

TITLE OF REPORT: THE REGULATION OF INVESTIGATORY POWERS ACT 2000

REPORT OF THE CORPORATE LEGAL MANAGER AND MONITORING OFFICER

1. SUMMARY

- 1.1 This Report presents to the Overview and Scrutiny Committee an update on the position in relation to the Regulation of Investigatory Powers Act 2000 (RIPA).

2. FORWARD PLAN

- 2.1 This report does not contain a recommendation on a key decision and has not been referred to in the forward plan

3. BACKGROUND

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) was introduced to regulate advances in technology and surveillance capability to balance a public authorities' need to undertake investigations, against the rights of an individual as set out in the Human Rights Act 1998. It therefore regulates the use of covert surveillance of individuals by public bodies. RIPA provides a framework for authorising officers to authorise surveillance activity prior to that surveillance being undertaken.
- 3.2 There are three elements where RIPA is relevant:
- Directed Surveillance
 - Covert use of human intelligence source (CHIS)
 - Access to communications data
- 3.3 When assessing whether to authorise a RIPA application, an authorising officer must consider issues such as proportionality and necessity, and the impact of the surveillance on the person being surveyed and anyone else who may be impacted.
- 3.4 National consultation was undertaken in 2009, following concerns raised in the national media about the use of RIPA by some public authorities. The result of the consultation was revised Codes of Practice and Consolidating Orders that came into force on 6 April 2010. Broadly this requires elected members of a local authority to set the Council's policy (a matter for Cabinet) at least once a year, and for members to have a strategic role in reviewing how the Council uses RIPA.
- 3.5 A RIPA Policy was approved by Cabinet at the Cabinet meeting on 28 September 2010. A copy of this is attached at Appendix 1 for information and reference.

- 3.6 The Office of Surveillance Commissioners (OSC) monitors how local authorities use the powers under the Act. It has carried out three inspections into the way in which the Council uses its RIPA powers. The most recent inspection was on 1 July 2010, and the previous inspection was in October 2007.
- 3.7 Reports relating to RIPA were reported to the Partnerships Scrutiny Sub Committee during 2010/11.

4. ISSUES

4.1 Member Involvement

- 4.1.1 The two Codes of Practice that came into effect on 6 April 2010 were:
- Regulation of Investigatory Powers (Covert Human Intelligence Source: Code of Practice) Order 2010
 - Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2010
- 4.1.2 These Codes of Practice state that elected members should:
- Review the local authority's use of RIPA
 - Set the RIPA policy at least once a year.
- 4.1.3 The Code of Practice therefore introduced a strategic role for members to oversee the way in which the Council uses RIPA techniques. This role is within the terms of reference of the Overview and Scrutiny Committee. Reports on the use of RIPA will be given to the Committee on a quarterly basis.
- 4.1.4 The Policy will, under the existing statutory regime, go before Cabinet annually for consideration.
- 4.1.5 Whilst Members clearly have an important role to play, the decision making in relation to authorising RIPA must be retained with Officers.

4.2 Council's Use of RIPA

- 4.2.1 There were no RIPA authorisations during 2010/11. The two main departments that had cause to use these powers were the Head of Revenues and Benefits and the Head of Housing and Public Protection.
- 4.2.2 These departments are either using overt rather than covert surveillance, or relying on the review of electronic records. This accounts for the decrease in the use of the powers.

4.3 The Future of RIPA

- 4.3.1 On 26 January 2011 the Home Office published its awaited review of counter-terrorism and security powers, which included proposed changes to local authorities' powers to carry out surveillance under the Regulation of Investigatory Powers Act 2000. It is anticipated that the approval of a Magistrate will be required in the event that the Council wish to carry out covert surveillance. In addition the Review has recommended that the use of RIPA for Directed Surveillance should be confined to cases where the offence under investigation carries a custodial sentence of six months or more.

4.3.2 The proposed changes to the RIPA legislation are contained within the draft Protection of Freedoms Bill. This was presented to the House of Commons on 11 February 2011. The Bill had its second reading debate on 1 March 2011 and the Public Bill Committee last met on 17 May 2011. The Bill is awaiting its Report stage on a date to be announced.

5. LEGAL IMPLICATIONS

5.1 The Report is before the Overview and Scrutiny Committee for consideration in accordance with its Terms of Reference.

5.2 The Consolidating Orders that came into effect on 6 April 2010 were:

- Regulation of Investigatory Powers (Communications Data) Order 2010
- Regulation of Investigatory Powers (Extension of Authorisation Provisions: Legal Consultations) Order 2010
- Regulation of Investigatory Powers (Direct Surveillance and Covert Human Intelligence Source) Order 2010
- Regulation of Investigatory Powers (Covert Human Intelligence Source: Matters Subject to legal privilege) Order 2010. This order is unlikely to ever to be relevant to a local authority

5.2.1 These Codes of Practice state that elected members should:

- Review the local authority's use of RIPA
- Set the RIPA policy at least once a year.

5.3 A RIPA Policy was approved by Cabinet at their meeting on 28 September 2010, and this is attached for information at Appendix A.

5.4 The Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2010 that came into effect on 6 April 2010, introduced a strategic role for members to oversee the way in which the Council uses RIPA techniques. This role is within the terms of reference of the Overview and Scrutiny Committee. The Code states that members should therefore receive a report on the use of RIPA on a quarterly basis.

6. FINANCIAL AND RISK IMPLICATIONS

6.1 It is important that the Council continues to operate in accordance with RIPA to ensure that it is able to effectively manage its reputational risk whilst also exercising its legitimate evidence gathering powers in connection with enforcement activity.

6.2 There are no financial implications arising from the implementation of the Policy.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

7.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans. Where necessary, specialist skills may be required to deal with matters such as legal support and advice.

- 7.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. We also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.
- 7.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 8.1 None.

9. RECOMMENDATIONS

- 9.1 Members are asked to note the matters contained in this Report.

10. APPENDICES

- 10.1 Appendix 1: RIPA policy

11. REPORT AUTHOR

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