

REPORT OF THE DIRECTOR OF LAW, HR AND ASSET MANAGEMENT

USE OF POWERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT (RIPA)

1. Background

- 1.1. The Regulation of Investigatory Powers Act 2000 (“RIPA”) governs how public bodies use surveillance methods. Wirral Council, like other local authorities may use directed surveillance where doing so is in the public interest and for the purpose of preventing or detecting crime or preventing disorder.
- 1.2. The Office of Surveillance Commissioners (“OSC”) is responsible for overseeing the operation of RIPA. The Council has to account to the OSC on an annual basis on its use of RIPA. The Council has been the subject of two inspections by the OSC in July 2003 and July 2007. The Council’s use of RIPA was also the subject of a recent review by the Internal Audit Section. One of the recommendations of that review was that the Council’s Policy and Procedures on the use of RIPA be updated. The Policy was most recently reviewed in 2004.
- 1.3. This report and appendices have been considered by the Council’s Standards and Audit and Risk Management Committees and have been revised to reflect discussions at those meetings.

2. The Use of RIPA by Local Authorities

- 2.1. There has been much debate in the last 12 months around the use of surveillance powers by local authorities. This has led the LGA to write to Leaders of all Councils. John Healey MP, the Minister for Local Government also wrote to all Chief Executives in November 2008 regarding the use of surveillance by local authorities. The Home Office has announced an intention to consult on the use of RIPA powers by public authorities in early 2009.
- 2.2. Unfortunately there has been a large degree of misreporting of the subject of surveillance. The Home Office has published on its website a document on some of the misconceptions. A copy is attached as Appendix 1 to this report.
- 2.3. The Council has used directed surveillance to support its enforcement activity since the passing of RIPA. In the year 2007/8 the Council granted 45 authorisations. These related to cases investigated by the Wirral Anti-social Behaviour Team (36) and the Trading Standards team (9). The use of these powers has assisted in legal action to tackle rogue traders and to obtain court orders to tackle anti-social behaviour. The Council has used surveillance evidence in numerous court actions and its use has never been challenged. In some cases surveillance evidence obtained by the Council under RIPA has been used by the police to secure criminal convictions.

- 2.4. The use of RIPA is overseen by the Office of the Surveillance Commissioner (OSC). The OSC carries out regular inspections of public bodies. The OSC last inspected the Council in July 2007. A copy of the report is attached as Appendix 2 to this report. It considers the previous report of the OSC in 2003 and concludes that:

Whilst the actions taken by the Council have addressed many of the significant issues raised in the previous inspection report, more works need to be done to fully rectify the previous deficiencies.

- 2.5. The report sets out a number of recommendations. These are set out below, followed (in italics) by the actions taken to implement the recommendations:

- (a) The Head of Legal and Member Services should ensure that the correct current forms are being used.

The current versions of the forms have been circulated to all teams using, or which may potentially use, directed surveillance.

- (b) The Central Record should be regularly updated.

A new procedure has been implemented to ensure that Departments update the central record immediately upon authorisation being granted

- (c) The Central Record should capture all the information required by the Codes of Practice.

The new system will ensure that this is done

- (d) The central record should be used more appropriately to provide central oversight and monitoring of authorisations.

The new system will enable Legal and Member Services to have better access to the applications in a timely manner to monitor use of RIPA

- (e) A training needs analysis should be undertaken to identify any knowledge gaps and thereafter a corporate training event held to educate and inform all potential applicants and authorising officers;

An assessment has been carried out and a training event took place on 7 October 2008 which was well attended. A further event is due to take place in April 2009. It will be a requirement that all authorising officers who have not received training in the past two years shall attend one of those sessions. It is intended that after the second event has taken place all applying officers will have received training. The training is specifically tailored to Wirral and will highlight the issues raised in the OSC report.

- (f) There is a need to attach a central unique reference to each application;

The new system provides for this.

- (g) There should be an annual report to COMT on the use of RIPA;

The first such report was received by COMT in June 2008 and further reports will be brought to COMT.

- 2.3 A review of the use of RIPA has also been carried out by Internal Audit at the request of the Chair of the Audit and Risk Management Committee in December 2008. This identified a number of areas for improvement and an action plan was agreed. A copy is attached as Appendix 3.
- 2.6. The action plan identified the need for the Council's policy and procedure on the use of powers under RIPA to be updated. A draft policy is attached which has been considered by Chief Officers Management Team. As indicated it was also considered by:

Standards Committee (on 30 March 2009); and
Audit and Risk Management Committee (on 31 March 2009).

This report and appendices have been revised to reflect discussions at those meetings.

3. Financial implications

- 3.1 None arising directly from this report.

4. Staffing implications

- 4.1 None arising directly from this report.

5. Equal Opportunities Implications

- 5.1 The purpose of RIPA is to strike a fair and proportionate balance between the rights of individuals to privacy and the right, in a democratic society, for public bodies to act in the public interest.

6. Community Safety Implications

- 6.1 It is likely that the Council will continue, in appropriate cases to use directed surveillance in areas such as tackling anti-social behaviour.

7. Local Agenda 21 implications.

- 7.1 None arising directly from this report.

8. Planning Implications

- 8.1 None arising directly from this report.

9. Anti-poverty implications

9.1 None arising directly from this report.

10. Social inclusion implications

10.1 None arising directly from this report.

11. Local Member Support Implications

11.1 None arising directly from this report.

12. Background Papers

12.1 None.

13. Recommendations

13.1 That Members endorse the Policy and Procedure on the use of RIPA, appended to this report.

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