

BROMSGROVE DISTRICT COUNCIL

CABINET

6th April 2011

REVIEW OF COVERT SURVEILLANCE UNDER RIPA

Relevant Portfolio Holder	Geoff Denaro
Relevant Head of Service	Claire Felton
Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The purpose of this report is to update the Cabinet on the Council's use of covert surveillance as permitted by under the Regulation of Investigatory Powers Act 2000 (RIPA). A copy of the most recent version RIPA policy (March 2011) is included in the report. Members are asked to note the updated policy and the information contained in the report relating to the administration of the Council's RIPA scheme since April 2010 and the type of activities where covert surveillance is being carried.

2. RECOMMENDATIONS

It is recommended that:

- 2.1 Cabinet considers and notes the contents of the report.**

3. BACKGROUND

- 3.1 The Regulation of Investigatory Powers Act 2000 is the legislation which allows local authorities to undertake covert surveillance. For District Councils the need to rely on RIPA powers will arise in very infrequently, and the use of those powers is limited to circumstances where the Council in carrying out a regulatory role is investigating whether a criminal offence may have been committed. For example, in cases where the Council is investigating suspected benefit fraud.
- 3.2 The RIPA legislation covers covert surveillance activities. In other words situations where observations and evidence are being gathered of which the subject of the investigation is unaware. As by implication this type of activity could be intrusive and involve interference with individual's private and family lives, the RIPA legislation imposes a system of checks and balances which local authorities must comply with. The purpose of this is to ensure that any interference is necessary and proportionate. Members will be aware that a small number of local authorities have been criticised in the last 12 months for using RIPA powers in a disproportionate way. For

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example, to assist in investigating the validity of school entry applications and to prosecute for dog fouling. Members should also note that a considerable amount of observations carried out by Council employees are performed as “overt surveillance”, such as car parking enforcement or planning enforcement. These activities fall outside of RIPA and do not need to be authorised.

- 3.3 The Council's RIPA policy was extensively revised and updated in November 2007 to bring it into line with the relevant legislation. At that time Council granted a delegation to the Head of Legal Services to allow the policy to be updated and this has been carried out from time to time as required.

4. KEY ISSUES

Changes to policy in last 12 months

- 4.1 In June 2010 the policy was updated to take into account new Codes of Conduct that had been issued by the Home Office and together with other changes to the legislation. A significant change is that the government has tried to ensure that only senior officers can act as authorising officers for RIPA applications. The BDC policy was amended to reflect this. The changes also required a Senior Responsible Officer (SRO) to be appointed to have overall oversight of RIPA activity. This was required to be at senior management level and accordingly the Executive Director (Finance and Corporate Resources) has been designated as the SRO. Member oversight has also been built into the policy by way of an annual report to Cabinet (of which this is the first) and regular updates from the Executive Director (Finance and Corporate Resources) to the Portfolio Holder for Resources. Officers are meeting on a quarterly basis with the SRO to review a sample of RIPA applications made in the previous quarter, to ensure all processes under the policy are operating properly and to co-ordinate staff training.
- 4.2 In June 2010 the policy was also amended to reflect the transfer of staff to Bromsgrove District Council in it's role as host authority to Worcestershire Regulatory Services. In particular, the incorporation into the new regulatory service of the Trading Standards team from the County Council. This was significant as due to the nature of their work and the fact that in investigating offences such as under age sales and sale of counterfeit goods the team regularly makes RIPA applications for covert surveillance activities. The Council's legal team sought specialist advice on how to approach the new

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arrangements for hosting the regulatory service in terms of the RIPA policy. However, it was difficult to establish an authoritative view as these types of collaborative arrangements between local authorities are still relatively new models in terms of governance.

- 4.3 As all staff now operating within the Worcestershire Regulatory Service are employed by BDC the RIPA policy was amended to reflect this. In other words under the system now in place any WRS staff wishing to carry out covert surveillance must comply with the BDC RIPA policy and processes. It was thought that this was the safest option available in that all staff will be working to a common policy which can be regularly updated with training being provided on an annual basis. Accordingly arrangements were put into place to incorporate the Trading Standards RIPA applications into the BDC process and on a practical level this is working very well (although some issues have subsequently been raised by the Chief Surveillance Commissioner as set out in para 4.6)
- 4.4 Finally the policy has most recently been updated in March 2011 to implement some minor changes with staffing arrangements and the recommendation arising out of the recent inspection that there should be a formally designated RIPA co-ordinating officer.

