

Cheltenham Borough Council
Audit Committee – 25 March 2015
REGULATION OF INVESTIGATORY POWERS (RIPA)
REVISED POLICY GUIDELINES

Accountable member	Councillor Jon Walklett, Cabinet member corporate services.
Accountable officer	Director Resources, Mark Sheldon
Ward(s) affected	None
Key Decision	No
Executive summary	<p>To update Audit Committee on the new Home Office Code of Practice on the Regulation of Investigatory Powers Act (RIPA) 2000 that has been used to update the Councils own RIPA Procedural Guidance document.</p> <p>The Cheltenham Borough Council (CBC) RIPA Procedural Guidance summarise the new duties and responsibilities based upon the Codes of Practice and will be used by all officers involved in this activity.</p>
Recommendations	<ol style="list-style-type: none"> 1. To note the changes to the RIPA Procedural Guidance; and 2. To agree the revised RIPA Policy Guidelines.

Financial implications	<p>There are no direct financial implications arising from this report. Where initiated, the RIPA process may support the safeguarding of public funds.</p> <p>Contact officer: Mark Sheldon</p> <p>Email: mark.sheldon@cheltenham.gov.uk Tel: 01242 264123</p>
Legal implications	<p>The Council may, where it is necessary and proportionate, need to undertake surveillance. RIPA provides a legal framework for the control and regulation of surveillance and information techniques which public authorities undertake as part of their duties. The Council's procedural guide will provide information and advice to those seeking authorisation and those officers granting authorisation. It will also provide the public with information about how the Council approaches the use of surveillance</p> <p>Contact officer: Vikki Fennell</p> <p>Email: vikki.fennell@tewkesbury.gov.uk Tel: 01684 272015</p>

HR implications (including learning and organisational development)	Officers of the Council must comply with the CBC RIPA Procedural Guidance when involved in this activity and effective management and guidance will be provided to the officers concerned. Contact officer: Carmel Togher Email: carmel.togher@cheltenham.gov.uk Tel: 01242 775215
Key risks	<i>If surveillance is carried out without due regard to RIPA, Ministry of Justice Codes of Practice and the CBC procedural guidance then there are risks to an individual's rights and to the council's reputation.</i>
Corporate and community plan Implications	None
Environmental and climate change implications	None

1. Background

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is the law concerning the use of covert techniques by public authorities.
- 1.2 It requires that when public authorities need to use covert techniques to obtain private information about someone, they do it in a way that is necessary, proportionate and compatible with human rights.
- 1.3 Members will be aware from previous reports in respect of the Council's use of RIPA powers, that it must have in place a system of authorising, recording and reviewing any surveillance that it carries out that is covered by the Act.

2. RIPA Authorisations

- 2.1 The Council is included within the RIPA framework with regard to the authorisation of both directed surveillance and of the use of Covert Human Intelligence Sources (CHIS). The Council is only able to authorise surveillance under RIPA if it is for the purpose of preventing, or detecting crime or preventing disorder subject to the "serious offence test". Before giving authorisation an Authorising Officer must be satisfied that the reason for the request is for the prevention and detection of crime and that the crime attracts a custodial sentence of a maximum of 6 months or more, or is an offence relating to the underage sale of alcohol or tobacco under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933. one of the permitted reasons under the Act and permitted under the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 i.e.
 - the desired result of the covert surveillance cannot reasonably be achieved by other means;
 - the risks of collateral intrusion have been properly considered, whether the reason for the surveillance is balanced proportionately against the risk of collateral intrusion;
 - there must also be consideration given to the possibility of collecting confidential

personal information. If there is a possibility of collecting personal information the matter should be passed to the Chief Officer for consideration.

3. Revised RIPA Policy Guidelines

- 3.1** A copy of the revised CBC RIPA Guidance is attached at Appendix 2. The changes take account of the recently published Home Office guidance on the judicial approval process. They also include guidance to officers in relation to:

Internet Investigations

- 3.2** The use of the internet as an investigative method is now becoming routine. However, just because the information being obtained is from the internet staff must still consider all the normal rules and guidance applicable to any type of enquiry conducted within a criminal investigation, such as, the Data Protection Act (DPA), Criminal Procedures Investigations Act (CPIA) and RIPA. In the Surveillance Codes of Practice issued December 2014 there is now a section dealing with these types of enquiries.

Reporting errors

- 3.3** There is now a requirement to report all covert activity that was not properly authorised to the OSC in writing as soon as the error is recognised. This would be known as an error. This includes activity which should have been authorised but wasn't or which was conducted beyond the directions provided by the authorising officer.

Surveillance Outside of RIPA

- 3.4** Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) mean that a local authority can now only grant an authorisation under RIPA where the local authority is investigating criminal offences which attract a maximum custodial sentence of at least six months or criminal offences relating to the underage sale of alcohol or tobacco.
- 3.5** As a result of the changes in legislation, it is envisaged that surveillance may be required which falls outside of RIPA (for example in the case of anti-social behaviour offences which do not attract a maximum custodial sentence of at least six months imprisonment). This guidance covers that eventuality.

Equipment

- 3.6** All equipment capable of being used for Directed Surveillance such as cameras etc. should be approved for that purpose by the Authorising Officer.

Joint Agency Surveillance

- 3.7** In cases where one agency is acting on behalf of another, it is usually for the tasking agency to obtain or provide the authorisation. For example, where surveillance is carried out by Council employees on behalf of the Police, authorisation would be sought by the Police. If it is a joint operation involving both agencies the lead agency should seek authorisation.

4. Reasons for recommendations

- 4.1** It is essential that these powers are used for the proper purpose and in the correct way, this guidance will ensure that that happens and that elected members are kept fully informed.
- 4.2** If authorisation is given for the use of RIPA then a briefing informing the Audit Committee of what

action has been taken will be made as soon as possible. It should be noted that the Council use these powers very sparingly and only when there is no other alternative.

5. Alternative options considered

5.1 None

6. Consultation and feedback

6.1 The Corporate Governance Group, Audit Cotswold and officers involved in investigation and surveillance activities work have been consulted. Advice has also been sought from One Legal.

7. Performance management – monitoring and review

7.1 There will be reports to the Audit Committee on the use of RIPA.

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Appendices	1. Risk Assessment 2. RIPA guidance

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If surveillance is carried out without due regard to RIPA, Codes of Practice and the CBC procedural guidance then there are risks to an individual's rights and to the Councils reputation.	Borough Solicitor	25/03/2015	4	2	8	Accept	<ul style="list-style-type: none"> Put in place effective management and guidance. Promote the guidance with Service managers and investigation staff. 	Ongoing	Borough Solicitor	
<p>Explanatory notes</p> <p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											