

**Audit and Risk Management Committee**  
**Tuesday, 22 November 2016**

<b>REPORT TITLE:</b>	<b>REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)</b>
<b>REPORT OF:</b>	<b>ASSISTANT DIRECTOR: LAW &amp; GOVERNANCE (MONITORING OFFICER)</b>

**REPORT SUMMARY**

This report summarises the use of covert surveillance by the Council between 1 June and 1 November 2016.

It also invites the Committee to agree to additions to the Policy and Procedure Guidance on the Council's use of covert surveillance.

This report was requested in the work plan for the Committee.

**RECOMMENDATION/S**

- 1) That the Committee note the contents of this report on the use of covert surveillance.
- 2) That the Committee approve the amendments and additions to the Policy and Guidance Document contained in Appendix 1.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 The Home Office Code of Practice on covert surveillance requires every Council to report quarterly on its use of RIPA.
- 1.2 It is important to provide guidance to officers as to when covert surveillance is lawful where RIPA does not apply.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 None

### **3.0 BACKGROUND INFORMATION**

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public bodies use surveillance methods. The Council may use covert surveillance for the purpose of preventing or detecting crime or preventing disorder.
- 3.2 The origin of RIPA lies in the Human Rights Act 1998 which places restrictions on the extent to which public bodies may interfere with a person's right to respect for his or her home and private life and correspondence during the course of an investigation into suspected criminal activities. The provisions of RIPA ensure (in summary) that any such interferences are in accordance with the law and are necessary and proportionate (i.e. the seriousness of the suspected crime or disorder must outweigh any possible interferences with the personal privacy of the persons being investigated and of persons who associate with them).
- 3.3 The Council's Constitution authorises Directors to designate Heads of Service and Service Managers to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA. Since 1 November 2012 such authorisations require the further approval of a magistrate where the legislation applies.
- 3.4 The Office of Surveillance Commissioners (OSC) is responsible for overseeing the operation of RIPA. The OSC inspected the Council on 13 May 2015. The outcome of that inspection was reported to the Committee on 22 September 2015. The Committee approved amendments to the Council's Policy and Guidance Document made in response to the Report.

### **THE USE OF RIPA BY THE COUNCIL**

- 3.5 Since the meeting on 13 June 2016 the Council has obtained on 20 October 2016 approval from a magistrate to use covert surveillance to detect suspected illegal fly tipping at a site in Wirral.

## **CHANGES IN LEGISLATION**

- 3.6 The Protection of Freedoms Act 2012 came into force on 1 November 2012 and made the following changes to the law;
- A Magistrate's approval is required for a local authority's use of RIPA. It is in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
  - Use of RIPA to authorise directed surveillance is confined to cases where the offence under investigation carries a custodial sentence of six months imprisonment or more except in relation to underage sales of alcohol and tobacco, where this sentencing threshold will not apply.

## **ANNUAL TRAINING**

- 3.7 This took place on 18 October 2016 and was conducted by Stephen Morris an acknowledged expert in this field.
- 3.8 It was attended by Applying and Authorising Officers who are required to undertake refresher training every 2 years.
- 3.9 Mr Morris dealt in detail with the requirements for authorisations of surveillance under RIPA.
- 3.10 He also drew to our attention gaps in the legislation where RIPA is not available to authorise covert surveillance eg where a local authority is exercising an ancillary and not a core statutory function such as disciplinary proceedings against an employee suspected of theft. Another example would be the use of evidence obtained from covert surveillance in civil proceedings such as care proceedings when such evidence is necessary and proportionate to protect children from the risk of suffering significant harm.
- 3.11 In those instances the covert surveillance would have to be authorised under and be compliant with the fair and lawful processing of personal data prescribed by the Data Protection Act 1998 and Article 8 of the European Convention on Human Rights.

## **ADDITIONS TO THE POLICY AND PROCEDURE GUIDANCE DOCUMENT**

- 3.12 This document is attached as an Appendix to the report.

A new paragraph 10 has been added in the light of the training delivered by Mr Morris which sets out the procedure to be followed if covert surveillance can only be authorised under the Data Protection Act 1998 and not under RIPA.

## **4.0 FINANCIAL IMPLICATIONS**

- 4.1 None at present.

## **5.0 LEGAL IMPLICATIONS**

- 5.1 The Protection of Freedoms Act 2012 which restricts local authorities use of covert surveillance came into force on 1 November 2012.
- 5.2 In suitable cases where the RIPA legislation does not apply, covert surveillance could be authorised under the Data Protection Act 1998 and Article 8 of the European Convention on Human Rights (which balance the value of the surveillance against intrusions into people's private lives).

## **6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS**

None at present.

## **7.0 RELEVANT RISKS**

These have been discussed in previous reports.

- 7.1 There is a risk that some investigations of anti-social behaviour will not be able to use covert surveillance under RIPA because the suspected criminal behaviour does not carry a custodial sentence of 6 months or more.
- 7.2 The Anti-Social Behaviour Team are however intent on applying to the Court for approval of covert surveillance in suitable cases of suspected harassment of individuals which would amount to an offence under the Protection from Harassment Act 1997 (which can attract a sentence of 6 months or more imprisonment).
- 7.3 Where RIPA does not apply but covert surveillance would be legitimate necessary and proportionate then it would have to be authorised by the Authorising Officers in accordance with the Data Protection Act 1998 eg to supply evidence in disciplinary or care proceedings as explained in paragraph 10 of the amended Policy and Procedures Guidance Document.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 None

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 None

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## **APPENDICES**

**Appendix 1 – Policy and Procedure Document**

## REFERENCE MATERIAL

None

## SUBJECT HISTORY (last 3 years)

<b>Audit and Risk Management Committee</b>	<b>Date</b> 28/1/14
A report on Regulation of Investigatory Powers Act 2000 (RIPA) is presented to each meeting of the Committee	<b>18/3/14</b>
	<b>17/9/14</b>
	<b>27/1/15</b>
	<b>8/6/15</b>
	<b>22/9/15</b>
	<b>17/2/16</b>
	<b>13/6/16</b>