31 March 2011.</p> <p>Responsibility: Area Manager – Trading Standards & Licensing (JB). Timescale: 31 January 2011.</p>

Ref	Recommendation	Response	Responsibility & Timescale
		<p>out to the Law & Evidence Group.</p> <p>In response to Lord Colville's comment that 'there is no reason why covert surveillance should not be used outside the RIPA model, as it is allowed for in s.80 of the Act and it would have to be based on ECHR art 8.2, protection coming via the Human Rights Act', legal services will provide advice and suggest additional / revised corporate procedure wording as appropriate.</p>	<p>Roll out to Law & Evidence Group by 28 February 2011.</p> <p>Solicitor, Legal Services (DP), provided a legal opinion on 28 July 2010 considered by the RIPA group on 24 September 2010.</p> <p>Updated Action: Solicitor, Legal Services (DP), to provide an update (flowchart format) suitable to include within the corporate policy and procedure to account for this advice.</p> <p>Responsibility: Solicitor, Legal Services (DP). Timescale: 31 March 2011.</p>
13	There remains a real issue about the ability to supervise RIPA procedures, it may be useful to have the present matrix or summary on a database, but a monitoring officer, or a new co-ordinator of the RIPA system, - the whole process - should have easy access to the text of the authorisations. It is all very well that the paper versions can be retrieved from the department concerned (as was established from my request to see certain authorisations) but this does not facilitate a more comprehensive oversight by the supervisor of the way in forms are being completed.	In order to assist the new senior responsible officer's (SRO) monitoring role, the consideration of implementing an electronic document management system (EDMS) option to store data will be considered.	<p>Responsibility: Head of Benefits (LH) to review and report back to the next RIPA group meeting. Timescale: 31 January 2011.</p>

Ref	Recommendation	Response	Responsibility & Timescale
	Ultimately it is this exercise which will ensure that documents would stand up to scrutiny in the case of any challenge. The way in which the central record is kept should be reviewed. Other authorities keep a matrix but also insist that a paper copy of all authorisation documents is placed on a central record.		

4 January 2011