

<b>Subject:</b>	<b>Surveillance Policy</b>		
<b>Date of Meeting:</b>	<b>8 December 2011</b>		
<b>Report of:</b>	<b>Director of Finance</b>		
<b>Lead Member:</b>	<b>Leader of the Council</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Jo Player</b>	<b>Tel: 29-2488</b>
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<b>Key Decision:</b>	<b>No</b>		
<b>Ward(s) affected:</b>	<b>All</b>		

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

- 1.1 The purpose of the 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 September 2011 and to confirm that these activities were authorised in line with the necessity and proportionality rules
- 1.2 The report also introduces a revised Policy and Guidance document that reflects the proposed changes to the legislation and the decision not to use covert human intelligence sources (CHIS) without the express involvement of the Chief Executive.

**2. RECOMMENDATIONS:**

- 2.1 That Cabinet approves the continued use of covert surveillance as an enforcement tool to prevent and detect all crime and disorder investigated by its officers, providing the activity is in line with the revised Policy and Guidance and the necessity and proportionality rules are stringently applied.
- 2.2 That Cabinet notes the surveillance activity undertaken by the authority since the report to Cabinet in September 2011 as set out in Appendix 1.
- 2.3 That Cabinet approves the publication of the revised Policy and Guidance document as set out in Appendix 2.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is the law governing the use of covert surveillance techniques by Public Authorities, including local authorities. RIPA was enacted as part of a suite of legislation flowing from the implementation of the Human Rights Act 1997. The Act requires that when public authorities need to use covert techniques to obtain private information about someone, they do it in a way that is necessary, proportionate and compatible with human rights.
- 3.2 RIPA regulates the interception of communications, directed and intrusive surveillance and the use of covert human intelligence sources (informants). Local authorities may only carry out directed surveillance, access certain communications data and use informants.
- 3.3 Changes in the Codes of Practice last year gave Councillors a scrutiny role for the first time and this report serves to provide an up date on the use of RIPA by the Council and an opportunity to review the changes to the Policy and Guidance document as a result of further proposed changes to the legislation and Codes of Practice following a Home Office review in January this year.
- 3.4 Cabinet in June 2011 approved the following change to our procedure
  - That the Director of Finance (Senior Responsible Officer) to become the only 'Authorising Officer' for all issues except 'child protection' and 'adult safeguarding', and
  - That a 'gatekeeper' role was introduced.
- 3.5 Following a recent discussion between the SRO, Gatekeeper and Authorising Officers (AO's) it was more appropriate for the SRO to oversee the process rather than authorising specific applications. Furthermore the (AO's) should operate at a level where they have the seniority that meets the legislative requirements as well as the relevant operational knowledge and competence, but that the AO's should be restricted to a manageable number. It was felt that the gatekeeper role should be retained.
- 3.6 Appendix 1 details the uses made by in the Council in the previous quarter and for the year as a whole. These figures will be reported to the OSC in the New Year for inclusion in the Chief Commissioners annual report to the Prime Minister.
- 3.7 A revised Policy and Guidance document is attached at appendix 2. This document reflects changes that will be implemented once the Protection of Freedoms Bill receives Royal Assent early next year with the exception of the 'Magistrate's Approval' provision. It also includes a reference to the scrutiny role of Councillors.
- 3.8 The report has been streamlined to make it more user-friendly and simple to follow. It is hoped that this will encourage the use of the guidance by applicants and authorising officers and improve the quality of the submissions.
- 3.9 The key recommended changes proposed by the Government's review are

- **Magistrates Approval:** When local authorities wish to conduct surveillance or acquire communications data, they must seek approval of a Magistrate. This will be in addition to the authorisation by an Authorising Officer who meets the criteria regarding their position within the authority.
- **Serious Offence Test:** Where local authorities wish to carry out directed surveillance, a requirement is to be introduced that such activity is restricted to the investigation of offences that carry a custodial sentence of six months or more. The only offence where this will not apply is in regard to underage sales of alcohol and tobacco.

3.10 An initial analysis of the offences currently investigated show that past surveillance activities would have passed this test. It is, however, requested that the council implements the serious offence provision prior to the implementation of the Protection from Freedoms Bill.

3.11 Training was recently provided for the Senior Responsible Officer, Gatekeeper, Authorising Officers and potential applicants. 10 officers received an update on the latest RIPA developments and best practice.

#### 4. COMMUNITY ENGAGEMENT AND 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: dd/mm/yy*

##### 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: dd/mm/yy*

##### 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 with without justification. Each application will be assessed by the gatekeeper for necessity and proportionality prior to the 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.

5.4 An Equalities Impact Assessment is currently being undertaken.

Sustainability Implications:

5.5 There are no sustainability implications.

Crime & Disorder Implications:

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

Risk and Opportunity Management Implications:

5.7 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.

Public Health Implications:

5.8 There are no Public Health implications.

Corporate / Citywide Implications:

5.9 Proper application of the powers will help to achieve fair enforcement of the law and help to protect the environment and public from rogue trading and illegal activity.

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

6.1 The only alternative is to curtail the use of RIPA but this is not considered an appropriate step.

**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 excluding all other methods of enforcement. An authorisation will only be given by the relevant 'Authorising Officer' following vetting by the '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. Details of the use of RIPA since previous report
2. Revised Policy & Guidance document

### **Documents in Members' Rooms**

None

### **Background Documents**

None

