

Cheltenham Borough Council
Audit Committee – 20 March 2013
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	To update Audit Committee on the new Regulation Investigatory Powers Act. (RIPA) 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.
Recommendations	<ol style="list-style-type: none"> 1. To note the changes to the RIPA process made by the Protection of Freedoms Act 2012; 2. To agree the revised RIPA Policy Guidelines; and 3. the designation of the nominated Executive Director as the Council's Senior Responsible Officer for the purposes of RIPA. 4. To recommend that Cabinet approve the Policy for immediate use.

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: sarah.farooqi@tewkesbury.gov.uk, 01684 272693</p>

HR implications (including learning and organisational development)	HR implications are only for those employees directly involved in dealing with surveillance ensuring that RIPA legislation is adhered to. Contact officer: donna.sheffield@cheltenham.gov.uk, 01242 774972
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 councils 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) RIPA is the law governing 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.

RIPA AUTHORISATIONS

- 1.4 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". These are criminal offences punishable by a term of at least 6 months imprisonment or criminal offences relating to the under-age sale of alcohol or tobacco.
- 1.5 The Protection of Freedoms Act 2012 made a number of changes, amongst other things, to the RIPA process. From 1 November 2012, local authorities are required to obtain judicial approval from the Magistrates Court before they can use their existing RIPA powers. This applies to all local authority RIPA usage, including communications data, directed surveillance and covert human intelligence sources (CHIS). A judicial approval will also be required if authorisations are being renewed.
- 1.6 The Council will still be required to maintain a central record of internal authorisations signed by authorised officers. However, the authorisation will not take effect until judicial approval has been granted. Approval can only be given if the Magistrate is satisfied that:
 - there were reasonable grounds for the authorising officer approving the application to believe that the surveillance/CHIS was necessary and proportionate and that those grounds remain;

- the authorising officer was of the correct seniority within the Council, at Cheltenham Borough Council these officers are either Executive Directors or Directors;
- the granting of the authorisation was for the prescribed purpose, i.e. preventing or detecting crime and it satisfies the Serious Offence test for directed surveillance.

1.7 The central record of authorisations will be held and maintained by the Governance Risk and Compliance officer who for the purposes of RIPA will be known as the RIPA Coordinator.

SERIOUS OFFENCE TEST

1.8 From 1 November 2012, the power to undertake surveillance is limited to offences that have a custodial sentence of 6 months or more. This is intended to restrict local authorities using surveillance inappropriately. The Council is still able to use RIPA powers for more serious criminal investigations such as benefit fraud, trading standards and licensing. However, in areas where the sentence is less than 6 months it will not be able to be used. The Act provides an exemption to this for under-age sales of tobacco and alcohol, which are punishable only by a fine. Because of the importance of directed surveillance in corroborating investigations into under-age sales of alcohol and tobacco, the test will not apply in these cases.

1.9 It is recommended that the Borough Solicitor and Monitoring Officer be designated as the Senior Responsible Officer for the purposes of RIPA in accordance with the Home Office Covert Surveillance Code of Practice. It is considered good practice that a Senior Responsible Officer should be responsible for:

- the integrity of the process in place within the Council to authorise directed surveillance;
- compliance with the legislation and the Code of Practice;
- engagement with the commissioners and inspectors when they conduct their inspections; and
- where necessary, overseeing the implementation of any post-inspection action plans recommended by the OSC.

1.10 The day-to-day responsibility will continue to be vested in the Council's Governance, Risk and Compliance Officer as the RIPA Coordinator.

REVISED RIPA POLICY GUIDELINES

1.11 The Council last updated its RIPA Policy Guidelines in June 2011. The current RIPA Policy Guidelines have been reviewed in light of legislative changes to the RIPA process.

1.12 A copy of the revised 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 surveillance deemed to be outside of RIPA.

2. Reasons for recommendations

2.1 The terms of reference for the Audit Committee require it to consider the reports of external audit and inspection agencies and monitor management action in response to the issues raised.

2.2 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. The last time Directed Surveillance was authorised was in 2009.

3. Alternative options considered

3.1 None

4. Consultation and feedback

4.1 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.

5. Performance management –monitoring and review

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

Report author	Contact officer: Bryan Parsons Email: bryan.parsons@cheltenham.gov.uk, Tel: 01242 264189
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	20/03/2013	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	
Explanatory notes 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) 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) Control - Either: Reduce / Accept / Transfer to 3rd party / Close											