

Subject:	Surveillance Policy – annual report on the Regulation of Investigatory Powers Act		
Date of Meeting:	12 November 2009		
Report of:	Director of Environment		
Contact Officer:	Name:	Jo Player	Tel: 29-2488
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Key Decision:	Yes	Forward Plan No: CAB11932	
Wards Affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The purpose of this report is to apprise the Cabinet of the activities that have been undertaken utilising the powers under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last report to Cabinet in October 2008 and to confirm that these activities were authorised in line with the necessity and proportionality rules and the council's priority of fair enforcement of the law.
- 1.2 To provide an update on the revisions made to our Policy to reflect recommendations made by the Surveillance and Interception Commissioners following the inspection in June 2009.

2. RECOMMENDATIONS:

- 2.1 That Cabinet approves the continued use of covert surveillance and the accessing of communications data as an enforcement tool to prevent and detect all crime and disorder investigated by its officers, providing the necessity and proportionality rules are stringently applied.
- 2.2 That Cabinet approves the amendments to the Policy and Procedures in line with the recommendations made by the Surveillance Commissioner.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Human Rights Act 1998 requires the City Council to respect the private and family life of citizens. This is a qualified right and, in certain circumstances, the City Council may interfere in an individual's right, providing that interference is in accordance with the law.
- 3.2 The Regulation of Investigatory Powers Act 2000 (RIPA) is the statutory mechanism for authorising covert surveillance, and accessing communications data. It seeks to ensure that any interference with an individual's right is both necessary and proportionate. An explanation of the meaning of these terms is included in the Policy document.

- 3.3 To ensure consistency, the government created the Office of the Surveillance Commissioner and the Office of the Interception Commissioner. Inspectors from these offices have a responsibility for auditing the activity of all public authorities in respect of these powers.
- 3.4 The Council has been audited on four occasions regarding 'covert surveillance', the most recent one being in June 2009, and once in respect of 'access to communications data.' The first audit recommended the development of a Corporate Policy, which received approval by Policy & Resources Committee in 2005. The policy has been the subject of amendment to reflect the recommendations of the Commissioners and changes to the legislation. These include:
- The creation of a Central Record to enable timely reviews and appropriate cancellations to occur and each application has a URN.
 - The use of Council wide forms that comply with the legislation and the Codes of Practice.
 - A more explicit explanation of the thought processes on necessity and proportionality.
 - That there is only one authorising officer on each application. However, a gatekeeper will still vet applications for necessity and proportionality before authorisation.
 - Amendments to the Policy to reflect the new overseeing arrangements during the secondment of the Head of Trading Standards until March 2011.
 - Transferring the SPOC responsibilities in relation to Access to Communications Data to NAFN.
- 3.5 The Commissioner recognised that, whilst the council deals with considerable crime and disorder, it only uses covert powers in a measured and justifiable manner.
- 3.6 The Commissioners have indicated that we operate a thorough and well informed RIPA regime and that there was effective quality control. They comment, though, that there appears to be some confusion regarding the terms necessary and proportionate. To remedy this, they recommended the introduction of cross service training and guidance on the meaning of each term. This has been incorporated into the revised policy.
- 3.7 Members of all parties have always been concerned about the potential misuse of covert investigating techniques to tackle minor crime and the negative impact this may have on its reputation. In 2003, Policy & Resources Committee requested that there would be two authorising signature on each application. Brighton & Hove is unique as the only authority requiring this.
- 3.8 The requirement for two authorising signatories does not accord with the recommendations made by the Surveillance Commissioner at the inspection in June 2009, or with the Home Office Codes of Practice. Instead, a solution suggested by the Inspector, in line with recent case law, is that a 'gatekeeper' is employed.
- 3.9 A gatekeeper is a person with sufficient knowledge and understanding of the enforcement activities of the relevant public authority, who would vet the applications for necessity and proportionality before the application is then

authorised by a senior officer. It is suggested that Service Managers would act as 'gatekeeper' with the Authorising Officers being either the Head of Services or Assistant Director.

