

Cheshire East Council

Cabinet

Date of Meeting:	3 rd May 2016
Report of:	Director of Legal Services
Subject/Title:	Review of Policy and Procedures – Surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA)
Portfolio Holder:	Councillor Paul Findlow, Corporate Policy and Legal

1. Report Summary

1.1. The Regulation of Investigatory Powers Act 2000 (RIPA) was enacted to consolidate and update a range of law enforcement investigative powers to ensure these powers were fit for purpose, as well as being compliant with the UK's obligations under the European Convention on Human Rights. A number of codes of practice have also been issued under this Act. The Protection of Freedoms Act 2012 introduced additional safeguards in respect of certain surveillance undertaken by local authorities.

1.2. Cheshire East Council occasionally needs to use directed surveillance in order to carry out its enforcement functions effectively, e.g. planning enforcement, licensing enforcement, trading standards, environmental health and community safety investigations. RIPA provides a regulatory framework to enable public authorities to obtain information through the use of certain covert investigatory techniques.

1.3. In December 2014, the OSC updated RIPA procedures and guidance. These changes have been incorporated into the Council's own policy and procedures, together with recommendations following the last RIPA inspection. The updated policy and procedure is attached at Appendix 1. Training materials have been updated accordingly and a new programme of training implemented.

2. Recommendation

2.1 It is recommended that Cabinet review and approve the updated RIPA Policy and Procedures.

3. Reasons for Recommendation

3.1 Using RIPA powers can conflict with an individual's human rights and so it is imperative that, when investigating alleged 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 contained within the Council's

own Policy, officers can demonstrate that any 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.

4. Other Options Considered

None.

5. Background

5.1 It is imperative that, when investigating alleged wrongdoing, certain conditions are met in each case in order that successful prosecutions can be made. In particular, it is essential that covert surveillance is only used when it is necessary and proportionate to do so. Therefore, this 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. Authorisations must be granted by a Magistrate before any activity takes place.

5.2 The RIPA Policy and Procedures were last updated in December 2012. The Policy and Procedures attached at Appendix 1 were updated in December 2015 and require Cabinet approval.

The main changes are as follows:

- Addition of Paragraph 5.3 to cover the use of social networking sites and the internet
- Paragraph 5.7 – the role of the Authorising Officer has been more clearly defined
- Paragraph 6.6 – the Cancellation procedure has been changed to emphasise the responsibility of the Authorising Officer
- Paragraph 6.8 has been added to include details of a separate central register of Applications for Communications Data. These were previously included in the central register for Applications for Directed Surveillance, but, as they are inspected separately by a different Commisisoner, they are now two separate registers.
- Amendments to reflect changes to job titles identified and minor typographical corrections within the Policy and Procedures.

6. Wards Affected and Local Ward Members

All wards

7. Policy Implications

None.

8. Legal Implications

8.1 Given the possible infringement of people's human rights when using these powers, it is important that the Council complies fully with the law and its own policy and that it reflects on its use of these powers to ensure it is proportionate at all times.

9. Financial Implications

9.1 Failure to comply with the legislation can lead to the Officer of the Surveillance Commissioner withdrawing the Council's ability to conduct directed surveillance for a period of time. This would have a detrimental impact on the Council's ability to conduct investigations. Fines may also be imposed if the Council were found to be breaching Human Rights legislation.

10 Human Resources implications

None.

11. Equality Implications

None.

12. Rural Community Implications

None.

13. Public Health Implications

None

14. Risk Management

14.1 The impact on the Council of not complying with the legislation would be significant, as identified above in 8.1 and 9.1.

15. Background Papers

15.1 <https://osc.independent.gov.uk/wp-content/uploads/2015/06/OSC-Annual-Report-2014-15-web-accessible-version.pdf>

15.2 OSC Procedures & Guidance Document - 2014

16.Contact Information

Name:	Julie Gibbs
Designation:	Senior Compliance and Customer Relations Officer
Tel. No.:	01270 686606
Email:	julie.gibbs@cheshireeast.gov.uk