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**Report of the Chief Officer, Legal, Licensing and Registration Services, and the Director of Environment and Neighbourhoods**

**Executive Board**

**Date: 25 August 2010**

**Subject: RIPA – Adoption of New Council Policy**

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**Electoral Wards Affected:**

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In  
(Details contained in the report)

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## **EXECUTIVE SUMMARY**

The Regulation of Investigatory Powers Act 2000 (RIPA) is designed to ensure that public bodies respect the privacy of members of the public when they carry out investigations which involve the use of covert surveillance, and that privacy is only interfered with when the law permits and there is a clear public interest justification. The Council only uses the RIPA powers in a small number of serious cases, subject to a number of safeguards.

New codes of practice which came into force in April 2010, require local authorities to involve elected Members in strategic oversight, including setting the policy and reviewing use at least once a year, and considering reports on use on at least a quarterly basis. This report outlines current practices in Environment & Neighbourhoods, the main user of the RIPA powers, and proposes a draft policy on directed surveillance conducted under RIPA.

## **1.0 Purpose Of This Report**

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is designed to ensure that public bodies respect the privacy of members of the public when their investigations involve the use of covert surveillance, and that privacy is only interfered with when the law permits and where there is a clear public interest justification.
- 1.2 This report outlines the Council's proposed policy on covert surveillance conducted under RIPA in Appendix 1. The report explains why and how covert surveillance is used, and by whom. The Covert Surveillance and Property Interference Revised Code of Practice provides that elected Members "should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on the use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose". This policy is not part of the Policy Framework as specified in the Council's Constitution, and therefore it needs to be approved by Executive Board.

## **2.0 Background Information**

- 2.1 RIPA provides an authorisation process for certain types of surveillance and information gathering, and that process can be used as a defence against human rights claims. At present, the Council is entitled to authorise its own directed surveillance under RIPA. However, there are a number of safeguards to prevent the over-use of authorisations.
- 2.2 The only purposes for which the Council can authorise such surveillance are for "preventing or detecting crime or preventing disorder". In addition, the level at which authorisations can be granted by local authorities has recently been raised, and it has been agreed that generally this should be at Director level. An authorisation can only be given where the authorising officer believes the authorisation is "necessary" for the purposes mentioned above, and that the surveillance is "proportionate" in relation to what is sought to be achieved by carrying it out. In addition, the Office of Surveillance Commissioners (OSC), the regulatory body for covert surveillance, carries out regular inspections of the Council's arrangements for authorisations, including "spot checking" individual authorisations

## **3.0 Main Issues**

- 3.1 The Coalition programme for government states "We will ban the use of powers in the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime". The Home Secretary has announced a review of six key areas which include the use of RIPA by local authorities. Consequently, it appears that the current "self authorisation" powers will eventually be removed, and that the purposes for which an authorisation can be granted will also be changed. As yet however, there is no indication from the Home Office how long this review will take, and when changes will be made.
- 3.2 At present, apart from exceptional cases, the only Directorate which uses RIPA authorisations for covert surveillance is Environment & Neighbourhoods, and then only the Anti-Social Behaviour Unit (Community Safety) (ASBU) and Health and Environmental Services (HEAS). In the 18 month period between 1 April 2008 and 31 December 2009 48 authorisations were given, of which 23 were for the purposes

of tackling anti-social behaviour and 25 were for environmental enforcement. There has been only 1 authorisation since the new codes of practice came into effect in April.

