

Subject:	Surveillance Policy		
Date of Meeting:	17 June 2010		
Report of:	Director of Environment		
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Key Decision:	No		
Wards Affected:	All		

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

- 1.1 The purpose of this 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 November 2009 and to confirm that these activities were authorised in line with the necessity and proportionality rules and the council's priority of fair enforcement of the law.
- 1.2 The report also provides and updates the revisions made to our Policy to implement recommendations made in the revised Code of Practice on Covert Surveillance and Property Interference and the revised Code of Practice on Access to Communications Data that came into force on 6th April 2010 and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, and the Regulation of Investigatory Powers (Access to Communications Data) Order 2010.

2. RECOMMENDATIONS:

- 2.1 That Cabinet approves the continued use of covert surveillance and the accessing of communications data as an enforcement tool to prevent and detect all crime and disorder investigated by its officers, providing the necessity and proportionality rules are stringently applied.
- 2.2 That Cabinet approves the amendments to the Policy and Procedures in line with the recommendations made by the revised Codes of Practice and the implementation of the two Orders made under the Act.
- 2.3 That Cabinet approves the amendment to the Council's scheme of delegation such that the Director of Finance and Resources is recognised as the Senior Responsible Officer for the purposes of directed surveillance and access to communications data.
- 2.4 That the Cabinet adopts the quarterly reporting template as set out in Appendix 2.

2.5 That Cabinet be updated on the Government's proposed changes to the surveillance regime as affects Local Authorities in a timely manner.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 The Human Rights Act 1998 requires the City Council to respect the private and family life of citizens. This is a qualified right and, in certain circumstances, the City Council may interfere in an individual's right, providing that interference is in accordance with the law.

3.2 The Regulation of Investigatory Powers Act 2000 (RIPA) is the statutory mechanism for authorising covert surveillance, and accessing communications data. It seeks to ensure that any interference with an individual's right is both necessary and proportionate. An explanation of the meaning of these terms is included in the Policy document.

3.3 Following concern that Public Authorities were using surveillance techniques in an inappropriate manner, the Home Office issued revised Codes of Practice on Covert Surveillance and Interference with Property and another covering Access to Communications Data. These Codes came into force on 6th April 2010.

3.4 The Codes provide guidance for officers who operate under the RIPA regime as well as setting down a series of recommendations, which if adopted by a public authority, are considered best practice. The recommendations concern the appointment of a Senior Responsible Officer and the role of members within the regime.

3.5 The Senior Responsible Officer should be a member of the corporate management team and will have responsibility for the integrity of the processes in place within the Council to authorise directed surveillance and access to communications data. It will also be the responsibility of the Senior Responsible Officer to meet with the Office of the Surveillance Commissioners and their inspectors and to ensure that any recommendations made following an inspection are implemented.

3.6 The Codes of Practice also make recommendations as to the role of elected members with regard to surveillance activity. The Codes recognise that members should not be involved in making decisions on specific authorisations. They should review the authority's use of the 2000 Act and set the policy annually. An annual report on the Council's use of surveillance has gone before Cabinet since 2008.

3.7 Elected members should also consider internal reports on the use of the 2000 Act on a quarterly basis to ensure that it is being used consistently with the authority's policy and that the policy remains fit for purpose. The revised Policy is attached at Appendix 1 and a suggested template for reporting this activity is attached at Appendix 2. A breakdown of surveillance activity undertaken since November 2009 by the authority is attached at Appendix 3.

3.8 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, and the Regulation of Investigatory Powers (Access to Communications Data) Order 2010 came into force on 6th

April 2010. These Orders specify who is able to grant authorisation for Directed Surveillance or Access to Communications Data. An authorising officer must be at the level of Director, Head of Service, Service Manager or equivalent.

- 3.9 Over the last year officers of these grades only have authorised surveillance activity. Access to Communications data is only authorised by the Head of Trading Standards.
- 3.10 The new coalition Government has made a commitment to ban the use of powers contained within the Regulation of Investigatory Powers Act by councils, unless they are authorised by a magistrate and required for stopping serious crime. Further information will be reported to Cabinet as it becomes available to officers.

4. 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: 11/05/10

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."

Lawyer Consulted: Elizabeth Culbert Date: 07/05/10

Equalities Implications:

- 5.3 A Rapid Impact Assessment will be carried out. In the meantime, the proper and consistent application of the RIPA powers should ensure that a person's basic human rights are not interfered without justification. Each application will be assessed by a gatekeeper for necessity and proportionality prior to authorisation by a senior manager and the 'authorisations' reviewed by a third manager who has responsibility for maintaining a central register. This process should identify any inconsistencies or disproportionate targeting of minority groups and enable action to be taken to remedy any perceived inequality.

Sustainability Implications:

- 5.4 There are no sustainability implications.

Crime & Disorder Implications:

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

Risk & Opportunity Management Implications:

- 5.6 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.

Corporate / Citywide Implications:

- 5.7 Proper application of the powers will help to achieve the 'fair enforcement of the law' objective and help to protect the environment and the public from rogue trading.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 Consideration was given to recommending that Cabinet stipulate those crimes that were trivial and therefore the powers referred to in the report should never be used. This approach is not considered necessary given the level at which authorisations are made.
- 6.2 A review of 'surveillance activities' could be the subject of the normal scrutiny process and this option has equal merit.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The introduction of the Corporate Enforcement Policy should help to ensure that identified breaches of the law are dealt with in the most appropriate manner. However, it is essential that officers are able to use the RIPA powers for all crimes regardless of how trivial some may be perceived, but only after exhausting all other methods of enforcement. As authorisation is generally given at Head of Service level and above, it is unlikely that these powers will be abused.
- 7.2 The implementation of an Annual Review has made the whole process transparent and demonstrated to the public that the correct procedures are followed.

SUPPORTING DOCUMENTATION

Appendices:

1. Surveillance Policy and Procedure.
2. Quarterly Reporting Template
3. Breakdown of Surveillance Activity since October 2009.

Documents in Members' Rooms

None

Background Documents

None

