

## CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM \_\_\_\_

REPORT TO CABINET

6 SEPTEMBER 2012

REPORT OF CORPORATE  
MANAGEMENT TEAM

### **CABINET DECISION**

**Corporate Management and Finance** - Lead Cabinet Member – Councillor Harrington.

**Housing and Community Safety** – Lead Cabinet Member – Councillor S Nelson.

#### **REGULATION OF INVESTIGATORY POWERS ACT 2000 (“RIPA”)**

1. Summary

The purpose of the report is to provide feedback regarding the Office of Surveillance Commissioners (“OSC”) inspection which took place on 2 April; to confirm the Council’s Corporate Policy and Procedures Document; to receive details of the surveillance activity carried out during 2011/12 and to note the position regarding legislative changes to the RIPA regime.

2. Recommendations

It is recommended that Cabinet:-

1. Notes the outcome of the OSC inspection which took place on 2 April 2012 and the action proposed to implement its recommendations;
2. In particular, affirms the changes to the Council’s Authorising Officers and the role of the Director of Law and Democracy as the senior responsible officer for RIPA;
3. Confirms the RIPA Corporate Policy and Procedures Document as revised following the OSC inspection;
4. Notes the details relating to RIPA activity carried out during 2011/12 and the proposal to circulate similar details to Members during 2012/13 on a quarterly basis, including the two six monthly Finance and Performance reports to Cabinet; and
5. Notes the current position regarding the legislative changes to RIPA detailed in the report and the intention to submit a further report in that respect.

3. Reasons for the Recommendations

The recommendations will ensure that Members are aware of the outcome of the OSC inspection and its implications for the Council’s corporate policy and procedures, and that the Authority’s arrangements regarding RIPA meet legislative requirements and Home Office good practice guidance.

#### 4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, 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 and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

#### Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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#### **DETAILS**

##### **Background**

1. Under RIPA, authorities such as the Council can authorise:-
  - Directed surveillance (e.g. 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; and the
  - Acquisition of communications data (e.g. not the contents of a communication, but information about the use made by a person of any postal or telecommunications service);
2. The only grounds for such authorisations are for the prevention or detection of crime or of preventing disorder.
  3. Only certain prescribed officers can sign authorisations (i.e. Director, Head of service, Service manager or equivalent).
  4. An authority exercising RIPA powers must have a corporate policy and procedure to regulate how the powers are exercised and the RIPA activity which takes place.
  5. Councillors should review an Authority’s use of RIPA and agree the policy at least once a year.
  6. Councillors should also consider internal reports on the use of RIPA on at least a quarterly basis, to ensure that it is being used consistently with the policy and the policy remains fit for purpose. They should not however be involved in making decisions on specific authorisations.
  7. It is good practice for a senior responsible officer (who should be a member of the Corporate Management 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 Code of Practice;
    - oversight of the reporting of errors to the relevant 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
    - ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the OSC; and
    - where the inspection report highlights concerns about the standards of authorising officers, ensuring the concerns are addressed.
  8. The Director of Law and Democracy has always been the Council’s senior responsible officer.

### **OSC Inspection**

9. An inspection by the OSC took place on 2 April 2012. This was conducted by H H Norman Jones QC, Assistant Surveillance Commissioner.

10. As a result of the inspection, the Chief Surveillance Commissioner indicated that he was pleased to see that the Council continues to be a high performing Council in relation to its RIPA activities and that the Council's approach to using covert surveillance only when no other means of obtaining evidence is possible is commendable.
11. The Inspector suggested certain minor changes to the format of the central register (eg including the Authorising Officer's job title) and outlined a number of points regarding authorisations (eg emphasizing the requirements of necessity and proportionality).
12. Steps will be taken to make the changes suggested to the register and to implement the points made about authorisations.
13. Recommendations were also made in the review report in relation to the following matters:-
  - Raising RIPA awareness within the Council
  - Reducing the number of authorising officers
  - Establishing a corporate RIPA training programme
  - Amending the Corporate Policy and Procedure Document
14. The Chief Surveillance Commissioner has been informed that the Council accepts these recommendations and that the necessary action will be taken to ensure that the recommendations are each implemented.

### **Raising RIPA Awareness**

15. Regular information about RIPA will be provided to Officers to heighten their awareness, with instructions to cascade the details to others. The intranet, KYIT etc will also be used for this purpose.

### **Authorising Officers**

16. As a result of the recommendation made by the Inspector, the Council's Authorising Officers have already been reviewed and reduced to 5 from 19. The majority of the officers who are no longer Authorising Officers for RIPA have not authorised surveillance activity before and are unlikely to do so in the future. The reduced number of Authorising Officers are considered to be sufficient to accommodate the likely surveillance activity which past experience suggests will take place. Most authorisations originate from Trading Standards work, and the only other service areas where authorisations occur are security and surveillance and environmental health. However, the number of authorisations in these latter two areas have been few and far between since the last OSC inspection in 2009. The remaining Authorising Officers are the Chief Executive; Corporate Director of Resources; Director of Law and Democracy; Head of Community Protection and Trading Standards and Licensing Manager.

### **Corporate RIPA Training Programme**

17. As recommended internal training will be undertaken at about 18 monthly intervals for Authorising Officers and others likely to use RIPA.

