

**AUDIT AND RISK MANAGEMENT COMMITTEE
12 JUNE 2017**

REPORT TITLE	REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)
REPORT OF	ASSISTANT DIRECTOR: LAW AND GOVERNANCE

REPORT SUMMARY

This report summarises the use of covert surveillance by the Council between 1 November 2016 and 31 May 2017.

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

It affects all Wards within the Borough.

The decision is not a key decision.

RECOMMENDATIONS

The Committee notes the report.

SUPPORTING INFORMATION

1.0 REASONS FOR THE RECOMMENDATIONS.

The Committee receives quarterly reports on the Council's use of covert surveillance.

2.0 OTHER OPTIONS

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.
- 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 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.
- 3.5 Further amendments to the Policy and Guidance Document were approved by the Committee at its meeting on 22 November 2016

4.0 THE USE OF RIPA BY THE COUNCIL

- 4.1 The Council obtained on 6 January 2017 and 22 May 2017 approval from a magistrate to use covert surveillance to detect suspected illegal flytipping at sites in Wirral.
- 4.2 The Council's Anti-Social Behaviour obtained on 1 December 2016 approval from a Magistrate to conduct covert surveillance to detect suspected criminal damage and harassment of residents in an area of Wirral.

5.0 CHANGES IN LEGISLATION

5.1 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.

6.0 PROSECUTIONS ARISING FROM AUTHORISED COVERT SURVEILLANCE

6.1 On 11 May 2017 a 22 year old man was sentenced to 200 hours unpaid community works for 3 offences of flytipping in Kelvinside Industrial Estate Seacombe.

6.2 The Court also ordered him to pay £450 in compensation to the Council for the cost of clearing up the site, £500 as a contribution to prosecution costs and £85 in respect of the Victim Surcharge.

7.0 FINANCIAL IMPLICATIONS

7.1 None.

8.0 LEGAL IMPLICATIONS

8.1 The Protection of Freedoms Act 2012, which requires local authorities (where RIPA applies) to obtain the approval of a magistrate for the use of covert surveillance, came into force on 1 November 2012.

8.2 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). This is explained in the previous report to the Committee on 22 November 2016.

9.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

9.1. There are none at present.

10.0 RELEVANT RISKS

10.1 These have been discussed in previous reports.

10.2 There is a risk that some investigations of anti-social behaviour will not be able to use covert surveillance because the suspected criminal behaviour does not carry a custodial sentence of 6 months or more.

10.3 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).

10.4 As described earlier in this Report, the Anti-Social Behaviour Team did apply for and obtain a Magistrates approve on 1 December 2016 to conduct covert surveillance to detect suspected harassment and criminal damage.

10.5 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 e.g. to supply evidence in disciplinary or care proceedings as explained in paragraph 10 of the amended Policy and Procedures Guidance Document and the report to the Committee on 22 November 2016.

11.0 ENGAGEMENT/CONSULTATION

11.1 Not applicable.

12.0 EQUALITY IMPLICATIONS

12.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no proposal which is relevant to equality.

REPORT AUTHOR: **Colin Hughes**
Group Solicitor
telephone: (0151 691 8502)
email: colinhughes@wirral.gov.uk

REFERENCE MATERIAL

Authorisations for directed surveillance - exempt from publication because they relate to individuals and may be the subject of continuing investigations into alleged criminal behaviour.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Reports to the Audit & Risk Management Committee	28 January 2014 18 March 2014 17 September 2014 27 January 2015 8 June 2015 22 September 2015 17 February 2016 22 November 2016 14 March 2017