

## **CABINET ITEM COVERING SHEET PROFORMA**

**AGENDA ITEM**

**REPORT TO CABINET**

**20 MAY 2010**

**REPORT OF  
CORPORATE  
MANAGEMENT TEAM**

### **CABINET DECISION/**

**CORPORATE MANAGEMENT AND FINANCE – Lead Cabinet Member – Councillor  
Laing**

**HOUSING AND COMMUNITY SAFETY - Lead Cabinet Member - Councillor S Nelson**

### **REGULATION OF INVESTIGATORY POWERS LEGISLATION**

1. Summary

To update Members regarding revisions to the Regulation of Investigatory Powers legislation (RIPA) and codes of practice; to summarise the new duties and responsibilities this legislation places on local authorities, their officers and members; and to recommend policies and procedures to satisfy the new duties and responsibilities.

2. Recommendations

It is recommended that Cabinet:-

- (1) affirms the position regarding the Council's Authorising Officers and the Director of Law and Democracy as the senior officer responsible for RIPA, as outlined in paragraph 5 of the report;
- (2) approves the proposed procedure specified in paragraph 5 of the report regarding the setting of the Council's RIPA policy and the review of the use of RIPA on an annual basis;
- (3) agrees to receive information on the use of RIPA in the quarterly Finance and Performance reports to Cabinet;
- (4) ratifies the current RIPA Policy and Procedures document referred to at paragraph 6 of the report;
- (5) authorises the Director of Law and Democracy to amend the Policy and Procedures document, in consultation with the Cabinet Members for Housing and Community Safety and for Corporate Management and Finance, in order to reflect the new RIPA requirements;
- (6) notes the RIPA authorisation and application details for 2009/10 included at paragraphs 9 to 11 of, and at Appendix 1 to the report.

### 3. Reasons for the Recommendations

- (1) To confirm the Council's current RIPA Authorising Officers and senior responsible officer.
- (2) To agree the procedure for approving the RIPA Policy and Procedures annually.
- (3) To approve the procedure for reporting regularly to Members regarding the use of RIPA.
- (4) To agree the current RIPA Policy and Procedures.
- (5) To authorise the revision of the current Policy and Procedures to reflect the new legislative requirements.
- (6) To receive the details of RIPA authorisations and applications for 2009/10.

### 4. Members Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

**Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter),**

**and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.**

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**RECOMMENDATIONS**

It is recommended that Cabinet:-

- (1) affirms the position regarding the Council's Authorising Officers and the Director of Law and Democracy as the senior officer responsible for RIPA, as outlined in paragraph 5 of the report;
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## **DETAIL**

### **Background**

1. Under RIPA, various public authorities, including local authorities such as Stockton, can authorise:-
  - directed surveillance (eg covert camera surveillance) in a manner likely to obtain private information about an individual;
  - a covert human intelligence source ("CHIS"), which is someone who establishes or maintains a personal or other relationship with another individual for the covert purpose of obtaining information;
  - the acquisition of communications data (eg not contents of a communication, but information about the use made by a person of any postal or telecommunications (eg mobile telephone) service).
2. The only grounds for such authorisations are for the prevention or detection of crime or of preventing disorder.

### **Consultation on changes to RIPA**

3. A public consultation took place on RIPA from 17 April to 10 July 2009 which invited views on, amongst other things, all relevant public authorities listed under RIPA, the ranks of officers able to authorise under RIPA and the statutory purposes for which RIPA can be used. Of the responses received, most were broadly supportive of the Government's (and local authorities') view that public authorities had a continuing well-founded need to authorise the carrying out of directed surveillance or the conduct or use of covert human intelligence sources under RIPA when it was necessary and proportionate to do so. The Home Office has consequently published new RIPA Orders and Codes of Practice on this basis.

### **New RIPA requirements**

4. The RIPA (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 and revised Codes of Practice for covert surveillance and CHIS have been published and came into force on 6 April 2010. They have the following effects:-

#### **Previous requirements maintained**

- The only grounds for which RIPA authorisations can be given by local authorities is for the purpose of preventing or detecting crime or of preventing disorder;
- The authorisation levels when knowledge of confidential information is likely to be acquired or when a vulnerable individual or juvenile is to be used as a covert human intelligence source (CHIS) is the Head of Paid Service or (in his or her absence) the person acting as the Head of Paid Service.

#### **New requirements for local authorities with respect to Officers**

- The prescribed officers who can sign authorisations have been revised to "Director, Head of Service, Service Manager or equivalent" (and more senior posts).

