

CHESHIRE EAST COUNCIL

REPORT TO: CABINET

Date of Meeting:	16 August, 2010
Report of:	Head of Policy and Performance
Subject/Title:	Policy and Procedures – Regulation of Investigatory Powers Act 2000 (RIPA)
Portfolio Holder:	Councillor David Brown

1.0 Purpose of Report

1.1 To present the following updated policies and procedures for approval.

1.1.1 Cheshire East Policy and Procedures for Surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA)

1.1.2 Cheshire East Policy and Procedures for the Acquisition and Disclosure of Communications Data under the Regulation of Investigatory Powers Act 2000

2.0 Decision Requested

2.1 That the updated policies and procedures identified in 1.1 above are adopted with immediate effect.

3.0 Reasons for Recommendations

3.1 To ensure that the Council has clear and robust policies and procedures in place to guide Officers in carrying out their investigatory functions.

4.0 Wards Affected

4.1 Potentially all.

5.0 Local Ward Members

5.1 Potentially all.

6.0 Policy Implications including - Climate change - Health

6.1 N/a

7.0 Financial Implications (Authorised by the Borough Treasurer)

- 7.1 The 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. The Compliance Unit and Services need to ensure that arrangements are in place to ensure ongoing training and meet professional development requirements.

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 both to 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 and both Orders are relevant to the policies to be approved.

On 3rd June, the Office of the Surveillance Commissioner (OSC), whose role is to oversee the use by local authorities of surveillance powers under the RIPA legislation, and to enable public authorities to improve their understanding and conduct of covert activities, wrote to the Chief Executive setting out the results of the Council's first inspection of its surveillance practices. No recommendations were made, and the Inspector described the Council's processes which he had inspected, including the document "Surveillance under RIPA – Policy and Procedure" as "of the highest order".

- 8.2 This endorsement by the OSC indicates an external recognition by the appropriate regulatory body of the Council's compliance with the surveillance legislation in this respect. Notwithstanding this, some minor practical changes to reflect development of the Council's structure have been made.
- 8.3 The OSC is not responsible for vetting policies in relation to Acquisition of Communications Data, and the policy referred to at 1.1.2 above which is attached to this report has therefore not been seen or approved by the OSC. Nonetheless, it has been internally reviewed for legal compliance.

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 and Options

- 10.1 The Regulation of Investigatory Powers Act (RIPA) allows the use of covert surveillance by local authorities in those circumstances where the required

information cannot be obtained by 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 Since the inception of Cheshire East Council, only one RIPA application has been authorised (although it is expected that more applications will be submitted now that many of the relevant teams (e.g. Trading Standards, Licensing) are more established). 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 five Authorising Officers – all members of the Corporate Management Team. All Authorising Officers, as well as in excess of 80 members of staff, have received thorough training in the use of RIPA.
- 10.3 Cabinet approved the existing Policy and Procedures at its meeting on 24th March 2009. It is now appropriate to review and revise these for number of reasons:
- The Council now has experience of operating the Policy and Procedures and needs to incorporate some of the learning points.
 - The Home Office issued new statutory codes of practice on 6th April, 2010, to be incorporated into existing procedures.
 - Local Authorities are inspected on a bi-annual basis by an Inspector from the Office of the Surveillance Commissioner. This Council was inspected on 11th May and received an excellent report. (Copy of report is attached.) However, during discussions with the Inspector, there were useful examples of best practice, which have also been incorporated into these procedures.
 - The policies and procedures are subject to annual review as agreed by Cabinet on 24th March 2009.
- 10.4 A copy of the updated Policy and Procedures is attached. The changes proposed relate primarily to the role and seniority of the Authorising Officers and the appointment of a Senior Responsible Officer, with overall responsibility for the integrity of the operation. A further change is that the Annual Report to Members should, in future, be submitted to the Audit and Governance Committee rather than Corporate Scrutiny Committee. This was proposed to the Corporate Scrutiny Committee at their meeting on 15th March, 2010, when the Annual Report was submitted. It was suggested that the Scrutiny Committees should continue to have information about RIPA and/or review its operation in accordance with the Scrutiny Work Programmes if the individual committees would find this beneficial, but the Audit and Governance Committee

is the more appropriate route for compliance issues to be reported routinely. Other changes in the document relate to record management issues.

- 10.5 It is worth noting that the Government has recently announced a review of the use of RIPA as part of a wider review of counter-terrorism laws. This review will be overseen by the former Director of Public Prosecutions, Lord MacDonald.

11.0 Overview of Year One and Term One Issues

- 11.1 The adoption of the updated policies and procedures will mean that this Council has an appropriate framework in place to ensure that it is in a position to fulfil its legal obligations and meet the highest standards of professional practice. The policies and procedures are subject to annual review.

12.0 Access to Information

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

Name: Sandra Smith
Designation: Compliance Unit Manager
Tel No: 01270 685865
Email: Sandra.smith@cheshireeast.gov.uk