

## CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM \_\_\_\_

REPORT TO CABINET

1 SEPTEMBER 2016

REPORT OF SENIOR  
MANAGEMENT TEAM

### CABINET DECISION

**Leader of the Council** – Councillor Cook

**Access, Communities and Community Safety** – Lead Cabinet Member – Councillor Steve Nelson

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

1. Summary

The report asks Cabinet to confirm the Council’s Corporate Policy and Procedures Document for 2016/17; to affirm the Senior Responsible Officer role and to receive details of the Council’s surveillance activity during 2015/16.

2. Recommendations

It is recommended that Cabinet:-

1. Confirms the Council’s RIPA Corporate Policy and Procedures Document for 2016/17;
2. Affirms the Monitoring Officer as the Council’s Senior Responsible Officer; and
3. Receives the details relating to the Authority’s RIPA activity during 2015/16.

3. Reasons for the Recommendations

To confirm the Authority’s corporate policy and procedures document for 2016/17; to affirm the Council’s Senior Responsible Officer and to ensure Members are conversant with the RIPA activity which has taken place during 2015/16, in accordance with Home Office 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)

## **CABINET DECISION**

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

#### **SUMMARY**

The report asks Cabinet to confirm the Council’s Corporate Policy and Procedures Document for 2016/17 ; to affirm the Senior Responsible Officer role, and to receive details of the Council’s surveillance activity during 2015/16.

#### **RECOMMENDATION**

It is recommended that Cabinet:-

1. Confirms the Council’s RIPA Corporate Policy and Procedures Document for 2016/17;
2. Affirms the Monitoring Officer as the Council’s Senior Responsible Officer; and
3. Receives the details relating to the Authority’s RIPA activity during 2015/16.

#### **DETAIL**

##### **Background**

1. Under RIPA, authorities such as the Council can authorise:-
  - a. Directed surveillance (e.g. covert camera surveillance) in a manner likely to obtain private information about an individual;
  - b. 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
  - c. 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, Assistant Director, Service manager or equivalent).

## RIPA Powers

4. All authorisations or renewals for directed surveillance in a manner likely to obtain private information about an individual, or use or conduct of a Covert Human Intelligence Source or the acquisition of communications data, can only be implemented if judicial approval is first obtained. To date all applications by the Council for judicial approval have been granted.
5. In addition, the directed surveillance crime threshold means that:-
  - Local authorities can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment **or** are related to the underage sale of alcohol and tobacco. The offences relating to the latter are as follows:-
    - 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)
    - Section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc to persons under the age of 18)
  - Local authorities **cannot** authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.
  - Local authorities can therefore continue to authorise use of directed surveillance in more serious cases as long as other tests are met – ie that it is necessary and proportionate and where prior approval from a JP has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of 6 months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.
  - Local authorities can also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.
  - A local authority **may not authorise** the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly-posting.

## Corporate Policy and Procedures Document

6. 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.

7. Councillors should review an Authority's use of RIPA and agree the policy at least once a year. The current policy and procedure document is accessible at:- <https://www.stockton.gov.uk/stockton-council/good-governance-doing-things-properly/surveillance/>

### **Senior Responsible Officer**

8. It is good practice for a senior responsible officer 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.
9. The former Director of Law and Democracy continues to fulfil the Council's senior responsible officer role and it is proposed that this remains the case until a new senior responsible officer is appointed for 2017/18 onwards.

### **RIPA Authorisations/Activity**

10. Home Office guidance indicates that 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 that the policy remains fit for purpose.
11. During 2015/16 the following covert surveillance took place:-

#### **Directed Surveillance**

- The number of directed surveillance authorisations granted during the year – 1
- The number of authorisations in force at the year end – 0

#### **Covert Human Intelligence Source ("CHIS")**

- The number of CHIS recruited during the year – 5
- The number of CHIS who ceased to be used during the year – 5
- The number of active CHIS at the year end - 0

## **Communications Data**

- The number of applications submitted to a designated person for a decision to obtain communications data, which were rejected after due consideration - 0
  - The number of notices requiring disclosure of communications data within the meaning of each sub-section of section 21 (4) of RIPA or any combination of data - 1
  - The number of authorisations for conduct to acquire communications data within the meaning of each sub-section of section 21 (4) of RIPA or any combination of data - 1
12. Specific details of authorisations/activity during the year are included in the **Appendix** to this report.

## **COMMUNITY IMPACT IMPLICATIONS**

13. There are no new policies, strategies, or changes in service delivery involved insofar as the Council is concerned.

## **FINANCIAL AND LEGAL IMPLICATIONS**

### **Financial**

14. There are no financial implications arising directly from the report, however there continues to be officer time and cost involved in obtaining the approval of a Justice of the Peace to a proposed RIPA authorisation/application.

### **Legal**

15. The Council's policy and procedures document continues to be updated to reflect changes in legislative requirements and related guidance. This report ensures that the Authority is complying with such guidance and with best practice.

## **RISK ASSESSMENT**

16. 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 procedure, together with the oversight arrangements and inspection regime.

## **COUNCIL PLAN POLICY PRINCIPLES AND PRIORITIES**

17. 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.

## **CORPORATE PARENTING IMPLICATIONS**

18. There are no corporate parenting implications arising directly from this report.

## CONSULTATION

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

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Education related? No  
Background Papers: None  
Ward(s) and Ward Councillors: Not ward specific  
Property Implications: None