- 3.3 With most investigations concerning anti-social behaviour, fly-tipping and other waste offences, a range of information can be accessed without any recourse to covert methods. This can be by gathering evidence directly from victims and witnesses, by encouraging reporting to the Council, Police or other agencies, by overt staff observation or by using overt surveillance, such as public safety CCTV. Overt investigations, apart from gaining evidence to resolve the problem and/or progress legal action, also make the Council's actions visible to victims, witnesses and the wider community and thus provides reassurance that the Council is acting on their concerns. There are therefore advantages in using "normal" investigation methods, other than the covert gathering of evidence, and indeed many Council services other than the ASBU and HEAS use overt techniques to obtain information about possible regulatory breaches. Therefore, the presumption applied by the Directorate will always be towards overt surveillance.
- 3.4 However, in some circumstances overt methods might not yield results. For instance, in some neighbourhoods witnesses may be too intimidated to give evidence against perpetrators.
- 3.5 The Directorate's practice is that covert surveillance is only considered as an option when these other means of acquiring information about the problem have been considered, or where overt methods have been used and failed. Moreover, covert surveillance is only considered when the problem is serious and/or persistent, and where overt surveillance would not provide evidence of the offences and/or might displace the problem elsewhere. The Directorate does not use covert surveillance to address minor matters, but instead focuses on those issues which are of greatest concern to the community – environmental damage such as flytipping and graffiti, and anti-social behaviour where individuals or families are targeted or threatened.
- 3.6 Whilst covert surveillance does not always lead to evidence that can be presented at court, it has led to positive outcomes in a number of cases through the positive identification of perpetrators. Examples are: prosecutions for breaches of ASBO and tags; possession orders; prosecutions for waste offences; legal notices on individuals; seizure of vehicles; evidence of other offences passed to the Police. Whilst it is difficult to provide a precise definition of the circumstances where an authorisation may be appropriate, Appendix 2 gives some examples of the use of covert surveillance by the ASBU.
- 3.7 In such cases, covert surveillance may be used. Thus far the Directorate has only used directed surveillance, but it is also able to use a "covert human intelligence source". As the Council is not expecting to use this method however, the proposed policy does not cover it. Nor does the policy cover intrusive surveillance, which the Council is not permitted to authorise.
- 3.8 The procedures adopted by the Council when undertaking directed surveillance are:
- To ensure it adheres to the letter and spirit of RIPA;
  - To take seriously issues of privacy, intrusion and risk;
  - To ensure a robust process through the use of training;
  - To follow the recommendations of the OSC.

- 3.9 A Corporate Guidance and Procedure document issued by Legal, Licensing and Registration Services, is available for use by applicants and authorising officers.
- 3.10 It is proposed that the Council's RIPA policy should reflect current practice within Environment & Neighbourhoods, and also the requirements of the new Covert Surveillance and Property Interference Revised Code of Practice issued by the Home Office.
- 3.11 A proposed policy is set out in Appendix 1.
- 3.12 The policy should ensure that the Council continues to use the RIPA powers in a balanced and proportionate way in serious and/or persistent cases, where overt methods are not appropriate, or where overt methods have been used and have failed.

#### **4.0 Implications For Council Policy And Governance**

- 4.1 The Code of Practice mentioned above must be taken into account by the courts, and by the OSC when carrying out inspections. The Council can be required to justify, with regard to the Code, the use or granting of authorisations generally.
- 4.2 The terms of reference of Corporate Governance and Audit Committee include the review of the "adequacy of policies and practices to ensure compliance with statutory and other guidance". It is therefore proposed that quarterly reports on the use of RIPA, and the annual review of the policy should be dealt with by Corporate Governance and Audit Committee.

#### **5.0 Legal And Resource Implications**

- 5.1 The legal implications of the proposals in this report are as set out above.
- 5.2 The resource implication is that strategic oversight and reviews by Members, are now required. In addition, authorisations are required to be dealt with at the more senior level of Director, and an overview of designated authorising officers by a member of CLT, is also required.

#### **6.0 Conclusions**

- 6.1 The Council needs to adopt a clear policy about the use of RIPA authorisations, to the effect that they will only be granted in serious cases, after overt methods have been considered, and that there will be a demonstrable balance between the impact of the surveillance proposed, and the gravity and extent of the perceived crime or disorder.

#### **7.0 Recommendations**

- 7.1 Members are recommended to approve the proposed policy set out in Appendix 1.

## **8.0 Background Papers**

Covert Surveillance and Property Interference Revised Code of Practice 2010

## Regulation of Investigatory Powers Act 2000 (RIPA) Policy

### 1.0 Extent

This policy applies to the authorisation of directed surveillance under Sec 28(1) of RIPA. This policy does not cover the authorisation of covert human intelligence sources under Sec 29 of RIPA. Nor does it cover intrusive surveillance (which the Council is not entitled to authorise under RIPA).