- It is considered good practice for a senior responsible officer (who should be a member of the corporate leadership team) to be made responsible for:-
  - the integrity of the process in place within the local authority for the management of CHIS;
  - compliance with Part II of RIPA and with the Codes;
  - oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
  - engagement with the Office of the Surveillance Commissioner (OSC) inspectors when they conduct their inspections, where applicable; and
  - where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner.
  - ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the OSC.
  - where an inspection report highlights concerns about the standards of authorising officers, the named individual will be responsible for ensuring the concerns are addressed.

#### **New requirements for Members**

- Councillors in a local authority should review the authority's use of RIPA and set the policy at least once a year.
- Councillors in a local authority should also consider internal reports on use of RIPA on at least a quarterly basis to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.

#### **The Council's response to the new RIPA requirements**

5. In relation to the new requirements:-

- All of the Council's current Authorising Officers are Directors, Heads of Service, Service Managers or equivalents.
- The Director of Law and Democracy has always been the senior responsible Officer for RIPA, with responsibilities for each of the matters specified in the previous paragraph.
- It is proposed that Cabinet receives a report at the beginning of each municipal year, in order to set the Council's RIPA policy and review the use of RIPA.
- It is also proposed that information on the use of RIPA is included in the quarterly Finance and Performance reports to Cabinet. This will enable Members to determine if the RIPA powers are being used consistently with the Council's Policy, and that the Policy continues to be fit for purpose.

## The Council's RIPA Policy

6. The Council has had a Policy and Procedures document in place since the inception of the RIPA legislation. The current Policy and Procedures document is accessible at [www.stockton.gov.uk/yourcouncil/36659/publicationscheme/freedomofinformationact2000/reginvestpowers](http://www.stockton.gov.uk/yourcouncil/36659/publicationscheme/freedomofinformationact2000/reginvestpowers).
7. A covert surveillance inspection took place on 13 August 2009 and the Inspector commented that the Council's policy document "is a model and the OSC (Office of Surveillance Commissioners) has ..... permission to use it as an example of good practice." The OSC letter enclosing the Inspection report also referred to "the conspicuous care taken by (your) officers in relation to certain specific investigations."
8. The Policy document will however need to be reviewed and revised to reflect the new RIPA requirements.

## RIPA authorisations/applications

9. During 2009/10 the following covert surveillance activity took place:-
  - Directed Surveillance  
The number of directed surveillance authorisations granted during the year:- 6  
The number of authorisations in force at the end of the year:- 3
  - CHIS  
The number of CHIS recruited during the year:- 0  
The number of CHIS who ceased to be used during the year:- 0  
The number of active CHIS at the end of the year:- 0
10. As regards communications data applications the following occurred for the year ending 31 December 2009:-
  - Number of applications submitted to a Designated Person for a decision to obtain communications data which were rejected after due consideration 0
  - Number of notices requiring disclosure of communications data within the meaning of each subsection of section 21(4) of the Act or any combination of data 27
  - Number of authorisations for conduct to acquire communications data within the meaning of each subsection of section 21(4) of the Act or any combination of data 27
  - Number of recordable errors which have been recorded by the Authority 0

11. Further details of the covert surveillance authorisations are attached at **Appendix 1** to the report. This is the type of information which will be included in the quarterly Finance and Performance reports.

## **FINANCIAL AND LEGAL IMPLICATIONS**

### **Financial**

12. There are no financial implications arising from the new RIPA requirements.

### **Legal**

13. The Council's Policy and Procedures are compliant with the new RIPA Orders and the proposed arrangements for reporting to Members will ensure compliance with the new RIPA guidance.

## **RISK ASSESSMENT**

14. Each RIPA authorisation is the subject of a separate, specific risk assessment. RIPA activities generally are considered to be low to medium risk, taking into account the current Policy and Procedures, together with the oversight arrangements and inspection regime.

## **SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS**

15. RIPA authorisations and applications are made, when it is necessary and proportionate to do so, in order to assist in the prevention or detection of crime or in preventing disorder. They are therefore relevant to the Authority's community safety objectives. RIPA Policy and Procedures are also an inherent element in the Council's organisational effectiveness.

## **EQUALITY IMPACT ASSESSMENT**

16. The report has not been the subject of an Equality Impact Assessment. RIPA authorisation arrangements will not change as a result of the new requirements. New reporting arrangements to Members will however be introduced.

## **CONSULTATION**

17. The matters referred to in this report have not been the subject of prior consultation with Members. .

### **Director of Law & Democracy**

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Background Papers:

Ward(s) and Ward Councillors:

Property Implications:

The Appendix to the report

Not Ward specific

None