

Cheltenham Borough Council

Cabinet - 27 April 2010

Regulation of Investigatory Powers Act (RIPA) – procedural guide

Report of the Cabinet Member Corporate Services

1. Executive Summary and recommendation

1.1 The issue

1.1.1 To update Cabinet on the new regulation investigatory powers (RIPA) legislation and codes of practice; to summarise the new duties and responsibilities this legislation places on local authorities, their officers and members; and to recommend amendments to the procedural guide to meet these.

1.2 I therefore recommend that Cabinet:

1.2.1 Request Economy and Business Improvement Overview & Scrutiny Committee to consider the revised procedural guide as set out in Appendix 1 and report back to Cabinet on its adoption.

1.2.2 That Economy and Business Improvement Overview & Scrutiny Committee undertake a review of the guidance and suggest amendments to Cabinet as necessary every twelve months.

1.2.3 Recommends that when the powers are used then its use is reported at the next appropriate meeting cycle of the Economy and Business Improvement Overview and Scrutiny Committee, so that members can satisfy themselves that it is being used consistently within the council's procedural guide and that the guidance remains fit for purpose.

1.2.4 Summary of implications

1.2.5 Financial No financial implications arising from this report

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1.2.6 Legal

The Council are required when carrying out of directed surveillance or using covert human intelligence sources to do so in accordance with the Regulation of Investigatory Powers Act 2000. This will ensure that the authorisations are only granted when necessary and proportionate to do so. The procedural guide will assist investigating and authorising officers in understanding and complying with the Act.

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1.2.7 Other

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1.3 Implications on corporate and community plan priorities

1.3.1 There are no implications on the council's corporate strategy

1.4 Statement on Risk

1.4.1 See attached risk register in Appendix 2

2. Introduction

2.1 A public consultation took place on RIPA from 17 April to 10 July 2009 which invited views on, amongst other things, all relevant public authorities listed under RIPA, the ranks of officers able to authorise RIPA techniques, and the statutory purposes for which techniques can be used. Of 222 responses received, most were broadly supportive of the Government's (and local authorities') view that public authorities had a continuing well-founded need to authorise the carrying out of directed surveillance or the conduct or use of covert human intelligence sources under RIPA when necessary and proportionate to do so. The Home Office has consequently published new RIPA Orders and Codes of Practice which came into effect on 6 April 2010.

2.2 The Home Office has strongly recommended that local authorities seek an authorisation where the surveillance is likely to interfere with a person's Article 8 European Convention Of Human Rights to privacy by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. Obtaining an authorisation ensures that the action is carried out in accordance with law and subject to stringent safeguards against abuse.

2.3 The Council has therefore previously put into place a detailed RIPA procedural guide (which is available on the internet) and officers already authorise RIPA activity.

Additionally RIPA activity has been inspected on a number of occasions by the Office of Surveillance Commissioner (OSC). The OSC note that the council uses its powers sparingly and proportionately.

- 2.4 The purpose of this report is to update cabinet on the proposals which have recently come into force and to make the necessary amendments to the procedural guide.

3. Background

- 3.1 353 local authorities in England and 22 in Wales are able to use directed surveillance and covert human intelligence sources in order to prevent or detect crime or disorder in connection with their statutory functions. Examples of investigations where covert techniques enable local authorities to gather evidence and offer evidence in legal proceedings include:

- trading standards (e.g. action against loan sharks and rogue traders, car fraud, consumer scams, deceptive advertising, counterfeit goods, unsafe toys and electrical goods);
- enforcement of anti-social behaviour orders and legislation relating to unlawful child labour;
- housing/planning (e.g. intervening to stop and take remedial action against unregulated and unsafe building, breaches of preservation orders, cases of landlord harassment);
- benefits fraud (e.g. housing benefits, investigating 'living together' and 'working whilst in receipt of benefit' allegations, council tax evasion);
- environment protection (e.g. action to stop large-scale waste dumping, the sale of unfit food and illegal 'raves');
- taking enforcement action in support of explosive and petroleum regulations
- investigations against deliberate fire setting.

- 3.2 Additionally the advantages of being able to use communications data to help criminal investigation especially in trade and consumer scams is becoming more important with the growth of the internet and distance selling. Many transactions are now done without buyer and seller coming into contact and often the only way of linking offenders to these transactions is by communications data obtained using RIPA authorisations. Communications data is also used in connection with taking enforcement action in support of deliberate fire setting to help piece together the sequence of events, progressing accident investigations (for instance where fire fighters are injured at the scene of a fire) and detecting inappropriate calls.

- 3.3 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 and revised Codes of Practice for covert surveillance/property interference and CHIS have been published and came into force on 6 April 2010. The existing arrangements are maintained:

- The only grounds for which RIPA authorisations can be given by local authorities is for the purpose of preventing or detecting crime or of preventing disorder;
- The authorisation levels when knowledge of confidential information is likely to be acquired or when a vulnerable individual or juvenile is to be used as a covert human intelligence source (CHIS) is the Head of Paid Service or (in his or her absence) the person acting as the Head of Paid Service.

3.4 There are new requirements in respect of local authority officers

- The prescribed officers who can sign authorisations have been revised to "Director, Head of Service, Service Manager or equivalent" (and more senior posts); The council's existing procedural guide already had posts at director and assistant director level and this has been maintained in the revised policy attached at Appendix 1.
- It is considered good practice for a senior authorising officer (who should be a member of the corporate leadership team) to be made responsible for:
 - the integrity of the process in place within the local authority for the management of CHIS;
 - compliance with Part II of the Act and with the Codes;
 - oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
 - engagement with the Office of the Surveillance Commissioner (OSC) inspectors when they conduct their inspections, where applicable; and
 - where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner.
 - ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the OSC and where an inspection report highlights concerns about the standards of authorising officers, this individual will be responsible for ensuring the concerns are addressed.

3.5 Previously the co-ordination and monitoring of RIPA was undertaken by the council's legal team. With the establishment of OneLegal (the legal partnership with Tewkesbury Borough Council) the borough solicitor has advised that the designated person should be an employee of the borough council. The attached policy has designated the Chief Executive as the senior responsible officer for this work who will be supported by the Policy Officer (governance).

3.6 There are also new requirements for members. Councillors in a local authority should review the authority's use of RIPA and set the procedural guide at least once a year. Councillors in a local authority should also consider internal reports on use of RIPA on at least a quarterly basis to ensure that it is being used consistently with the council's procedural guide and that it remains fit for purpose. They should not,

however, be involved in making decisions on specific authorisations.

- 3.7** During the last twelve months the council has used RIPA powers two times, the authorisations related to housing benefit applications.
- 3.8** The council is arranging training for authorising officers, so that they are fully aware of their obligations as a result of the updated legislation and respond effectively to requests for authorisation.

4. Consultation

- 4.1** No formal consultation has been undertaken on this report as it relates to minor amendments to an existing policy

Appendices	
1	Regulation of investigatory procedural guide April 2010
2	Risk Register
Background Papers	None
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Accountability	Councillor Colin Hay, Cabinet Member Corporate Services
Scrutiny Function	Economy and Business Improvement