

Chichester District Council

CABINET

3 November 2015

Regulation of Investigatory Powers Act (RIPA) Policy

1. Contacts

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2. Recommendation

- 2.1 That Cabinet adopt the policy as recommended by Corporate Governance and Audit Committee.
- 2.2 That Cabinet authorise the delegations in Appendix 1 of the Policy as recommended by Corporate Governance and Audit Committee.
- 2.3 That Cabinet note the enhanced oversight process adopted by the Corporate Governance and Audit committee as outlined at paragraph 3.2 of this report.

3. Background

- 3.1 The policy annexed to this report has been considered by the Corporate Governance and Audit Committee on 29 September 2015. They made several recommendations which in turn are reflected in recommendations 2.1 and 2.2 of this report.
- 3.2 To maintain strong oversight of surveillance by members, the Corporate Governance and Audit Committee agreed to require the Monitoring Officer to prepare an annual report on RIPA. This will cover the use of surveillance by this Council, provision of updating or induction RIPA/ surveillance training for staff and on surveillance legal and procedural changes.
- 3.3 The majority of this report matches that given to the Corporate Governance and Audit Committee and, after consideration and debate, the policy annexed to this report was approved without amendment by that committee to Cabinet.
- 3.4 The Council is an enforcement body and is required to adopt and maintain up to date procedures for relevant statutes. RIPA provides the legal framework for covert surveillance by the Council.
- 3.5 A significant legal change took place with the **Protection of Freedoms Act 2012**. This introduced many issues which were not reflected in this Council's policies, in particular the new requirement that any directed surveillance has to

be the subject of a Court hearing, and that covert surveillance is now only available for matters which carry a maximum sentence of six months imprisonment or more.

- 3.6 Earlier this year Her Majesty's Commissioner for Surveillance sent an inspector to consider local practices and policies. These inspections take place at each body having statutory powers of surveillance.
- 3.7 The purpose of the interview and its report is to ensure best practices are followed by the authority and to make recommendations for improvement on a confidential and constructive criticism basis.
- 3.8 A report was issued and submitted to the Council's Chief Executive. The Strategic Leadership Team instructed the legal department to take forward suggestions made by the Inspector in the area of ensuring the Council's RIPA policy is up to date.
- 3.9 The Council was guided by the Inspector to make various updates to the local policy and practices. He recommended that the policy of Fareham Borough Council would be a good starting point for this Council's policy. Colleagues at Fareham kindly assisted this process by providing their policy in a format which could then be adapted by this authority.
- 3.10 In addition to minor changes to reflect local structure and job title amendments, the legal team has also updated the template policy to include a new Home Office Covert Surveillance and Property Interference Code of Practice (December 2014), and the Office of Surveillance Commissioner's Procedures and Guidance (also December 2014) so that the policy attached to this report is as up to date as is possible.

4. Outcomes to be achieved

- 4.1 The adoption of this policy will ensure that a framework for all surveillance activities is clear and up to date and within all relevant best practice guidance.
- 4.2 The policy will also comply with the requirements of the Protection of Freedoms Act 2012.
- 4.3 Officers will have a resource to give guidance setting out how to proceed in any particular investigation scenario and to ensure that practices will be consistent between departments. This is particularly important since surveillance is carried out extremely rarely so staff will need to have practical clear guidance to support them in carrying out complex responsibilities in this area.
- 4.4 By using the guidance, the highest standards of operational practice for enforcement practices can therefore be followed, maintaining a high quality evidential basis of prosecutions or other enforcement action and reducing the chance of reputational damage for enforcement failings.
- 4.5 A clear statement of local practices and procedures, and the understanding it gives of our enforcement being to the highest standards will reassure the public

of the performance of this authority.

- 4.6 Delegations under the new policy will be in accordance with recommendations of best practice in the Office of Surveillance Commissioners 2014 guidance and ensure that a clearer chain of reporting exists for surveillance decision making.

5. Proposal

- 5.1 That the Council adopts the policy and procedures for use by all enforcement staff in the authority.
- 5.2 If Cabinet makes decisions in line with the recommendation they will then have been adopted formally and those delegations will be added to the Constitution.

6. Alternatives that have been considered

- 6.1 If the Council does not use suitable policies and procedures then any evidence gained might not be admissible. This would mean that prosecution is liable to failure. There are reputational risks which would arise in this position.
- 6.2 Other model policies were considered, but the version recommended by the Inspector for Surveillance was assessed by the Council legal team who confirmed the suitability of this policy.
- 6.3 Alternatively the Council could choose not to amend its policies but this would place it at risk of legal, financial and reputational risk where its current policies do not cover issues which are included in the new policy.

7. Resource and legal implications

- 7.1 The primary legal and financial risk follows that set out in paragraph 6.3 above, being the likely risk of evidence being inadmissible, practices being judicially reviewable and that operational activities are hampered by out of date practices which would be unacceptable to the Court. These issues may lead to costs orders against the Council as well as reducing its effectiveness as a prosecuting authority.

8. Consultation

- 8.1 The policy and procedure was considered by the Corporate Governance and Audit Committee who debated it at session on 29 September 2015.
- 8.2 The policy and procedure has been presented to the strategic leadership team who endorse the policy and procedure and in particular framed the new delegations to reflect the local strategic roles of the officers concerned.
- 8.3 The Inspector for Surveillance has been advised that the recommendation of her Inspector is being adopted through this report.
- 8.4 Legal section have discussed the policy with senior operational enforcement officers and carried out relevant updating training with benefit fraud team and

environmental enforcement team.

9. Community impact and corporate risks

9.1 Surveillance enables the Council to carry out investigative work legally and in accordance with its statutory powers. It enables the Council to achieve its corporate objectives in situations where partnership working or discussion are not available or have been unsuccessful. Having unsuitable policies and procedures for RIPA would lead to the Council being unable to carry out key parts of its work.

9.2 As the Council already has policies in place and these are an updating of those policies it is not considered that this has any new direct implications under paragraph 10 (below).

10. Other Implications

Are there any implications for the following?		
	Yes	No
Crime & Disorder:		x
Climate Change:		x
Human Rights and Equality Impact:		x
Safeguarding:		
Other (Please specify): eg Biodiversity		x

11. Appendices

Appendix 1 – Recommended policy and procedure

12. Background Papers

12.1 None