

**REPORT OF THE ASSISTANT CHIEF
EXECUTIVE, LEGAL AND
GOVERNANCE TO THE AUDIT
COMMITTEE ON 6 NOVEMBER 2013**

REGULATION OF INVESTIGATORY POWERS ACT 2000

PURPOSE OF THE REPORT

- 1.1 This is a periodic report to apprise the Committee on the level of surveillance activity undertaken by the Council. It also provides an update on progress in relation to action points identified in the previous report to the Committee on the 27 March 2013, following the biennial inspection by the Assistant Commissioner appointed by the Surveillance Commissioners.

RECOMMENDATION

- 2.1 That the Audit Committee give consideration to this report.

BACKGROUND

- 3.1 Local Authorities are empowered to authorise certain limited forms of surveillance activity in accordance with the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA). The Local Authority may undertake covert surveillance by means of either directed surveillance, or the use of a Covert Human Intelligence Source (CHIS).
- 3.2 Directed surveillance is covert surveillance which is undertaken for a specific investigation in such a manner that is likely to result in the obtaining of private information about a person and is carried out in such a manner calculated to ensure that the surveillance subject is unaware of it taking place.
- 3.3 Covert Human Intelligence Source (CHIS) is where a person establishes or maintains a personal or other relationship with another person (Surveillance Subject) for the purpose of covertly using the relationship to obtain information or to provide access to information to another person or for the purpose of covertly disclosing information obtained in the relationship.

- 3.4 The ultimate purpose of the RIPA Scheme of Legislation is intended to ensure that the citizen's right to respect for his private life under Article 8 of the European Convention on Human Rights (as applied domestically by the Human Rights Act 1998) is not infringed and to ensure that evidence to be used in criminal proceedings has been fairly obtained. Accordingly, a Local Authority's use of surveillance is significantly constrained by statutory safeguards which are both substantive and procedural.
- 3.5 Legislative changes which were introduced by the Protection of Freedom's Act 2012 mean that directed surveillance can now only be authorised by the Council under RIPA in respect of preventing or detecting conduct which constitutes one or more criminal offences of certain types or of certain seriousness, rather than for the purpose of preventing disorder or nuisance or for the prevention or detection of crime generally, which was the previous position. It also prescribes that an authorisation for covert surveillance will not take effect until a Magistrate has made an Order approving the grant of authorisation.

SURVEILLANCE ACTIVITY

- 4.1 The report presented to the Committee on the 27 March 2013 noted that the Council makes very limited use of directed surveillance. And that in the previous inspection period it had only granted seven authorisations, all of which occurred in 2010. It further noted that the Council made no use of CHIS; and never has. This trend has continued and since the submission of the previous report there has been no surveillance activity whatsoever authorised under RIPA.

PROGRESS REPORT

- 5.1 Since an application/authorisation for covert surveillance has become a rarity it is proposed that both the applicant and authorising officer in any such case will receive bespoke legal advice from a Solicitor within the Legal Services Division. The deployment of resources towards the implementation of measures recommended by the Inspector in his report have to be considered in that context and approached with the appropriate degree of proportionality. Moreover, a number of the Inspector's recommendations, such as amending the method of recording on the Central Register and applying a more robust oversight of authorisations would only be brought to bear in the context of a practical application of an authorisation process. Since none have occurred it is not possible to assess the impact of any improvements in process. However, the officers that would be engaged in such a process are fully aware of the requirements, should the need arise.

- 5.2 There are principally two areas in which measures still need to be taken to implement the Inspector's recommendations. These are around the provision of training and the revision of the Local Codes of Practice and Guidance in relation to directed surveillance and CHIS. Given the ongoing hiatus in surveillance activity and the ability of applicants and authorising officers to secure bespoke legal advice, the need to expend resources on these matters has not been especially pressing. However, it is acknowledged that surveillance activity may increase in the future and accordingly there is a value in attending to these recommendations and thus discharging the Council's commitments in response to the Inspector's report.
- 5.3 The Inspector strongly recommended that training should initially be provided by an external professional trainer. Accordingly, the RIPA Co-ordinating Officer has procured proposals from four leading training providers in the field which now need to be assessed on a quality/cost basis and a date arranged for the training to take place. It is anticipated that this will be prior to Christmas 2013. The training course, which will take place on Council premises on a single day will be attended by a cross section of potential applicants, the Council's five authorising officers (including the Chief Executive Officer), the RIPA Senior Responsible Officer and the RIPA Co-ordinating Officer.
- 5.4 It was noted by the Inspector that the Council has produced comprehensive local codes of practice and guidance in relation to directed surveillance and CHIS which are intended to regulate the surveillance activities of the authority within the statutory scheme. He did nonetheless go on to highlight a number of desirable amendments that could be made to the Council's documentation. It remains the intention to implement these revisions, however, they have not yet been completed because of the need to prioritise other work within the Legal Services Division. Revised codes should be available to be reported to the Committee at the next scheduled RIPA update. In the meantime the local codes which were approved by Cabinet on the 18 August 2010 (Cab.18.8.2010/6.2), as added to by a supplementary note on the impact of the Protection of Freedoms Act 2012, remain essentially fit for purpose.

IMPACT ON LOCAL PEOPLE

- 6.1 Covert surveillance will have an impact on those who are identified as subjects. It may also impact on those local people who are not targeted but who are, for example, included in the observations as they pass by. These impacts can be controlled by ensuring that the tests set down for the authorisation of surveillance are met (especially those relating to necessity and proportionality) and that the forms for application and

authorisation are properly completed. The availability of bespoke legal advice and the application of a robust overnight procedure should provide the necessary safeguards.

COMPATIBILITY WITH EUROPEAN CONVENTION ON HUMAN RIGHTS

- 7.1 The purpose of RIPA is to ensure that covert surveillance is compatible with the convention. Whilst there has been no suggestion of breach by the Council, improved assurances for the right to respect for private life will result from the measures set out in this report.

REDUCTION OF CRIME AND DISORDER

- 8.1 Surveillance activity authorised under RIPA is simply one of a number of tools available to combat crime and disorder in respect of matters for which the Council is the enforcing authority. Currently it is evident that other investigative approaches and other methods of enforcement are being utilised.

RISK MANAGEMENT

- 9.1 The inappropriate or non-compliant use of RIPA may lead to applications for damages under the Human Rights Act 1998 in respect of breaches of the right to respectful privacy etc under Article 8 of the convention or to applications for evidence to be excluded under PACE. The proper use of RIPA, especially the integrity of the authorisation process will mitigate this risk. The additional levels of assurance proposed in respect of that process, as set out in this report, should assist in reducing any risks of non-compliance or inappropriate use.

FINANCIAL IMPLICATIONS

- 10.1 There will be a cost associated with providing the professional training which was recommended by the Inspector. This is estimated to be in the region of £1,500.

EMPLOYEE IMPLICATIONS

- 11.1 None arising from this report.

BACKGROUND DOCUMENTS

- (i) Report of Assistant Chief Executive, Legal and Governance to the Audit Committee on 27 March 2013
- (ii) Office of Surveillance Commissioners Inspection Report dated 17 October 2012
- (iii) Report of Assistant Chief Executive, Legal and Governance to the Audit Committee on 27 March 2013
- (iv) Scrutiny Commission Report dated 12 November 2008
- (v) The Council's Local Codes of Practice
- (vi) Central Register of Authorisations (this document consists of exempt information pursuant to the Local Government Act 1972 Schedule 12A Part I paragraphs 1, 2 and 7).

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