

Subject: Surveillance Policy
Date of Meeting: 9 June 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 March 2011.
- 1.2 The report provides an update on the progress of the legislation needed to introduce the Government's proposed changes to the use of surveillance activity by local authorities. It also sets out the outcome of an internal review of the current policy and procedures designed to consider whether any changes should be made in advance of the legislative requirements.

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 March 2011 as set out in Appendix 1.
- 2.3 That the Cabinet notes the outcome of the internal review and approves the implementation of the proposed changes with immediate effect.

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.

- 3.3 The new Codes of Practice require that elected members should 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.
- 3.4 One technical breach needs to be drawn to Members' attention which was due to an error by a third party, not by the Council. Access to Communication Data is permitted under RIPA but the Home Office have determined that this should only be carried out by certain individuals or organisations known as Single Points of Contact. Trading Standards used the National Anti Fraud Network (an accredited Single Point of Contact) to obtain subscriber details for a telephone number in order to assist in the identification of a rogue trader under investigation. On receipt of the data it was established that the Service Provider, i.e. the company holding the data provided more information than requested. This error was correctly notified to the Senior Responsible Officer (Director of Finance & Resources) and subsequently reported to the Interception Commissioner.
- 3.5 The Government made a commitment to ban the use of powers contained within the Regulation of Investigatory Powers Act by councils and asked Lord MacDonald to conduct a review of surveillance powers. His report was received by Parliament in January this year. The recommendations were outlined in full in the report to Cabinet in March.
- 3.5 The recommendations are being debated as part of the Freedoms Bill passage through Parliament. The Bill is receiving a high level of scrutiny and is unlikely to receive Royal Assent until at least November this year. An internal review of the policy and procedures was carried out in April to consider whether any changes should be made in advance of the legislative change.
- 3.6 It is proposed as a result of this review that the proposed requirement for Director Level authorisation for any covert surveillance activity be introduced with immediate effect. The Director of Finance will be the 'Authorising Officer' for all issues except child protection matters which will fall to the Director of Children's Services and adult protection matters which will fall to the Director of Adult Services. In order to ensure that requests for authorisation submitted to the Directors are of consistent quality and merit a 'gatekeeper' role will be introduced. There will be one in Housing Benefits which will be a designated Benefits Manager(s) and for all other teams the gatekeeper will be the Head of Trading Standards. The gatekeeper will maintain an expertise in the legislation and provide advice and training to all officers, the Senior Responsible Officer and act as a conduit with the Magistrates Court when Magisterial oversight is introduced.

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: 10/5/2011

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. As set out in the report, the use of these powers may interfere with qualified Convention rights incorporated into UK law by the Human Rights Act 1998, but the revised policy and reporting measures will ensure that the powers are exercised lawfully and proportionately and consistently."

Lawyer Consulted: Elizabeth Culbert Date: 12/5/2011

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 the gatekeeper for necessity and proportionality prior to authorisation by a restricted number of 'Authorising Officers'. 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 It is essential that officers are able to use the RIPA powers where necessary within the new threshold, but only after exhausting all other methods of enforcement. An authorisation should now be given by a Director and above, and scrutinised by a 'gatekeeper', therefore, it is unlikely that these powers will be abused.

7.2 The implementation of the Annual Review and quarterly oversight has made the whole process transparent and demonstrates to the public that the correct procedures are followed.

SUPPORTING DOCUMENTATION

Appendices:

1. Breakdown of Surveillance Activity since February 2011.

Documents in Members' Rooms

None

Background Documents

None