

## Cheltenham Borough Council

### Audit, Compliance and Governance Committee – 22 January 2020

#### Regulation of Investigatory Powers Act 2000 Surveillance and Covert Human Intelligence Source Policy

#### Investigatory Powers Act 2016 Acquisition of Communications Data Policy

<b>Accountable Member</b>	Cabinet Member Corporate Services, Councillor Alex Hegenbarth
<b>Accountable Officer</b>	Acting Chief Executive Tim Atkins, Managing Director Place and Growth <a href="mailto:Tim.Atkins@cheltenham.gov.uk">Tim.Atkins@cheltenham.gov.uk</a>
<b>Ward(s) affected</b>	All indirectly
<b>Key/Significant Decision</b>	No
<b>Executive summary</b>	<p>To present Cabinet with:</p> <ul style="list-style-type: none"><li>i) A revised Regulation of Investigatory Powers Act 2000 Surveillance and Covert Human Intelligence Source Policy for approval and adoption.</li><li>ii) A new Investigatory Powers Act 2016 Acquisition of Communications Data Policy for approval and adoption.</li></ul> <p>The Local Authority is required to have effective Policies to enable officers to gather intelligence and conduct surveillance in line with the law.</p> <p>The Policies set out the legislative framework and principles the Local Authority will abide by to mitigate the risk of legal challenge in Court.</p> <p>The Policy demonstrates the Local Authority's consideration of necessity, proportionality and public interest when deciding on surveillance activity and requests for communication data. It also demonstrates openness and transparency for its customers.</p> <p>The report also provides an update in relation the Local Authority's existing authorisation arrangements.</p>
<b>Recommendations</b>	<p><b>That the Audit, Compliance and Governance Committee:</b></p> <ul style="list-style-type: none"><li>a) <b>Considers the Regulation of Investigatory Powers Act 2000 Surveillance and Covert Human Intelligence Source Policy to comment thereon to Cabinet, to aid its deliberations and decision making.</b></li><li>b) <b>Considers the Investigatory Powers Act 2016 Acquisition of Communications Data Policy to comment thereon to Cabinet, to aid its deliberations and decision making.</b></li></ul>

<b>Financial implications</b>	<p>The adoption and approval of these Policies will support the Local Authority's objectives in reducing crime and financial loss to the Local Authority.</p> <p><b>Contact Officer: Paul Jones, Executive Director Finance and Assets</b>  <a href="mailto:Paul.Jones@cheltenham.gov.uk">Paul.Jones@cheltenham.gov.uk</a></p>
<b>Legal implications</b>	<p>The Local Authority is required to ensure that it complies with the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016 and any other relevant/statutory legislation regarding investigations. It should also consider government guidance in this area.</p> <p>The Local Authority has a statutory obligation for enforcing a wide range of legislation, where it is necessary and proportionate to do so. Human rights implications are a consideration of this type of activity and this is included within the Policy.</p> <p>Any requests for directed/covert surveillance or the acquisition of communications data to be undertaken should be necessary and proportionate, and authorised by the appropriate Officer. Both Policies provide information and advice to those seeking authorisation and those officers granting authorisation. Both policies confirm the process to be used and matters to be considered.</p> <p><b>Contact officer: Iona Moseley, One Legal.</b>  <a href="mailto:iona.moseley@teWKesbury.gov.uk">iona.moseley@teWKesbury.gov.uk</a></p>
<b>HR implications (including learning and organisational development)</b>	<p>There will be a requirement to cascade the new policies to all relevant employees and ensure any training is undertaken.</p> <p><b>Contact officer: Julie McCarthy, HR Operations Manager</b>  <a href="mailto:Julie.McCarthy@publicagroup.uk">Julie.McCarthy@publicagroup.uk</a> 01242 264355</p>
<b>Key risks</b>	<p>The Policies demonstrate the Local Authority's consideration of necessity, proportionality and public interest when deciding on surveillance activity or the decision to obtain personal communication data.</p> <p>The Policies set out the legislative framework and principles the Local Authority will abide by in investigations undertaken to mitigate the risk of legal challenge in Court.</p>
<b>Corporate and community plan Implications</b>	<p>Effective enforcement plays an important role in enabling the Local Authority to achieve its priorities and community outcomes.</p>
<b>Environmental and climate change implications</b>	<p>N/A</p>
<b>Property/Asset Implications</b>	<p>There are no property implications associated with this report.</p> <p><b>Contact officer: Dominic Stead, Head of Property Services</b>  <a href="mailto:dominic.stead@cheltenham.gov.uk">dominic.stead@cheltenham.gov.uk</a></p>

