

Cheltenham Borough Council
Cabinet – 16 April 2013
Regulation Of Investigatory Powers (Ripa)
Revised Policy Guidelines

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| 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 Cabinet 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 approve the revised RIPA Policy Guidelines; and 3. To approve the designation of the nominated Executive Director as the Council's Senior Responsible Officer for the purposes of RIPA. |

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| 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> |

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| HR implications (including learning and organisational development) | There are no direct HR implications in this report. However, there will be implications for those employees involved in surveillance or acting as Senior Responsible Officers, where training will be provided 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 | <i>None</i> |

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 six 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 Corporate 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 directed 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 nominated Executive Director 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 Corporate 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

1.13 The Audit Committee considered this guidance on the 20 March 2013 and made the following comments which were addressed at committee by the officers;

➤ Q Would staff be trained?

A. CBC arranged a training session for 40 people in January 2013 including staff who work

in the GO Partnership, Audit Cotswold and other staff who could possibly be involved in surveillance as it was important that people understood their roles and responsibilities. Additional training would be arranged if a need is identified through the annual appraisal process.

➤ Q. How would staff know what length of sentence could be attributed to different types of offence?

A. When a statute (law) creates a criminal offence the statute will detail the sentence that can be imposed. The statute will therefore set out whether or not an offence attracts a term of imprisonment of 6 months or more. If an officer is unsure whether the matter they are investigating could result in a offence where there is a possible sentence of imprisonment of 6 months or more they will be able to seek advice from One Legal.

➤ Q. How many suspected fraud cases had there been at CBC in the last 12 months?

A. It was not possible to provide a figure at that meeting on the number of cases of suspected fraud in a year however I can inform Members that there have been 428 cases referred to the Benefit investigation team in the last 12 months resulting in;

- a. 56 Cautions,
- b. 23 prosecutions and
- c. 18 administrative penalties.

The Councils Benefit Investigation Team has developed alternative methods of gathering information and intelligence to support its anti-fraud work, because of this RIPA has not been used at Cheltenham Borough Council since 2009. There are arrangements in place to ensure that if there was a need to undertake surveillance outside of RIPA the detail of that work would be authorised and recorded. There have been no reported investigations involving the use of non RIPA surveillance techniques.

➤ Q. Do Parish Councils have powers under RIPA?

A. Clerks at Parish Councils had not received training on RIPA as surveillance was not a power open to Parish Councils. The Corporate Governance, Risk and Compliance Officer could provide a short overview to Parish Councils on the CBC powers if they considered it necessary.

➤ Q. Would we use other agencies to investigate particularly where it was a serious offence?

A. In certain types of offence we are the enforcing authority and it would be our responsibility to undertake the investigation and any surveillance. Other agencies including the police could be involved at an early stage and they would also be required to comply with the requirements of RIPA. The involvement of any other agencies would be considered on a case by case basis, it is not felt that the guidance needs to be amended to reflect this.

1.14 The Audit Committee recommended that the guidance be approved by Cabinet.

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 Audit Committee, the Corporate Governance Group, Audit Cotswolds 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.

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| 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. | Director Resources | 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. | On going | Corporate Governance, Risk and Compliance Officer | | |
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| <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> | | | | | | | | | | | | |