### 2.0 Safeguards

- 2.1 The Council will apply a presumption in favour of overt investigation methods. The Council will always consider using a variety of overt investigatory tools, before considering whether an authorisation is required. Covert investigation will be used only when other reasonable options have been considered, and ruled out.
- 2.2 In order to comply with the duties in Sec 28(2) of RIPA, that a person shall not grant an authorisation for the carrying out of directed surveillance unless they believe that the authorisation is “necessary” on the ground of preventing or detecting crime or preventing disorder, and in accordance with the Covert Surveillance and Property Interference Revised Code of Practice, the Council will
- balance the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence, or disorder;
  - explain how and why the methods to be adopted will cause the least possible intrusion on the target and others;
  - consider whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
  - evidence, as far as reasonably practicable, what other methods were considered and why they were not implemented.
- 2.3 The Council will only use covert surveillance when the problem is serious and/or persistent, and where overt surveillance would not provide evidence and/or might displace the problem elsewhere.
- 2.4 The Council will not use covert surveillance to address minor matters, but instead will focus on those issues which are of greatest concern to the community – environmental damage such as flytipping and graffiti, and anti-social behaviour where individuals or families are targeted or threatened.
- 2.5 The Council will only use covert surveillance either to obtain evidence that can be presented at court, or where another positive outcome relating to the prevention or detection of crime or the prevention of disorder has been identified, for example through the positive identification of perpetrators.
- 2.6 The Council will give responsibilities to a single member of its Corporate Leadership Team, Nicole Jackson, Assistant Chief Executive (Corporate Governance) to ensure

that designated authorising officers meet the standards required by the Office of Surveillance Commissioners.

- 2.7 The Council will ensure that the quality of authorisations is monitored by Legal, Licensing and Registration Services.
- 2.8 The Council will ensure applicants and authorising officers receive an appropriate level of training.
- 2.9 The Council will ensure that in accordance with The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, authorisations will only be granted by Directors. This will avoid any perception that authorising officers are directly involved with the investigations they authorise. Authorising officers will therefore be able to apply more independently reasoned judgment of the issues
- 3.0 **Review**
- 3.1 This policy will be reviewed on an annual basis, and reports on the use of authorisations will be considered on a quarterly basis, in each case by Corporate Governance and Audit Committee.

## Appendix 2

### Examples of use of RIPA by Anti Social Behaviour Unit

Location	Date Applied	Reasons for RIPA	Outcomes Obtained	Date Cancelled
LS13	10.10.08	The purpose of the investigation was to monitor and record the activities of a number of known suspects who were congregating in a small cul-de-sac. It was believed that this group were responsible for high levels of crime, anti social behaviour, intimidation and property damage in the locality. It was hoped that with the use of covert surveillance equipment it would be possible to confirm the identities of those involved in the nuisance and disorder and where possible secure evidence to facilitate criminal prosecutions and or further civil enforcement measures towards individuals themselves or tenancy enforcement action against their properties/tenancies. Local residents were not willing to give evidence for fear of reprisals.	Four pieces of footage were used to identify seven breaches of an anti social behaviour order (ASBO), and three stills were used to prove breach of ASBO and tenancy and eleven offences of trespass by other family members. There was also a breach of a tag. All this was used to prove breaches of the ASBO, to obtain possession of the property, and to prove breach of the tag.	28.10.08
LS11	20.10.09	The authorisation was obtained due to reports of crime and anti social behaviour occurring in an area in Leeds 11. Many of the residents in the area were extremely vulnerable and because of their fear of reprisals, were reluctant to attend court as witnesses. The purpose of the surveillance was to confirm the identity of young people whom the Council and West Yorkshire Police believed were involved in persistent anti social behaviour, and to document their behaviours. Surveillance was carried out on a number of occasions.	Acts of anti social behaviour were witnessed on these occasions and the evidence was used at court on 29 <sup>th</sup> October 2009. On this date a possession order was granted on one of the properties. A Notice of Intention to Seek Possession was also served on another property.	29.10.09
LS12	17.11.09 Renewed 15.12.09 Renewed 14.1.10	The authorisation was given in connection with the investigation of crime and anti social behaviour. It was hoped that with the use of existing overt surveillance equipment and recorded observations, that it would be possible to confirm the identities of persons involved in drug dealing	The surveillance was of significant value to this operation, resulting in a "Crack House" closure, the obtaining of seven Anti Social Behaviour Orders (ASBO) against street sex workers and the agreeing of six Acceptable	14.1.10



		and prostitution within certain Council owned properties and the surrounding streets.	Behaviour Contracts (ABC) with identified kerb crawlers	
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