



## **AGENDA ITEM: 7**

**AUDIT AND GOVERNANCE  
COMMITTEE: 25 SEPTEMBER 2012**

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**Report of: Borough Solicitor**

**Relevant Managing Director: Managing Director (People and Places)**

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**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT – QUARTERLY  
MONITORING OF USE OF POWERS**

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### **Borough Wide Interest**

#### **1.0 PURPOSE OF THE REPORT**

1.1 To monitor on a quarterly basis the use of the Regulation of Investigatory Powers Act 2000 (RIPA) to ensure it is being used consistently with the Council's Policy.

#### **2.0 RECOMMENDATIONS**

2.1 That the Council's RIPA activity be noted.

2.2 That it be noted that the procedure for applying for authorisations to carry out directed surveillance and for the use of Covert Human Intelligence Sources will change from 1 November 2012.

#### **3.0 BACKGROUND**

3.1 The Council employ a number of investigative techniques including surveillance, which assist its regulatory functions. Relevant areas of activity can potentially include investigation by Internal Audit, Benefits Fraud Team, Environmental Health, Housing, Licensing, CCTV Services and the MAPs Team. Some activities must be undertaken in accordance with the Regulation of Investigatory Powers Act 2000 ("RIPA"). RIPA, its subordinate legislation and Codes of Practice prescribe the type of activities permitted and the procedures required to

monitor RIPA activity within the Council. As reported previously, this is now supplemented by monitoring through this Committee.

- 3.2 In accordance with the current Scheme of Delegation the Joint Managing Directors and Heads of Service consider whether or not to grant authorisations for surveillance activity. In practice under the Policy this is restricted to the Joint Managing Directors, the Assistant Director (Community Services) and the Assistant Director (Housing and Regeneration). In the case of the authorisation of communications data (i.e. relating to material, such as subscriber and billing records obtained from telecommunications service providers, but not the content of the communication) the authorisation must be from the Joint Managing Directors and via the externally approved specially trained officer (SPOC).
- 3.3 The Council's approved RIPA Guide is made available on the Council's Intranet and is a working document to assist investigating and co-ordinating officers within the Council. Paragraph 5 of the Guide stresses that grantors must believe the authorised activity is (1) necessary for preventing and detecting crime and/or of preventing disorder (2) is proportionate to what is sought to be achieved in carrying out the surveillance activity (e.g. the 24/7 watching of premises where private individuals may go about their lawful business, for the possibility of gaining collateral evidence for a very minor technical infraction of a byelaw would not in all likelihood be proportionate). If it fails either test, authorisations should not be granted.
- 3.4 The Code requires that Councillors should consider internal reports on the use of RIPA on at least a quarterly basis to ensure that it is being used consistently with the Council's Policy and that the Policy remains fit for purpose. It continues that Councillors should not, however, be involved in making decisions on specific authorisations. It is stressed that the involvement of elected members is not to extend to operational decision making or stipulate in detail how the Council discharges the procedure. The Government's position is that there should be no possibility of political interference in law enforcement operations.

#### **4.0 UPCOMING LEGISLATIVE CHANGES**

- 4.1 By the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, (the 2012 Order) changes will come into force on 1 November 2012, in respect of the grounds upon which local authorities can authorise directed surveillance and the way in which authorisations are obtained. From that date authorising officers may not approve directed surveillance unless it is for the purpose of preventing or detecting a criminal offence and it must meet certain conditions. The conditions are that the criminal offence which is sought to be prevented or detected is punishable, whether on summary conviction or on indictment, by a maximum term of at least six months' imprisonment, or would constitute an offence involving the sale of tobacco and alcohol to underage children.
- 4.2 The Protection of Freedoms Act 2012 will bring into force provisions requiring local authorities to have all their RIPA surveillance authorisations (that is, use of directed surveillance and covert human intelligence sources and the acquisition of communications data) approved by a magistrate before they take effect.

These changes will come into force on 1 November 2012. In terms of the approval mechanism, it is envisaged that a representative of the local authority will attend the Magistrates' Court, when it is not in session, for a magistrate to assess the authorisation. The feasibility of using electronic means for the magistrate's approval on the authorisation of communications data alone is being assessed. It is not intended that the mechanism be overly bureaucratic but rather to provide an independent check and balance such that the powers can be utilised in a way that adds to the steps, authorisations and consideration that a local authority already undertakes in introducing one of these proposals. There will be no oversight by the commissioners in respect of the work of the Magistrates' Court. They are fulfilling a different role and a different function.

- 4.3 It is not intended to require a solicitor or other legally qualified person to appear in court to seek the magistrates' approval for an authorisation. It is possible for local authorities to authorise their own officers to appear in court. If there are issues of delay, where an expedited application may be required, the Government will work with the Ministry of Justice and the Courts service on how they may be accommodated practically.

## **5.0 MONITORING OF RIPA ACTIVITY**

- 5.1 In the last quarter no covert surveillance has been authorised.

- 5.2 The Senior Responsible Officer proactively seeks to ensure that the use of covert surveillance in this authority is well regulated. Applications for authorisation to use covert surveillance must be rejected when the Authorising Officer is not satisfied that the surveillance is necessary or proportionate and legal advice should be sought by Authorising Officers in appropriate cases.

- 5.3 Amongst other matters, a RIPA guidance note is circulated within the Council at regular intervals.

## **6.0 THE RIPA POLICY**

- 6.1 The RIPA Guide is annually approved by Cabinet; it is important to ensure the use of RIPA is consistent with the Council's policy.

## **7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 7.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **8.0 FINANCE AND RESOURCE IMPLICATIONS**

- 8.1 There are no additional significant financial and resource implications arising from this report.

## **9.0 RISK ASSESSMENT**

9.1 The Council could be in breach of the relevant legislation if it does not follow the procedures set out in the RIPA Orders and Codes. This could result in the inadmissibility of evidence and the possibility of breaches of the Human Rights Act 1990.

### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this report.

### **Equality Impact Assessment**

This will be considered in relation to any particular authorisation.

### **Appendix**

None