### **RIPA Policy and Procedures Document**

18. The Council's policy and procedures document has been reviewed and revised in order to reflect the comments and recommendation made at the Inspection. The changes in the document have been highlighted for ease of reference. As examples, a new section has been included to highlight the responsibilities of the senior responsible officer (the Director of Law and Democracy) and the role which members have in relation to RIPA, as well as changing some stale dates and adding "aspects of professional and business life" to the definition of private information.

The updated document is accessible at:-

<http://www.stockton.gov.uk/yourcouncil/dataprotection/publicationscheme/freedomofinformationact2000/reginvestpowers/>

19. The policy and procedures document will need to be reviewed and revised further in due course to reflect the legislative changes to RIPA referred to at paragraph 23 onwards.

### **RIPA Authorisations / Applications**

20. During 2011/12 the following covert surveillance activity took place:-

- Directed Surveillance
 

The number of directed surveillance authorisations granted during the year:-	12
The number of authorisations in force at the end of the year:-	2
- CHIS
 

The number of CHIS recruited during the year:-	4
The number of CHIS who ceased to be used during the year:-	4
The number of active CHIS at the end of the year:-	0

As regards communications data applications the following occurred during 2011/12:-

- Number of applications submitted to a Designated Person for a decision to obtain communications data which were rejected after due consideration 4
- Number of notices requiring disclosure of communications data within the meaning of each subsection of 21(4) of the Act or any combination of data 4
- 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 4
- Number of recordable errors which have been recorded by the Authority 0

21. Specific details of these authorisations / applications are included at the Appendix to this report
22. The Home Office code of practice on Covert Surveillance and Property Interference recommends that members consider quarterly reports on their authority's use of RIPA. Currently Cabinet receives six monthly Finance and Performance information which includes details of RIPA surveillance and communications data authorisations/applications. It is proposed that from 2012/13 onwards, the six monthly reports are supplemented by two further quarterly reports, consisting of RIPA activity details (which will be anonymised information) which will be circulated to all members by email.

### **Legislative changes**

23. The Protection of Freedoms Bill received Royal Assent on 1 May. Whilst the majority of the Act deals with a range of other issues, most of which do not directly apply to local authorities, part of the Act concerns proposed changes to RIPA legislative provisions.
24. In particular there will be a surveillance camera code of practice which local authorities will have to have regard to when exercising their surveillance functions and local authorities' authorisations under RIPA relating to the acquisition and use of communications data, directed surveillance and covert human intelligence sources will be subject to approval by a magistrate, before they can be actioned.
25. There is a judicial approval procedure mechanism in the Act for RIPA authorisations (directed surveillance; covert human intelligence sources and acquiring communications data), although how this will operate in practice is still to be worked out.
26. A member of a local authority's staff will, at the very least be required to present an authorisation to a magistrate in person.
27. A threshold is being introduced by secondary legislation (using the Secretary of State's Order making powers in the Act) for local authority use of directed surveillance. Where any such proposed surveillance relates to crime or (criminal) disorder carrying a maximum penalty below the threshold, a RIPA authorisation will not be permissible. An authorisation for directed surveillance will not be able to be granted unless it is for the purpose of preventing or detecting a criminal offence and the offence is punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months of imprisonment, or is an offence under section 146 of the Licensing Act 2003 (sale of alcohol to children); section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children); section 147A of the Licensing Act 2003 (persistently selling alcohol to children); or section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc to persons under eighteen). This means that directed surveillance for the purposes of tackling anti social behaviour will no longer be able to be authorised, unless it constitutes a criminal offence carrying a maximum prison term of six months or more.
28. The Home Office's Impact Assessment indicates that lay magistrates will be used and that they will reconsider authorisations afresh, with one of the tests being in the case of directed surveillance whether the offence meets the crime threshold.
29. A further order has been made by statutory instrument, amending the Criminal Procedure Rules, to bring the judicial approval provisions into effect on a day or days

to be appointed by the Secretary of State. It is likely the new requirements and arrangements will be operational on 1 November this year. It is considered that this will then enable Magistrates' training to be rolled out and completed beforehand. A series of road shows for local authorities is proposed in order to trail the new requirements and receive input from practitioners to what is proposed.

30. The powers of local authorities to acquire communications data are also likely to change as a result of the proposals emerging in the draft communications Data Bill which has recently been published.
31. The Council's policy and procedures will need to be reviewed and revised to reflect these new provisions and arrangements. When this has been done, a further report will be submitted to Cabinet.

## **FINANCIAL AND LEGAL IMPLICATIONS**

### **Financial**

32. There are no financial implications arising from the report, however there will be increased officer time and effort involved in obtaining the approval of a Justice of the Peace to a proposed RIPA authorisation/application. Whilst it is understood that funding will be made available to the court service in the first year of operation of the new provisions, once the process is "business as usual" it will no longer be funded by the Home Office. No additional funding is being provided for local authorities.

### **Legal**

33. The Council's policy and procedures document will need to be updated further to reflect the new legislative proposals. It has been reviewed and revised in light of the recent OSC Inspection.

## **RISK ASSESSMENT**

34. 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**

35. 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. The RIPA policy and procedures are also an inherent element of the Council's organisational effectiveness.

## **EQUALITY IMPACT ASSESSMENT**

36. The report has not been the subject of an Equality Impact Assessment. The policy changes reflect the OSC inspection recommendations and new legislation.

## **CONSULTATION**

37. The matters referred to in the report have been the subject of prior consultation with relevant Cabinet Members.

**Director of Law & Democracy**

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Background Papers:

None

Ward(s) and Ward Councillors:

Not Ward specific

Property Implications:

None