

**REPORT OF THE CORPORATE DIRECTOR POLICY, PLANNING AND
CORPORATE SERVICES****SURVEILLANCE AND THE REGULATION OF INVESTIGATORY POWERS
ACT****Purpose of the Report**

1. To update Policy Committee on changes to legislation in relation to surveillance, the outcome of an inspection, and to seek approval of policy revisions.

Information and Advice

2. Where it is considered both necessary and proportionate to do so, the Council can undertake covert (secret) surveillance. The Regulation of Investigatory Powers Act 2000 (RIPA) regulates the use of surveillance in relation to certain investigations.
3. The Council's policy in relation to covert surveillance was last reviewed by Full Council in September 2010. Changes are now required in order to reflect the provisions of the Protections of Freedoms Act 2012.
4. The main changes are as follows: -
 - a. Magistrate court approval is required for RIPA authorisations
 - b. A 'serious crime threshold' has been introduced for most RIPA directed surveillance (where surveillance is specifically focused on someone without their knowledge, e.g. a hidden camera); this means that the crime being investigated must carry a potential penalty of 6 months' imprisonment.
5. The Council was inspected by the Office of the Surveillance Commissioner (OSC) earlier this year in relation to its directed surveillance and Covert Human Intelligence Source (CHIS) surveillance. CHIS is where surveillance is carried out by means of a relationship being developed with a person without them being aware it is taking place (e.g. an undercover officer).
6. The Inspector made the following recommendations: -
 - a. Confirm a formal training programme and raise RIPA awareness within the Council
 - b. Clarify the structure of RIPA management by introducing the role of RIPA Coordinating Officer to support the Monitoring Officer's role as Senior Responsible Officer

- c. Reduce the number of officers with authority to approve RIPA applications
 - d. Ensure that officers are trained to manage and handle people who act as CHIS
7. The above recommendations are accepted. However it is proposed that the Council's Policy will not allow for the use of CHIS; the Council has not used CHIS surveillance in some years. If the situation changes in future a further report will be brought to Policy Committee.
8. The Council's Policy and procedures have been updated to reflect the changes in legislation, and the inspector's recommendations. The draft Policy is enclosed at the **Appendix** to this report and Policy Committee is asked to approve it. The main changes to procedural documentation are as follows: -
- a. Reduction in the number of authorising officers (from six to three)
 - b. Appointment of a Co-ordinating officer (Senior Solicitor) in addition to the Senior Responsible Officer (Monitoring Officer)
 - c. Inclusion of magistrates' court procedure
9. All officers with roles and responsibilities under RIPA have received training, but in light of the recommendations refresher training will be delivered on an annual basis. The updated policies and procedures will be promoted to staff via the intranet and the Team Talk monthly bulletin.
10. In accordance with OSC guidance, it is proposed to bring an annual report to Policy Committee on the implementation of the Policy; a quarterly report on RIPA statistics is already included in the work programme for the Community Safety Committee. Nearly all RIPA surveillance relates to the Trading Standards service and therefore Community Safety is considered the most appropriate committee for this.
11. The Interception of Communications Commissioner (IOCCO) is responsible for inspecting the Council in relation to acquisition of communications data under RIPA. These provisions enable the Council to access information relating to the use of a communications services such as telephone or email accounts (but not to access the content of communications). IOCCO has also inspected the Council this year and the inspection report is awaited. Unless Policy changes are required the Community Safety Committee will consider the outcome of this inspection report, as all surveillance of this nature is carried out by the Trading Standards team.
12. It should be noted that the Council relies on RIPA surveillance infrequently. The most recent data reported to the 2 inspectors is as follows: -
- a. OSC - Between 1 April 2012 and 31 March 2013 directed surveillance was authorised only once. This was in relation to an investigation into under-age alcohol sales and led to a successful prosecution and fine. No CHIS authorisations were granted.

- b. IOCCO - Between 1 January 2012 and 31 December 2012 a total of 15 authorisations were granted for access to communications data. Investigations were mainly in respect of doorstep crime such as bogus property repairs.

Other Options Considered

- 13. Policy Committee could allow for use of CHIS in the Policy.

Reason/s for Recommendation/s

- 14. To update the Council's Policy and procedure for RIPA and surveillance in accordance with legislative changes and the recommendations of the OSC Inspector.

Statutory and Policy Implications

- 15. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Crime and Disorder Implications

Use of surveillance assists the Council to achieve its aims and objectives in relation to the reduction of crime in Nottinghamshire.

Human Rights Implications

Every authorisation for surveillance requires consideration of human rights including the right to privacy and the right to a fair trial. The rights of people under surveillance need to be balanced against public safety and the prevention of crime. This is why every authorisation has to clearly set out why the surveillance is considered necessary and proportionate in the circumstances.

RECOMMENDATION/S

- 1) To approve the draft policy attached in the Appendix to the report.
- 2) To incorporate annual reporting on the operation of the RIPA policy into Policy Committee's work programme.
- 3) To note and endorse the proposals for staff awareness and training.
- 4) To note the changes in legislation and the frequency with which the Council relies on RIPA.

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Constitutional Comments (SG 04/11/2013)

16. The Committee is the appropriate body to decide the issues set out in this report. The Committee is responsible for policy development and approval under its Terms of Reference.

Financial Comments (SEM 04/11/13)

17. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- RIPA procedures
- The Protection of Freedoms Act 2012 is published
- The Regulation of Investigatory Powers Act 2000 is published
- County Council report dated 16 September 2010 is published

Electoral Division(s) and Member(s) Affected

All