

-CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting: 28th March 2013
Report of: Head of Performance, Customer Services and Capacity
Subject/Title: Compliance with Regulation of Investigatory Powers Act (2000) (RIPA)
Portfolio Holder: Councillor David Brown

1.0 Report Summary

1.1 This report provides an update on:

- how the Council has complied with RIPA legislation during 2012/13 and the number of RIPA applications which have been submitted and authorised.
- changes made to the existing RIPA Policy and Procedures to take account of the requirements of the Protection of Freedoms Act 2012.
- the forthcoming inspection by the Office of the Surveillance Commissioner.

2.0 Recommendation

2.1 That the Committee note the contents of the report in respect of the numbers of applications, actions taken to update the RIPA Policy and Procedures, the forthcoming visit by an Inspector from the Office of the Surveillance Commissioner, and the current arrangements in place to ensure that the Council complies with the legislation.

3.0 Reasons for Recommendations

3.1 In order to form an opinion on the Council's compliance with this legislation, the Audit and Governance Committee needs to gain assurance that there are effective arrangements in place to record, co-ordinate and authorise requests for directed surveillance, and that the Council complies fully with the requirements of RIPA legislation in so doing.

4.0 Wards Affected

4.1 All wards.

5.0 Local Ward Members

5.1 Not applicable.

6.0 Policy Implications including - Carbon reduction - Health

Using RIPA powers can conflict with an individual's human rights, and so it is imperative that, when investigating wrongdoing, certain conditions are met in each case, in order that successful prosecutions can be made.

By following the authorisation procedures set out in RIPA legislation and outlined in the Council's Policy and Procedures (Surveillance under the Regulation of Investigatory Powers Act 2000 – Policy and Procedures – 1st November 2012), officers are demonstrating that the surveillance is necessary for a purpose permitted by the Human Rights Act 1998 and that it is a proportionate measure to take, given all the circumstances.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 Failure to comply with the legislation can lead to the Office of the Surveillance Commissioner withdrawing the Council's ability to conduct directed surveillance for a period of time, which would then result in a follow up inspection. This would have a detrimental impact on the Council's ability to carry out investigations.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The legal implications arising from the primary and secondary legislation referred to in this report are contained within the body of the report, including measures to ensure compliance, and the importance of ensuring compliance.

9.0 Risk Management

- 9.1 The impact on the Council of not complying with the legislation would be significant, as identified above in 7.1.

10.0 Background and Options

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a regulatory framework to enable public authorities to obtain information through the use of certain covert investigatory techniques. The Protection of Freedoms Act 2012, which came into force on 1st November, 2012, requires public authorities to acquire judicial approval to use covert surveillance techniques. It also restricts the use of surveillance to the investigation of offences which attract a custodial sentence of six months or more.

10.1 Compliance with RIPA Legislation and changes made to existing RIPA policy and procedures

The Council will, on occasion, need to use directed surveillance in order to carry out its enforcement functions effectively, e.g. benefit fraud, planning enforcement, licensing enforcement, trading standards, environmental health

and community safety investigations. Directed surveillance is essentially covert surveillance in places open to the public. Using RIPA powers can conflict with an individual's human rights, and so it is imperative that, when investigating wrongdoing, certain conditions are met in each case, in order that successful prosecutions can be made. In particular, RIPA requires that covert techniques are only used when it is necessary and proportionate to do so. All covert surveillance must be properly authorised and recorded, the tests of necessity and proportionality must be satisfied, and the potential for collateral intrusion must be considered and minimised.

All applications must be authorised by an Authorising Officer; for local authorities, this role is restricted to the Chief Executive and Directors. In the case of the Council, the Head of Human Resources and Organisational Development is also an Authorising Officer. The Head of Legal and Democratic Services is not an Authorising Officer, as he/she assumes responsibility as the Monitoring Officer for the integrity of the process and procedures, to ensure that the council complies with the requirements of the legislation.

The existing RIPA Policy and Procedures were revised with effect from 1st November 2012 to take account of the new requirements following the implementation of the Protection of Freedoms Act 2012 (i.e. additional approval by a Justice of the Peace and restrictions regarding the investigation only of offences attracting a custodial sentence of six months or more). They were submitted to and approved by Corporate Management Team on 30th October 2012 and by Cabinet in December 2012.

10.2 Access to Communications Data – use of National Anti Fraud Network

The Regulation of Investigatory Powers (Communications Data) Order 2010 currently sets out which organisations can access communications data and for what purposes. The Council is limited to accessing only service user and subscriber data i.e. the 'who', 'when' and 'where' of a communication but not the actual content. The Council is required to nominate a Single Point of Contact (SPOC), who needs to be an accredited person, to ensure that data is obtained lawfully and to facilitate access to the data with the communications service providers. The SPOC may be an employee of the Council or an externally appointed person. It was recommended to and approved by Corporate Governance Group on 11th October, 2012 that the Council should use the SPOC service provided by the National Anti-Fraud Network. The changes to the procedures were subsequently incorporated into the revised RIPA Policy and Procedures (1st November, 2012) which were submitted to and approved by Corporate Management Team and Cabinet, as outlined above.

10.3 Numbers of applications authorised

Thirty-eight RIPA applications have been authorised since 1st April 2009:

2009-2010	1
2010-2011	9
2011-2012	10
2012- 2013 to date	<u>18</u>
	38

The Council has applied to access communications data on six occasions (3 in 2011/12 and 3 in 2012/13); NAFN (National Anti-Fraud Network) have acted as SPOC (Single Point of Contact) for the Council for the cases this year.

Numbers of applications were low in the early years of Cheshire East Council as the enforcement teams were still being established. Numbers have increased in 2012/2013, in part because there has been a particular focus on cybercrime.

10.4 Forthcoming visit by an Inspector from the Office of the Surveillance Commissioner

Notification has been received from the Office of the Surveillance Commissioner that the Council is to be inspected on 2nd May 2013. Inspections are normally conducted on a biennial basis. The Council was last inspected on 11th May 2010, following which there were no recommendations. At that time we had made little use of RIPA powers, but it was considered by the Inspector that we had 'put in place policies, procedures, guidance and training 'of the highest order''. Preparations are currently underway for the forthcoming visit.

- 10.5** It is proposed that, following the response to the Inspection, a further report is submitted to the Audit & Governance Committee, outlining the Inspector's findings and recommendations.

11.0 Access to Information

- 11.1** The background papers relating to this report can be inspected by contacting the report writer:

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