

To the Chair and Members of the Audit Committee

Covert Surveillance - Regulation of Investigatory Powers Act 2000 (RIPA) Update

EXECUTIVE SUMMARY

1. The Council uses the Regulation of Investigatory Powers Act 2000 (RIPA) to conduct covert surveillance to investigate matters that the Council has responsibility to take action against. Home office orders dated 6th April, 2010 brought in new codes of practise which included recommendations that it is best practise that Councillors are involved in overseeing covert surveillance. It was agreed at the Audit Committee on 27th July 2010 should receive a yearly report reviewing the authority's use of RIPA and its policy and quarterly it will receive an update on covert surveillance that has taken place. This is the quarterly report. There have only been 3 matters authorised since the last report and these matters are on-going, all other matters have been concluded. To avoid prejudicing the on-going cases only brief details are shown. The Magistrates have not refused any RIPA applications.

RECOMMENDATIONS

2. The committee notes the RIPA applications that have been completed since the January 2014 report attached at appendix 1 and:
3. The Committee agree that, considering the low use of RIPA by the Authority, these reports are only received six monthly.

BACKGROUND

4. The Regulation of Investigatory Powers Act 2000 was introduced in response to the Human Rights Act 1998 to ensure that Local Authorities could continue lawfully to carry out covert surveillance. The Government also set up the Office of Surveillance Commissioners who regularly inspects Local Authorities. The Council has had four inspections in 2003, 2004, 2009 and most recently in October 2012. The action plan following the latest inspection has been completed by the Authority. The only outstanding matter is that we are awaiting confirmation from South Yorkshire Police that the document detailing the protocol for Police use of CCTV has been signed by all parties.
5. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 came into force on 1st November 2012. This provides that directed surveillance can only be authorised under RIPA where the criminal offence sought to be prevented or detected is punishable by a maximum of at least 6 months imprisonment or would constitute an offence involving sale of tobacco and alcohol to underage children.

6. The Protection of Freedoms Act 2012 also requires Local Authorities to have all their RIPA surveillance authorisations (both directed and CHIS surveillance) approved by a Magistrate before they take effect.
7. Appendix 1 details the recent covert surveillance authorisations. Authorisations have been provided from July 2012 as these have been updated to show the outcomes from these surveillances which include successful prosecutions.
8. The 2010 Code of Practice suggests that Councillors should receive quarterly reports on RIPA activity. Due to the reduced surveillance carried out over the last few years the report to Audit Committee has only been made every six months in 2013. It is recommended that to avoid unnecessary reports that this continues whilst there is such a low level of use of covert surveillance. The Home Office consulted on a new code in February 2014 for a period of 6 weeks and the Council did respond with the following statement:

'The only concerns that the Council have concerning the updated code is the requirement in 3.27 of the CHIS code and 3.34 of the covert surveillance code of:

'In addition, elected members of a local authority 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 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 Local Authority has seen the number of applications for directed surveillance and CHIS greatly reduced in recent years, particularly with the need for Magistrates approval. If an authority is only approving a few cases a year it is disproportionate to bring a report to members 'on at least a quarterly basis'. With the financial pressures that Councils are facing it is inappropriate to suggest quarterly reports should always be produced where there will be no updates to report and in effect wasting members and officers time. It is suggested that the wording is amended to something along these lines:

'In addition, elected members of a Local Authority 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 use of the 2000 Act where directed surveillance or use of a CHIS has been applied for and once completed (if authorised) 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.'

9. If our use of RIPA increases this will be reported back to the Committee and a further decision taken on increasing the report cycle. The outcome of the consultation will also be fed back to the Committee.

OPTIONS CONSIDERED

10. To not follow the Code of Practice's revised recommendations with regard to Members seeing the reports would lead to criticism at the next inspection by the Office of Surveillance Commissioners. Failure to follow the guidance could also lead to legal challenge.

REASONS FOR RECOMMENDED OPTION

11. This will ensure that we are properly and lawfully carrying out covert surveillance where it is necessary.

RISKS & ASSUMPTIONS

12. To fail to follow the Regulations and Inspection report will put us at risk of criticism at the next inspection by the Surveillance Commissionaires. However considering the low level of RIPA usage it would seem expedient and appropriate to only have an annual report and then a review report at six months. It is considered this can be justified to the Commissioners at the next Inspection.

LEGAL IMPLICATIONS

13. The Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Codes of Practice) Order 2010 and the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Code of Practice) Order 2010 have brought into force revised Codes of Practice on Covert Surveillance and use of Covert Human Intelligence Source (CHIS). Failure to follow their guidance and the Inspection report may lead to criticism at the next inspection of the Surveillance Commissioner and may be challenged in a Court case relying on RIPA.

FINANCIAL IMPLICATIONS

14. There are no specific implications to the recommendations of this report. Where covert surveillance is used the costs are met from within individual service budgets.
15. This report has significant implications in terms of the following:

Procurement		Crime & Disorder	
Human Resources		Human Rights & Equalities	X
Buildings, Land and Occupiers		Environment & Sustainability	
ICT		Capital Programme	

BACKGROUND PAPERS

16. Appendix 1 – Details of RIPA surveillances since the January 2014 report.

17. REPORT AUTHOR & CONTRIBUTORS

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