

Subject: Surveillance Policy
Date of Meeting: 17 March 2011
Report of: Director of Finance
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Key Decision: No
Wards Affected: All

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

- 1.1 The purpose of this report is to inform 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 November 2010 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 The report also provides an update on the implications of the recent Home Office review of local authority use of RIPA.

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 notes the surveillance activity undertaken by the authority since the last report to Cabinet in November 2010.
- 2.3 That Cabinet notes the outcome of the Government's review of the local authority surveillance regime, and its implications for the council.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Human Rights Act 1998 requires public bodies such as the council to comply with the European Convention on Human Rights, which includes an individual's right to respect for his private and family life, his home and his correspondence. This is a qualified right and, in certain circumstances, a public body may interfere with the right, providing it is done 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 and procedures document previously agreed by Cabinet.

- 3.3 Following concern that public authorities were using surveillance techniques in an inappropriate manner, the Home Office issued revised Codes of Practice on Covert Surveillance and Interference with Property and another covering Access to Communications Data. These Codes came into force on 6th April 2010.
- 3.4 New Procedures and Guidance were issued by the Office of the Surveillance Commissioner in September 2010. The council's corporate policy and procedures on surveillance were amended to incorporate the recommendations of the Codes of Practice and the Commissioners and the amendments incorporating these recommendations were approved by Cabinet in November 2010. A full report of the surveillance activity undertaken by the authority over the last year went to Cabinet in November 2010.
- 3.5 The Codes of Practice state that elected members should also consider internal reports on the use of the 2000 Act on a quarterly basis to ensure that it is being used consistently with the authority's policy and that the policy remains fit for purpose. Attached at appendix 1 is a break down of the last quarter's surveillance activity.
- 3.6 The Government made a commitment to ban the use of powers contained within the Regulation of Investigatory Powers Act by councils, unless they are authorised by a magistrate and required for stopping serious crime. The Government's review of surveillance powers was reported to Parliament in January 2011.
- 3.7 The review recommended that: Magistrate's approval should be required for local authority use of all surveillance techniques that it is able to utilise and should be in addition to the authorisation needed now from a local authority senior manager (at least Director level) and the more general oversight by elected councillors. Use of RIPA to authorise directed surveillance only should be confined to cases where the offence under investigation carries a maximum custodial sentence of 6 months or more. But because of the importance of directed surveillance in corroborating investigations into underage sales of alcohol and tobacco, the Government should not seek to apply the threshold in these cases. The threshold should not be applied to the two other techniques (Access to Communications data and the use of Covert Human Intelligence Sources) because of their more limited use and importance in specific types of investigation which do not attract a custodial sentence.
- 3.8 The recommendations will be debated fully by Parliament with a view to introducing legislation as soon as possible. Until new legislation is introduced, the council's existing policy and procedures on surveillance will continue to be adhered to.

4. CONSULTATION

- 4.1 There has been no consultation in the compilation of this report.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are no direct financial implications arising from the recommendations in this report.

Finance Officer Consulted: Karen Brookshaw

Date: 02/02/11

Legal Implications:

- 5.2 The legal framework governing the use of covert surveillance and accessing communications data is addressed in the body of the report, notably paragraphs 3.1 and 3.2. The council's policies and procedures on surveillance may need to change following any revision to RIPA or related legislation, or the introduction of new legislation, stemming from the Home Office review presented to Parliament in January 2011.

Lawyer Consulted:

Oliver Dixon

Date: 07/02/11

Equalities Implications:

- 5.3 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 and illegal activity.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 A review of 'surveillance activities' could be the subject of the normal scrutiny process.

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 Surveillance Activity since October 2010.

Documents in Members' Rooms

None

Background Documents

1. 'Review of Counter-Terrorism and Security Powers: Review Findings and Recommendations', presented to Parliament by the Home Secretary, January 2011.
2. <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>