- 3.10 A Central Register has been established to ensure that each application has a unique reference, that the application has been made on the correct Home Office form and the authorisations are subject to reviews and cancellations.
- 3.11 A review of the Central Registers shows that the majority of covert surveillance activity relates to Housing Benefit fraud, disorder and harassment issues reported to Housing Management, and incidents of flytipping and graffiti. Applications for accessing communications data are predominantly made by Trading Standards relating to incidents of 'rogue trading' including doorstep crime, illegal money lending, counterfeiting and internet scams. A breakdown of the activities since October 2008 is detailed in the appendix to this report.
- 3.12 Following the 2006 inspection, inspectors raised concerns regarding the capacity of the authority to maintain control of the regime in the absence of the Head of Trading Standards. This was further recognised with the 2009 inspection, following the secondment of the Head of Trading Standards until 2011. However, the transfer of the Single Point of Contact (SPOC) duties to the National Anti Fraud Network (NAFN) following Cabinet's decision in October 2008, has alleviated these concerns in relation to Access to Communications Data. The overview function in relation to covert surveillance has been passed to the Acting Head of Trading Standards, with support from Legal Services and colleagues within Public Safety.

4. CONSULTATION

- 4.1 Officers responsible for activities under the Regulation of Investigatory Powers Act 2000 have been consulted in the preparation of this report and made aware of the new procedures.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The cost of maintaining the central register will be met from within the existing revenue budget for Trading Standards. There are no other direct financial implications arising from the recommendations in the report. There is no cost involved in using the National Anti Fraud Network as the single point of contact for accessing communications data.

Finance Officer Consulted: Karen Brookshaw

Date: 12/10/09

Legal Implications:

- 5.2 The legal framework governing the use of covert surveillance is addressed in the body of the report. The Corporate Policy and Procedures document (as amended) complies with the Regulation of Investigatory Powers Act 2000 (RIPA) and Human Rights Act 1998 requirements and provides robust controls for the use of RIPA powers.

Lawyer Consulted:

Elizabeth Culbert

Date: 09/10/09

Equalities Implications:

- 5.3 A Rapid Impact Assessment will be carried out. In the meantime, the proper and consistent application of the RIPA powers should ensure that a person's basic human rights are not interfered without justification. Each application will be assessed by a gatekeeper for necessity and proportionality prior to authorisation by a senior manager and the 'authorisations' reviewed by a third manager who has responsibility for maintaining a central register. This process should identify any inconsistencies or disproportionate targeting of minority groups and enable action to be taken to remedy any perceived inequality.

Sustainability Implications:

- 5.4 There are no sustainability implications.

Crime & Disorder Implications:

- 5.5 If used appropriately, the activities described in the report should enhance our capacity to tackle crime and disorder.

Risk & Opportunity Management Implications:

- 5.6 Any failure to comply with the provisions of the legislation could render any evidence obtained as inadmissible, resulting in a failed prosecution, and have a detrimental impact on the council's reputation.

Corporate / Citywide Implications:

- 5.7 Proper application of the powers will help to achieve the 'fair enforcement of the law' objective and help to protect the environment and the public from rogue trading.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 Consideration was given to recommending that Cabinet stipulate those crimes that were trivial and therefore the powers referred to in the report should never be used. This approach is not considered necessary given the level at which authorisations are made.
- 6.2 A review of 'surveillance activities' could be the subject of the normal scrutiny process and this option has equal merit.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The introduction of the Corporate Enforcement Policy should help to ensure that identified breaches of the law are dealt with in the most appropriate manner. However, it is essential that officers are able to use the RIPA powers for all crimes regardless of how trivial some may be perceived, but only after exhausting all other methods of enforcement. As authorisation is generally given at Head of Service level and above, it is unlikely that these powers will be abused.

- 7.2 The implementation of an Annual Review has made the whole process transparent and demonstrated to the public that the correct procedures are followed.

SUPPORTING DOCUMENTATION

Appendices:

1. Breakdown of activities by year.
2. Surveillance Policy & Procedure.

Documents in Members' Rooms

None

Background Documents

None

