

REPORT TO	DATE OF MEETING
Governance Committee	23 November 2016

Report template revised June 2008



SUBJECT	PORTFOLIO	AUTHOR	ITEM
REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)	LEADER	DAVID WHELAN	7

SUMMARY AND LINK TO CORPORATE PRIORITIES

The report summarises the outcome of an inspection of the Council’s RIPA regime by the Office of Surveillance Commissioners.

The report links to the corporate priority of “Efficient, effective and exceptional Council.”

RECOMMENDATIONS

That Committee note the contents of this report

DETAILS AND REASONING

The Regulation of Investigatory Powers Act 2000 (RIPA) provides the legislative framework within which any covert surveillance operations to be carried out by a council must be conducted in order to ensure that investigatory powers are used in accordance with Human Rights.

As required the council has a policy in place which sets out the procedures that will be followed whenever any covert surveillance is carried out. This policy has been subject to amendment/modification down the years to reflect changes in legislation and operating practices. Also periodically we have been subject to inspections by the Office of Surveillance Commissioners which have also resulted in changes to our documentation.

The general philosophy informing our policy has always been that such surveillance will only be authorised where it is strictly necessary. In 2012 the Government introduced the Protection of Freedoms Act that considerably reduced the extent to which a council could use these powers. In particular following on from this act the main changes were:

- Use of directed surveillance only for the purpose of preventing or detecting crime;
- Criminal offence under consideration must carry with it a custodial sentence of at least 6 months;
- Exemption to the 6 month requirement if the offences relate to the sale of alcohol or tobacco to minors;
- Authorised surveillance must receive judicial approval by a magistrate.

Since the introduction of these powers we have not made use of our RIPA powers. However, it has to be pointed out that in the years immediately preceding the change of legislation there had been

a significant reduction in the use of such powers. In part this was due to different methods of working.

In June this year the Office of Surveillance Commissioners wrote to the council informing us that we were due an inspection of our RIPA regime. The last such inspection was in September 2013. In their letter of the 15th of June 2016 the Surveillance Commissioner explained:

“It has become apparent in recent years that for a variety of reasons, including reduced resources, greater access to data-matching and overt rather than covert law enforcement, authorities like your own have granted far fewer RIPA authorisations. Some indeed have granted none at all during the last three years.”

“Bearing this in mind, the Chief Surveillance Commissioner, the Rt. Hon Lord Judge, has decided that a more flexible approach to the arrangements for OSC inspections of District and Borough Councils...should be adopted. Where appropriate, the inspection will be based on an examination of the relevant documentation, without a visit by one of the Surveillance Inspectors or Assistant Surveillance Commissioners.”

In our case it was decided that an inspection could indeed proceed on the basis of an inspection of relevant documentation without any actual visit by an Inspector.

On the 2nd of August 2016 the Office of Surveillance Commissioners wrote to us enclosing the report prepared by Mr Graham Wright a surveillance Inspector (please see Appendix 1).

Overall the Surveillance Inspector considered our policy to be “...a clear, thorough and useful document.” However, he did suggest some changes to that part of the policy that related to the use of Social Networking sites. This has now been attended to - please see attached amended policy with new text highlighted in red (Appendix 2). The intention is to introduce this slightly amended policy with effect from December 2016.

The Surveillance Inspector emphasised the importance of training all relevant officers particularly with regard to the issue of accessing Internet and Social Networking sites. The concern is that officers could inadvertently fall into the trap of carrying out covert surveillance whilst accessing such sites. Legal Services will be providing such training within the near future (this is something that we have done in the past). It is also considered desirable to arrange some training with an external expert in the field. Consideration will be given to that (possibly in conjunction with another council) sometime next year.

The Surveillance Inspector also advised that an audit should be carried out of the use that officers make of social networking sites for surveillance purposes. It has been agreed with the Head of Shared Assurance that such an audit should take place sometime next year after our new policy has been introduced and disseminated amongst staff.

WIDER IMPLICATIONS

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these.

FINANCIAL	None arising from this report
LEGAL	A council is required to have a sound RIPA regime in place. Failure to comply with RIPA requirements could result in some evidence obtained by surveillance being ruled inadmissible by the courts. A failure to comply with RIPA could also lead to a claim of breach of Human Rights.

RISK	The main factors are set out in the Legal implications section – a failure to comply with RIPA could lead to difficulties with any prosecutions we bring in terms of arguments over admissibility of evidence. Also a failure to comply with RIPA could also lead to a claim of breach of Human Rights.
-------------	---

THE IMPACT ON EQUALITY	There are no adverse impacts on equality issues arising from the report
-------------------------------	---

OTHER (see below)	
--------------------------	--

<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Crime and Disorder</i>	<i>Efficiency Savings/Value for Money</i>
<i>Equality, Diversity and Community Cohesion</i>	<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Health Inequalities</i>
<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>	<i>Staffing, Training and Development</i>	<i>Sustainability</i>

BACKGROUND DOCUMENTS