## **1. Background**

- 1.1.** The Local Authority's Policies are based on the legislative requirements of the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016 and the Codes of Practice relating to directed surveillance, the use of covert human intelligence sources and the acquisition of communications data. Attached at [Appendix 2](#) and at [Appendix 3](#) are revised Policies.
- 1.2.** The Investigatory Powers Act 2016 now governs communication data requests. The legislation widened the scope of information the Local Authority may obtain for investigations, introduced the necessity for a serious crime threshold and removed the requirement for judicial approval.
- 1.3.** All applications for communications data are made online via the National Anti-Fraud Network (NAFN) which acts as the single point of contact for Local Authorities. NAFN send requests to the Office for Communication Data Authorisations (OCDA) which ratifies all applications from public authorities for approval and if granted, NAFN will then obtain the requested data for the applicant.
- 1.4.** There is a requirement for the Local Authority to nominate a Designated Senior Officer who will confirm to NAFN that the Local Authority is aware of any request and approve its submission. This role is undertaken by the Counter Fraud Manager and the Deputy Counter Fraud Manager.
- 1.5.** Surveillance and the use of a Covert Human Intelligence Source (CHIS) is still governed by the Regulation of Investigatory Powers Act 2000 and any 'RIPA' applications are subject to the same application processes as outlined in the previous Policy – the offence must meet the serious crime threshold and the Local Authority must obtain judicial approval.
- 1.6.** As outlined in 1.5 above, the Local Authority must have a Senior Responsible Officer and Authorising Officers to approve the application before the Court is approached. The arrangements relating to Officers involved in the authorisation process have been updated to reflect the changes in staffing.
- 1.7.** The Senior Responsible Officer is the Acting Chief Executive, Tim Atkins and the Authorising Officers are the Executive Director People and Change, Darren Knight and the Director of Environment, Mike Redman.
- 1.8.** The refreshed Policy introduces a mandatory requirement for staff to complete a Non-RIPA Application Form where surveillance is being undertaken but the offence does not meet the serious crime criteria.
- 1.9.** As reported in April 2019, there were no RIPA applications made by the Local Authority during 2018/2019. There were four Non-RIPA applications made during 2018. Three related to overt activity and one related to an internal investigation.
- 1.10.** The application of these Policies, to govern surveillance and the obtaining of personal communications data, ensures that there is less risk that an individual's human rights will be breached. Furthermore it protects the Local Authority from allegations of the same.

## **2. Consultation**

- 2.1.** The draft Policy was subject to consultation with Enforcement Officers, Governance Group, Executive Leadership Team and One Legal.

<b>Report author</b>	<b>Emma Cathcart, Counter Fraud Manager</b> <a href="mailto:Emma.Cathcart@cotswold.gov.uk">Emma.Cathcart@cotswold.gov.uk</a> 01285 623356
<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Risk assessment</li><li>2. Regulation of Investigatory Powers Act 2000 Surveillance and Covert Human Intelligence Source Policy</li><li>3. Investigatory Powers Act 2016 Acquisition of Communications Data Policy</li></ol>

## Risk Assessment

## Appendix 1

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
1	If the Local Authority fails to put in place adequate policy and process covering the use of RIPA / IPA powers then it risks damage to its reputation and financial loss	Chief Executive	January 2020	4	2	8		Put in place effective management and guidance. Promote the guidance with managers and enforcement officers	Ongoing	Chief Executive	
<p><b>Explanatory notes</b></p> <p><b>Impact</b> – 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><b>Likelihood</b> – 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><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											