

CABINET MEETING

Agenda Item 92

Brighton & Hove City Council

Subject: Surveillance Policy
Date of Meeting: 16 October 2008
Report of: Director of Environment
Contact Officer: Name: John Peerless Tel: 292486
E-mail: John.peerless@brighton-hove.gov.uk
Key Decision: Yes Forward Plan No. CAB2381
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) and 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 To provide an update on the revisions made to the original Policy to reflect recommendations made by the Surveillance and Interception Commissioner's and legislative changes.

2. RECOMMENDATIONS:

- 2.1 That the 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 the Cabinet approve the implementation of an Annual Review relating to the use of RIPA powers.
- 2.3 That the Cabinet agree to the use of the National Anti Fraud Network as the Single Point of Contact for accessing communications data and that the Head of Trading Standards and Head of Operations are identified as the 'Designated persons' as required by the legislation.

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 To ensure consistency the government created the Office of the Surveillance Commissioner and the Office of the Interception Commissioner. Inspectors from these offices have a responsibility for auditing the activity of all public authorities in respect of these powers.
- 3.4 The Council has been audited on three occasions regarding 'covert surveillance' and once in respect of 'access to communications data'. The first audit recommended the development of a Corporate Policy which received approval by Policy & Resources Committee in 2005. The policy has been the subject of amendment to reflect the recommendations of the Commissioners and changes to the legislation. These include
- **The addition of a procedure to enable access to communications data**
 - **Changes to the list of Authorising Officers**
 - **A more explicit explanation of the meaning of necessary and proportionate**
 - **Change to the Application Forms to include guidance on the above terms**
 - **Changes to the Application Form to make it more logical and less confusing**
 - **A separation of the application form and authorisation form and the inclusion of a risk assessment paragraph to reflect best practice.**
- 3.5 Covert surveillance has to be authorised by two relevant managers from the same Department. The regime is slightly different for 'accessing communications data' as the legislation requires that there is a Single Point of Contact (SPOC) who liaises with the service providers. This role is shared by the Head of Trading Standards and the Head of Operations, Public Safety, who are accredited by the Home Office.
- 3.6 The Commissioners have indicated that we operate a thorough and well informed RIPA regime and that there was effective quality control. They comment, though, that there appears to be some confusion regarding the terms necessary and proportionate. To remedy this, they recommended the introduction of cross service training and guidance on the meaning of each term.
- 3.7 The Inspectors have also raised concern regarding the capacity of the authority to maintain control of the regime in the absence of the Head of Trading Standards. This is not seen as an issue by the current post-holder in respect of 'covert surveillance', but the administrative requirements of the 'access to communications data' regime is a burden.

- 3.8 A solution to this problem would be to consider the transfer the SPOC duties to the National Anti Fraud Network (NAFN) who have secured funding from the Home Office to provide such a service to local authorities, with the Head of Trading Standards and Head of Operations remaining as the 'designated persons'.
- 3.9 It was always intended that councils should use these powers to prevent or detect crime, such as fly tipping, rogue traders and those that defraud the council tax or housing benefit system. Recently local authorities have been criticised for using the powers for perceived trivial matters, such as dog fouling or littering. The LGA has therefore called on the council to review existing permissions and satisfy itself that the relevant tests are being met. Furthermore they suggest that each authority should give consideration to implementing an annual review by an appropriate committee or panel. They have also stated that in their opinion the powers should not be used for trivial matters.
- 3.10 The Leader of the Council took personal responsibility for establishing the current process relating to the use of these powers and met with Sir Simon Milton (the author of the communication from the LGA) and formally responded to him to confirm their discussions. A copy of the LGA communication and our response are attached as appendices to this report.
- 3.11 A review of the Central Registers shows that the majority of covert surveillance activity relates to Housing Benefit fraud, disorder and harassment issues reported to Housing Management, and incidents of fly-tipping and Graffiti. Applications for accessing communications data are predominantly made by Trading Standards relating to incidents of 'rogue trading' including doorstep crime, illegal money lending, counterfeiting internet scams. A breakdown of the activities is detailed in the appendix to this report.
- 3.12 The council is unique as it is the only authority in the country that requires two signatories on an authorisation. The review found that the signatories on most authorisations were Heads of Service and Assistant Directors. The only exception to this rule is in Housing Benefits where authorisation is given by the team managers and their immediate line manager.

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 the report. There is no cost involved in using the National Anti Fraud Network as the single point of contact for accessing communications data.

Finance Officer Consulted: Patrick Rice Date: 12 September 2008

Legal Implications:

- 5.2 The legal implications are addressed in the body of the report.

Lawyer Consulted: Liz Woodley Date: 12 September 2008

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 persons basic human rights are not interfered without justification. Each application is assessed by two senior managers for necessity and proportionality, 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 use 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.
- 6.3 The status quo could be maintained in respect of the 'access to communications data' process but moving the SPOC service to NAFN would be more effective and an efficient use of resources.

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 would make the whole process transparent and demonstrate to the public that the correct procedures are followed.
- 7.3 The 'access to communications' process would be more effective, efficient and objective if it single point of contact service was carried out by the National Anti Fraud Network

SUPPORTING DOCUMENTATION

Appendices:

- 1. Breakdown of activities by year.
- 2. Surveillance Policy & Procedure

Documents in Members' Rooms

None.

Background Documents

None

