

CHESHIRE EAST COUNCIL

REPORT TO AUDIT & GOVERNANCE COMMITTEE

Date of meeting: 29 March 2011

Report of: Head of Policy & Performance

Title: Operational Procedures for Covert Surveillance –
Regulation of Investigatory Powers Act 2000

1.0 Report Summary

- 1.1 To provide assurance that Cheshire East Council is complying with the requirements for covert surveillance under the Regulation of Investigatory Powers Act, 2000, (RIPA).
- 1.2 RIPA is designed to control the use of surveillance to ensure that there has been a consideration of less intrusive options, that the necessity and proportionality of any surveillance has been assessed and that it has been properly authorised.
- 1.3 Key to the use of RIPA is that it has to be for the purpose of preventing or detecting crime or preventing disorder. Examples of its use in Cheshire East would be tackling serious crimes, such as housing benefit fraud, rogue traders and test purchases by Trading Standards.
- 1.4 The government is currently conducting a review of the use of RIPA and access to communications data, and there will be implications for the Authority in the administration of this.

2.0 Recommendations

- 2.1 That the Committee note the requirements of RIPA legislation and the actions in place to ensure that the Council complies with these requirements.

3.0 Reasons for Recommendations

- 3.1 It is best practice for Members to have involvement in the overall approach to RIPA and monitor the Authority's surveillance processes, culture and controls. At its meeting on 16th August, 2010, (in which the reviewed Policy and Procedures were approved) the Cabinet agreed that the Annual Report to Members should be submitted to this Committee. It had previously been submitted to Corporate Scrutiny Committee.

4.0 Wards affected

4.1 Potentially all.

5.0 Local Ward Members

5.1 Potentially all.

5.0 Policy Implications including Climate change and Health

6.0 N/a

7.0 Financial Implications (Authorised by the Borough Treasurer)

7.1 RIPA Policies and Procedures and the associated independent inspection regimes require the highest standards of professional competence from the Council's enforcement staff, as well as from managers who are authorised to approve activities under the policies. Consequently, the Compliance Unit and Services need to ensure that RIPA training takes place at frequent intervals.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 The Regulation of Investigatory Powers Act (2000) sets out processes which must be adhered to with regard to both surveillance and the acquisition and disclosure of communications data. The Regulation of Investigatory Powers (Communications Data) Order 2010 and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 came into force on 6th April, 2010, and both Orders are relevant to the policies to be approved.

The Office of the Surveillance Commissioner (OSC) oversees the use by local authorities of surveillance powers under the RIPA legislation and enables these authorities to improve their understanding and conduct of covert activities. The Chief Commissioner's Office carries out regular inspections, which take the form of interviews with senior management and operational staff at all levels, assessment of documentation relating to strategies, policies and procedures and detailed analysis of individual operations. Cheshire East Council was inspected on 11th May 2010. No recommendations were made, and the Inspector described the council's processes and documentation as being "of the highest order".

9.0 Risk Management

9.1 Without clear and robust policies and procedures in place, there would be a risk that officers would fail to comply with the relevant legislation and codes of practice. Consequently, complaints may be made against the authority by aggrieved persons, which may proceed to investigation by the independent tribunals set up by RIPA. The tribunals have the power to cancel authorisations, order the destruction of any records obtained in

exercise of the powers conferred by RIPA and award compensation as they see fit.

10.0 Background

10.1 RIPA allows the use of covert surveillance by local authorities in those circumstances where the required information cannot be obtained by any other means. Use of RIPA seeks to ensure that councils only use covert surveillance where it is necessary for specific, legally prescribed purposes, and that the risk of infringing individual rights is kept to a minimum. By following the authorisation procedures set out in RIPA, Council Officers are ensuring they can demonstrate that the measures taken are necessary, proportionate and lawful.

10.2 RIPA requires a number of senior officers who have been trained to the appropriate level to be nominated as Authorising Officers. It is the responsibility of these officers to consider all RIPA applications and to grant or refuse authorisations, as appropriate.

10.3 Central Record of Authorisations

Under the Act, the Council must keep a detailed record of all authorisations, renewals, reviews, cancellations and rejections for inspection. This Central Record of Authorisations is maintained by the Compliance Team within Internal Audit, who are also responsible for related administrative functions. The Borough Solicitor has a monitoring role to review and sign off this Record on a quarterly basis.

10.4 In 2009/2010 only one RIPA application was authorised. In 2010/2011 to date, 8 applications have been authorised, 7 of which are related to Trading Standards' test purchasing. The powers of covert surveillance under RIPA can only be used in the prevention and detection of crime and disorder. In order to use covert surveillance, the Council must be able to demonstrate necessity (that less intrusive methods have been considered and then discounted) and proportionality. It should only be used as a last resort. The Senior Responsible Officer is the Borough Solicitor and there are currently seven Authorising Officers – all members of the Corporate Management Team. All Authorising Officers, as well as in excess of 100 members of staff, have received thorough in-house training in the use of RIPA.

10.5 CCTV

CCTV systems are normally not within the scope of RIPA since they are overt and not being used for a "specific operation or investigation". However, the protection afforded by RIPA is available when they are used for enforcement activities.

10.6 Future issues

The Government has conducted a review of the use of RIPA and access to communications data. The Protection of Freedoms Bill, which is currently going through Parliament, will require public bodies to obtain the approval of a magistrate before RIPA powers can be used, and it will also restrict the use of RIPA to cases where the offence under investigation carries a custodial sentence of six months or more. (There is an exception where RIPA is used in corroborating investigations into underage sales of alcohol and tobacco.) It is anticipated that further advice on how to apply the new regulations will be issued in 2012.

11.0 Recommendation

Audit and Governance Committee to:

- Note the arrangements in place to ensure that the Council ensures compliance with RIPA and operates best practice
- Consider any ongoing involvement in RIPA and any recommendations to feed into Cabinet

12.0 The background papers relating to this report can be inspected by contacting the report writer:

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