



Cabinet (Resources) Panel

11 September 2013

Report Title	<u>REGULATION OF INVESTIGATORY POWERS ACT 2000</u>	
Classification	Public (Amber)	
Cabinet Member with Lead Responsibility	Councillor John Reynolds City Services	
Key Decision	No	
In Forward Plan	No	
Wards Affected	All	
Accountable Strategic Director	Tim Johnson, Education and Enterprise	
Originating service	Education & Enterprise	
Accountable officer(s)	Andy Jervis	Head of Regulatory Services
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Recommendation(s) for action or decision:

The Cabinet (Resources) Panel is recommended to:

1. Approve the transfer of the political oversight function in respect to RIPA regulated activity from the Cabinet (Resources) Panel to the Cabinet Member for City Services and the associated amendment to the RIPA corporate policy.

Recommendations for noting:

The Cabinet (Resources) Panel is asked to note:

1. the use of RIPA regulated techniques for the period 01/03/2013 to 31/08/2013 as part of the previously agreed procedures to ensure compliance with the Council's Covert Investigations Policy in delivering regulated activities.
2. that this report will be the last update report submitted to Cabinet (Resources) Panel for noting.

1.0 Purpose

1.1 The purpose of the report is to:

- update Councillors on the use of RIPA regulated techniques for the period 01/03/2013 to 31/08/2013 as part of the previously agreed procedures to ensure compliance with the Council's Covert Investigations Policy in delivering regulated activities,
- approve the transfer of the political oversight function in respect to RIPA regulated activity from the Cabinet (Resources) Panel to the Cabinet Member for City Services and the associated amendment to the RIPA corporate policy.

2.0 Background

2.1 In responding to revised Home Office Codes of Practice on RIPA introduced in 2010 requiring Councils to enhance RIPA management arrangements it was determined to provide a quarterly RIPA update report to Cabinet (Resources) Panel for noting.

2.2 Previous quarterly reports have updated Councillors on relevant issues and developments in relation to the use of RIPA by local authorities as well as in relation to the use of RIPA covert surveillance authorisations.

2.3 The March quarterly report summarised the changes to RIPA management arrangements under the Protection of Freedoms Act 2012 which placed additional restrictions on Local Authority use of RIPA regulated investigation techniques from November 2012.

Summary of changes:

Approval by the Magistrates Courts: Authorisations for covert surveillance, use of undercover officers and access to communications data (subscriber information) will all require approval by a Magistrate once they have gone through the current Council approval process.

Restrictions on Covert Surveillance: Such surveillance would only be permitted where the offence being investigated had a potential penalty of at least 6 months imprisonment. This would prohibit covert surveillance in relation to investigations in to dog fouling, statutory nuisance (noise) enquiries, littering and certain benefit fraud offences.

2.4 Further detail on authorisations since the implementation of the new restrictions is contained in section 3. The number of authorisations required has fallen significantly since the introduction of the changes brought in by the Protection of Freedoms Act 2012. Prior to the implementation of the Act, the Council processed in the region of 30 - 40 authorisations per year. As in 2.3 above this has been on the whole due to prohibition of investigations in to dog fouling, statutory nuisance (noise) enquiries, littering and certain benefit fraud offences.

2.5 The results of the changes are more of a case of enforcement bodies having to deal with issues differently, rather than not at all. For Regulatory Services issues, most of the matters excluded from RIPA by the Protection of Freedoms Act can be addressed by

notifying the surveillance subject and therefore making surveillance overt instead of covert. The longer term impact will, however, be monitored. In respect to benefit fraud issues the Benefit Fraud Service will work closely with DWP (who are not caught by the requirement to obtain judicial approval) to ensure all the important investigations are conducted.

- 2.6 At its meeting of 19 June 2013, Cabinet considered and endorsed a revised RIPA Corporate Policy and Procedure following the February 2013 inspection of the authority's delivery / discharge of corporate responsibilities under the Regulation of Investigatory Powers Act 2000.
- 2.7 At that meeting, Cabinet authorised the Assistant Director for Regeneration to approve future minor amendments to the new policy/protocol in consultation with the Chief Legal Officer without the need for Cabinet endorsement.
- 2.8 The Assistant Director (Regeneration) is the appointed Senior Responsible Officer for the discharge of RIPA regulated responsibilities.

3.0 Progress update: RIPA authorisations 01.03.13 – 31.08.13

- 3.1 As stated in 2.4 above, the number of authorisations for directed surveillance, covert human intelligence source (CHIS) and obtaining communications data has fallen from an annual average of approximately 35 to a significantly lower level. The following two cases being the only authorisations taking place within the last six months:-
 - **CHIS:** approval for juvenile covert human intelligence sources to undertake test purchasing of alcoholic drink at retail premises following repeated reports of underage sales.
 - **Communications data:** approval for subscriber details relating to 10 telephone numbers used by a pair of suspected rogue traders using banned, aggressive and intimidating practices to obtain contracted work, set prices and pursue payments.
- 3.2 Both of the above Regulatory Services authorisations have been endorsed by the District Judges sitting at Wolverhampton Magistrates Court who have duly approved the authorisations.
- 3.3 In view of this significantly reduced usage of authorised surveillance activity, together with the corporate requirement that issues not requiring decision, should ordinarily not be reported to Cabinet, it is proposed that going forward, the previously agreed political oversight role of the Cabinet (Resources) Panel be transferred to the Cabinet Member for City Services and that in future, the quarterly update reports are provided to the Cabinet Member and will be made available to all Councillors via the Members page on the intranet.
- 3.4 Matters requiring significant policy amendment or decision will continue to be reported to the Cabinet or resources Panel.

4.0 Financial implications

- 4.1 Corporate policies on RIPA ensure that the Council manages regulated activities lawfully, effectively and efficiently making the best use of officer time. RIPA regulated techniques are used in investigations funded by enforcement services core budgets.
- 4.2 Application to the Magistrates Court adds an officer time element to investigations. Increased costs can be met from approved Regulatory Services revenue budgets.

2013/2014. [TK/09082013/A]

5.0 Legal implications

- 5.1 The Council is required to ensure compliance with RIPA as failing to do so could expose it to legal challenge for breaching citizen's rights to private and family life under the Human Rights Convention 1951 and the Human Rights Act 1998.
- 5.2 This report will require an amendment to Appendix 1 of the Council's Constitution, namely the insertion of an additional lead responsibility for the Cabinet Member for City Services as set out below:-

“(12) To have political oversight, of the RIPA corporate policy and receive quarterly reports on the use of RIPA, including covert surveillance authorisations”

[FD/08082013/N]

6.0 Equalities implications

- 6.1 The management of RIPA regulated activities is aimed to ensure that the Council does not infringe the legitimate expectations of citizens that their human rights will be respected. A key element of this is that authorised activities are necessary in the individual circumstances of the case and proportionate having considered the balance between the rights of the individual targeted and the wider public interest.

7.0 Environmental implications

- 7.1 Effective and efficient use of RIPA regulated activities and CCTV in a lawful manner supports the Council's community safety and crime and disorder activities including those concerned with environmental issues.

8.0 Schedule of background papers

- Cabinet Report 08/09/2010: Revised Covert Investigation Management Policy
- Cabinet (Resources) Panel Report 02/11/10: Revised Covert Investigation & CCTV Management Policies
- Previous quarterly Cabinet (Resources) Panel reports
- Cabinet Report 19/06/2013: RIPA; Revised Corporate Policy and Procedure.
- Home Office RIPA Codes of Practice on Covert Surveillance, Covert Human Intelligence Sources and Communications Data