



AGENDA ITEM: 8

**AUDIT AND GOVERNANCE
COMMITTEE: 24 SEPTEMBER 2013**

Report of: Borough Solicitor

Relevant Managing Director: Managing Director (People and Places)

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**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT – OSC
INSPECTION UPDATE AND QUARTERLY MONITORING OF USE OF
POWERS**

Borough Wide Interest

1.0 PURPOSE OF THE REPORT

1.1 To monitor the use of the Regulation of Investigatory Powers Act 2000 (RIPA) to ensure it is being used consistently with the Council's Policy and update on the recent inspection of the Councils use and arrangements for the RIPA on behalf of the Office of the Surveillance Commissioner (OSC).

2.0 RECOMMENDATIONS

- 2.1 That the Council's RIPA activity be noted.
- 2.2 That the feedback on the OSC inspection also be noted.

3.0 BACKGROUND

- 3.1 The Council employ a number of investigative techniques including surveillance, which assist its regulatory functions. Relevant areas of activity include investigation activity by Internal Audit, Benefits Fraud Team, Environmental Health, Housing, Licensing, CCTV Services and the MAPs Team. Some activities must be undertaken in accordance with RIPA. RIPA, its subordinate legislation and Codes of Practice in some considerable detail prescribe the type of activities permitted and the procedures required to monitor RIPA activity within the Council. This includes a requirement to monitor any activity 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). Revisions now mean that an authorisation for relevant activity would have to be approved by order of a single Magistrate. 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 through an 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. The RIPA Guide was approved by Cabinet at its last meeting and by this committee too.
- 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 OSC INSPECTION

- 4.1 On 27 June 2013 the Council received a visit from Sir David Clark, who undertook an inspection of the Council's relevant records as well as interviewing several officers engaged in the process.
- 4.2 I am pleased to report that the resulting report from the OSC gave significant praise to the arrangements in place and concluded that the Council has "a sound RIPA structure with knowledgeable, committed and conscientious senior officers with commendable arrangements for oversight and training". The report gave rise to only one recommendation relating to two minor amendments to the RIPA Guide. These have now been introduced under delegated arrangements.

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, including relevant training, a RIPA guidance note is circulated within the Council at regular intervals.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

7.1 There are no significant sustainability impacts associated with this report, although appropriate use of powers will assist in facilitating the avoidance of crime and disorder issues. 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