

Subject:	Surveillance Policy		
Date of Meeting:	11 November 2010		
Report of:	Director of Finance		
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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 inform the Cabinet of the activities that have been undertaken utilising the powers under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last full report to Cabinet in November 2009 and since the quarterly report on our surveillance activity in September 2010. Its purpose is 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 To inform the Cabinet of our current Policy and Procedures. This was following the revisions adopted to reflect recommendations made by the Surveillance Commissioner following the inspection in June 2009. It also follows the introduction of 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.
- 1.3 To appraise the Cabinet of the current position regarding surveillance activity by Local Authorities, in light of Government proposals.

2. RECOMMENDATIONS:

- 2.1 That Cabinet notes 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 approves the continued use of the corporate Policy and Procedures which was updated in line with the recommendations made by the Surveillance Commissioner in June 2009 and the 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.

- 2.3 That the Cabinet notes the surveillance activity undertaken by the Authority since the last full report to Cabinet in November 2009.
- 2.4 That the Cabinet notes the Government's current position regarding the use of surveillance by Local Authorities.

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 four occasions regarding 'covert surveillance', the most recent one being in June 2009, 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.
- 3.5 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.
- 3.6 New Procedures and Guidance has been issued by the Office of the Surveillance Commissioner in September 2010. The guidance does not purport to state what the law is, it merely indicates the way in which the Commissioners are minded to construe particular statutory provisions.
- 3.7 The policy and procedures has been the subject of amendment to reflect the new guidance issued by the Commissioners in September 2010. Previous recommendations of the Commissioners and changes to the legislation were incorporated into the Policy and procedures which Cabinet approved in November 2009 and June 2010.
- 3.8 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.

- 3.9 Cabinet approved the amendment to the Council's scheme of delegation in June 2010 to recognise the Director of Finance and Resources as the Senior Responsible Officer for the purposes of directed surveillance and access to communications data. Responsibility will be retained by the Director of Finance in the Council's new structure.
- 3.10 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.
- 3.11 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. Quarterly reports have been submitted to Cabinet since June 2010. The current policy and procedures is attached at Appendix 1 and a breakdown of surveillance activity undertaken by the authority since November 2009 is attached at Appendix 2.
- 3.12 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.
- 3.13 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.
- 3.14 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. Responses to the review have been submitted by the Local Government Group. The outcome of the review is due to report to Parliament after the summer recess. Any recommendations accepted by the Government will be implemented as a matter of urgency.

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.

Finance Officer Consulted: Karen Brookshaw

Date: 14/10/10

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: 14/10/10

Equalities Implications:

- 5.3 An Equalities Impact Assessment has been undertaken and published on the Corporate Enforcement Policy.

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 has helped 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 Procedures.
2. Breakdown of Surveillance Activity November 2009-October 2010.

Documents in Members' Rooms

None

Background Documents

None

