

Audit Committee – 14 January 2013

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 for the second quarter, period ending 30 September 2012.

Background papers:

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

Recommendation:

1. Note the council's use of the Regulation of Investigatory Powers Act (RIPA) 2000 and seek assurance from the Senior Responsible Officer that it is being used consistently with the council's policy and procedures.



Jamie Morris – Executive Director (Neighbourhood Services)

21 December 2012

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.

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.

The council's new policy and procedures on the Regulation of Investigatory Powers Act (RIPA) 2000 were endorsed by Audit Committee on 30 January 2012. The policy and procedures now include the requirements of the new codes of practice and the recommendations made following the last Office of the Surveillance Commissioner's Inspection, namely:

- the Senior Responsible Officer's roles and responsibilities;
- procedures for where such surveillance pertaining to a non-criminal investigation into the conduct of an employee is required;
- greater detail regarding procedures for covert human intelligence sources;
- the role of members, particularly that of Audit Committee; and
- key personnel changes of officers with authorising responsibilities.

Following Audit Committee's endorsement, the new policy and procedures were approved by Council on 23 February 2012.

Subsequent to the implementation of the new policy and procedures, the following changes have come into force, which will require the council's policy and procedures to be updated and on which training is required. These are as follows:

The New Magistrates' Approval Process

On 1 November 2012, Chapter 2 of Part 2 of the [Protection of Freedoms Act 2012](#) (sections 37 and 38) came into force. From then local authorities are required to obtain the approval of a Justice of the Peace (JP) for the use of any one of the three covert investigatory techniques available to them under RIPA namely Directed Surveillance, the deployment of a Covert Human Intelligence Source (CHIS) and accessing communications data.

In practice, this change means that after RIPA authorisations have been approved by authorised council officers, officers must then contact the local magistrates court to arrange a hearing for JP (or in their absence, a District Judge) approval. The hearing is a 'legal proceeding' and therefore officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the JP for them to approve the RIPA application.

At 21 December 2012, 1 trading standards application had been submitted and approved by a District Judge under this new process. There was a slight delay on the part of the courts in adapting to the new process, but this has since been resolved.

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. CMT on 25 November 2010 agreed that this responsibility be delegated to Jamie Morris, Executive Director (Neighbourhood Services).

Regulation of Investigatory Powers Act (RIPA) 2000 Activity for the 2nd quarter period ending 30 September 2012

The table at **Appendix 1** includes the general purpose or reason for which RIPA authority was granted and the number of authorities 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. The table also gives a comparison of quarter 1 data as well as annual data from 1 April 2009 to 31 March 2012.

In accordance with the new council's new policy and procedures on the Regulation of Investigatory Powers Act (RIPA) 2000, where surveillance pertaining to a non-criminal investigation into the conduct of an employee is required, officers are now required to complete the appropriate forms and submit them for approval, but these are no longer considered to be RIPA authorisations. This follows advice given by the Office of Surveillance Commissioner in their inspection in March 2010 which was written into council's new policy and procedures on the Regulation of Investigatory Powers Act (RIPA) 2000 which came into effect on 23 February 2012. The first authorisation of this kind was made in quarter 1 of 2012/13.

Year end data in relation to 1 April 2011 to 31 March 2012 was submitted on 20 April 2012 in the Council's annual return to the Office of Surveillance Commissioner.

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.

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 detailed in the report 'The Roles and Responsibilities of the Audit Committee', which was agreed by Audit Committee on 20 June 2011.

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Appendix 1

Regulation of Investigatory Powers Act (RIPA) 2000

Quarter 1 and 2 Activity 2012/13 and Annual Comparators 1 April 2009 – 31 March 2012

	1 April 2009 – 31 March 2010 (Annual)	1 April 2010 – 31 March 2011 (Annual)	1 April 2011 – 31 March 2012 (Annual)	1 April 2012 - 30 June 2012 (Quarter 1)	1 July 2012 - 30 September 2012 (Quarter 2)
Housing benefit and / or council tax benefit investigation	34	16	16	2	2
Anti social behaviour enforcement	36	35	32	4*	5
Trading standards – age restricted test purchasing (knives, cigarettes, alcohol, fireworks), taxis plying for hire, counterfeit goods, fly tipping, litter enforcement	19	15	18	4	6
Miscellaneous – staff working privately while absent on sick leave; insurance claims from injured parties	7	1	1	0	0
Total	96	67	67	10	13

*correction, previously reported as 5