



Report of: Corporate Director of Finance & Resources

Meeting of:	Date	Agenda item	Ward(s)
Audit Committee	28 January 2016		All

Delete as appropriate		Non-exempt
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SUBJECT: THE COUNCIL'S USE OF SURVEILLANCE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000

1. Synopsis

- 1.1 The report updates the committee on the council's use of covert surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA).

2. Recommendations

- 2.1 To note the level and nature of covert surveillance undertaken by the council.

3. Background

- 3.1 RIPA provides a statutory framework regulating the use of directed surveillance and the conduct of covert human intelligence sources (informants or undercover officers) by public authorities. The Act requires public authorities, including local authorities, to use covert investigation techniques in a way that is necessary, proportionate and compatible with human rights. RIPA also provides for the appointment of a Chief Surveillance Commissioner to oversee the way in which public authorities carry out covert surveillance.
- 3.2 Directed surveillance is covert surveillance that is conducted for the purposes of a specific investigation or operation and it is likely to result in the obtaining of private information about a person. Private information includes any aspect of a person's private or personal relationship with others, including family and professional or business relationships. Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information.
- 3.3 The use of covert surveillance techniques by local authorities has been the subject of some controversy in recent years. The Government introduced significant changes under the

Protection of Freedoms Act 2012 which came into effect on 1 November 2012. The changes mean that a local authority can now only grant authorisations under RIPA for the use of directed surveillance where it is for the purpose of investigating criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. A magistrate's approval is also required before the RIPA authorisation can take effect.

3.4 All RIPA authorisations must be signed by an authorising officer. Authorising officers must be trained before issuing any authorisations and they should also attend regular refresher training. The council currently has 5 authorising officers:

- Corporate Director Housing & Adult Social Services
- Director of Operations (Housing)
- Service Director Public Protection
- Director Public Realm
- Audit Manager (Investigations)

Home Office Codes of Practice

4.

4.1 In December 2014 the Home Office issued revised codes of practice – Covert Surveillance and Property Interference Code of Practice and Covert Human Intelligence Sources Code of Practice – replacing the previous codes of practice issued in 2010. Public authorities may be required to justify, with regard to the codes of practice, the use or granting of authorisations in general or the failure to use or grant authorisations where appropriate.

4.2 The Covert Surveillance and Property Interference Code of Practice sets out that elected members of a local authority should annually review the authority's use of RIPA. The code also provides that public authorities should appoint a Senior Responsible Officer (SRO) to be responsible for the authority's compliance with RIPA. The SRO will engage with the OSC inspectors when they conduct their inspections and where necessary oversee the implementation of post-inspection action plans. Within local authorities, the SRO should be a member of the corporate leadership team and the Corporate Director of Finance & Resources has been nominated to this role for the council.

5. OSC inspection

5.1 The OSC carries out an inspection of the council's management of covert activities every 2 to 3 years. The last inspection was on 15 November 2013 and was carried out by Assistant Surveillance Inspector, Mr L W Turnbull.

5.2 An action plan was drawn up to address the inspector's recommendations and this was considered at Audit Committee on 29 September 2014. The action plan is reviewed quarterly by the SRO and an exempt copy of the updated action plan is at annex A to this report.

5.3 The council maintains a central register of authorisations. The register was previously maintained by Internal Audit but following the recommendation of the OSC Inspector the register is now maintained by Legal Services. Legal Services is now also responsible for issuing the unique reference numbers (URNs) for investigations.

5.4 Legal Services has recently provided training to the council's authorising officers and investigating officers on RIPA, the use of social media for covert investigation and the revised codes of practice.

6. Use of RIPA

- 6.1 During this financial year since 1 April 2015 the council has authorised directed surveillance on 1 occasion for Housing Operations to investigate a case of criminal damage, harassment and intimidation on a council estate. The RIPA authorisation was given judicial approval by a magistrate.
- 6.2 For the previous financial year (1 April 2014 to 31 March 2015) the council authorised directed surveillance on 4 occasions for Housing Operations to investigate:
- 2 cases of anti-social behaviour and drug-dealing
 - 1 case of harassment & racially motivated hate crime
 - 1 case of unlawful subletting & benefit fraud
- All 4 authorisations were given judicial approval by a magistrate.
- 6.3 The council has not authorised the use of a covert human intelligence source since October 2010.
- 6.4 The trend in the number of RIPA authorisations has been downwards. By comparison the council has granted the following number of directed surveillance authorisations in previous years:
- 2014/15 – 4
 - 2013/14 - 6
 - 2012/13 – 17
 - 2011/12 – 15
 - 2010/11 – 23
 - 2009/10 – 34
 - 2008/09 - 38

7. Implications

7.1 Financial implications:

There are no financial implications arising directly from this report. Robust anti-fraud activity is an integral part of the council's strategy for safeguarding its assets and maximising its use of resources. The use of investigatory surveillance is one of the tools the council uses to achieve these aims.

7.2 Legal Implications:

RIPA was introduced to ensure that covert surveillance undertaken by public authorities is undertaken in accordance with the European Convention on Human Rights and the Human Rights Act 1998.

The council can only undertake covert surveillance if the proposed operation is authorised by one of the council's authorising officers and subsequently approved by a magistrate. A local authority can only use directed surveillance if it is necessary to prevent or detect criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. The authorising officer must also be satisfied that the proposed directed surveillance is proportionate to what is sought to be achieved.

There has been a reduction in the number of directed surveillance authorisations granted by the council since 1 November 2012 when the Protection of Freedoms Act 2012 introduced significant changes to local authorities' use of RIPA. However, the council could still face a legal challenge to the way in which covert surveillance is conducted. This could lead to the evidence obtained being ruled as inadmissible and/or a complaint to the Investigatory Powers Tribunal.

7.3 Environmental Implications:

Nil

7.4 Resident Impact Assessment:

A resident impact assessment has not been conducted as this report only provides monitoring information and a legal update for the Committee.

8. Conclusion and reasons for recommendations

- 8.1 The OSC made recommendations as to how the council could improve the management of its covert activities and these recommendations are being implemented.
- 8.2 The Protection of Freedoms Act 2012 has introduced additional safeguards to the use of RIPA and the impact of covert surveillance on the privacy of those under investigation. This has seen a reduction in the use of directed surveillance by the council.

Appendix A (exempt) - Updated action plan to implement recommendations of OSC Inspection Report

Background papers: (available on request)

Home Office Code of Practice: Covert Surveillance and Property Interference

Home Office Code of Practice: Covert Human Intelligence Sources

Final report clearance:

Signed by:



Corporate Director for Finance and Resources

Date

Received by:

Head of Democratic Services

Date

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