Inspection October 2010

- 4.5 To ensure compliance with the RIPA legislation, an inspection regime is imposed on Councils by the Office of Surveillance Commissioners. Prior to 2010, the Council's last inspection had taken place in 2007. The Council was inspected again on 21st October 2010. The inspection involved an examination of the Council's policy and procedures and interviews with the key staff involved. The outcome of the inspection was extremely positive with only two recommendations for follow up actions. These related to appointing a formally designated RIPA co-ordinator and ensuring that on Trading Standards applications for surveillance of multiple sites that each site to be targeted in an operation is considered individually when the RIPA authorisation is granted. The Inspector commented that " BDC has an first-class policy document and the officers whom I saw displayed an excellent knowledge of RIPA and the latest Codes of Conduct and OSC Guidance".
- 4.6 Since the inspection a further issue has been raised by the Chief Surveillance Commissioner. This relates to the governance arrangements for Worcestershire Regulatory Services and whether as a body governed by a joint committee it falls within the traditional definition of "local

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authorities” that can carry out surveillance as set out in the 2000 Act. We are continuing to correspond with the Commissioner on this point and are consulting with other joint regulatory services to compare how they deal with implementing the RIPA legislation. Once officers have completed their enquiries and formed a clearer view of the issues involved it is intended that a full report will be brought before the Joint Committee to enable members to review the position.

Applications made in year ending 2010

4.7 The records for 2010 show that a total of 13 applications for RIPA authorisations were made. The applicant on each matter was the Trading Standards Team from Worcestershire Regulatory Services. No applications were made by BDC departments in 2010. The typical activities being authorised were operations to target sales of alcohol to under age purchasers and investigations into sale of counterfeit goods.

Training

4.8 In accordance with best practice the Council organises training on RIPA for staff on an annual basis. This enables officers to keep up to date with current practice and any changes in legislation. In 2010 two training sessions were held in December and a further half day session to complete that round of training is scheduled for March 2011.

Future changes

4.8 The government is currently in the process of making further changes to the RIPA regime for local authorities. The details have yet to be announced but the government has said that it will be introducing an additional requirement whereby Councils will have to get a Magistrate’s approval for use of covert directed surveillance, covert human intelligence sources (informants) and access to communications data. The primary legislation introducing these changes will be the Freedom Bill which is due to be published shortly.

5. FINANCIAL IMPLICATIONS

5.1 There are no direct financial implications arising from this report. The work involved in supporting the RIPA policy forms part of the main duties of the officers involved. There is a monetary cost attached to providing annual

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training for staff but this is a necessary requirement in order for the Council to continue to rely on the RIPA legislation.

6. LEGAL IMPLICATIONS

- 6.1 The primary legislation under which covert surveillance is regulated is the Regulation of Investigatory Powers Act 2000. This legislation enables local authorities to undertake covert surveillance and imposes a requirement for any surveillance to be authorised in accordance with that Council's RIPA policy.

7. POLICY IMPLICATIONS

- 7.1 A copy of the current version of the policy is attached at Appendix 1. The policy is regularly updated and this is carried out by the Head of Legal Services in line with the relevant delegation.

8. COUNCIL OBJECTIVES

- 8.1 Improvement/ One Community.

9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS

- 9.1 The main risks associated with the details included in this report are:
- Failure to operate in accordance with the RIPA legislation resulting in the inadmissibility of evidence submitted to the court in support of Council prosecutions.
 - Misuse of RIPA powers resulting in negative publicity/ complaints from residents
- 9.2 These risks are being managed through the operation of the Council's RIPA policy and maintaining high standards of compliance to the terms of the policy. As can be seen from this report the policy is updated regularly in addition to which officers receive annual training to ensure that all RIPA activity is appropriate and properly authorised.

10. CUSTOMER IMPLICATIONS

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10.1 The Council's use of covert surveillance will impact on those customers who are subject to investigation. However, all activity is properly managed under the policy which has built in safeguards to ensure minimal interference with private lives. This has to be balanced against the benefit to the community derived from the Council carrying out its regulatory role and bringing prosecutions where it is believed that criminal offences have been committed.

11. EQUALITIES AND DIVERSITY IMPLICATIONS

11.1 None

12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT

12.1 None

13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY

13.1 None

14. HUMAN RESOURCES IMPLICATIONS

14.1 None

15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS

15.1 The only issue to note is set out in para 4.6 of the report, namely the on-going dialogue between the Council and the OSC as to the governance arrangements for Worcestershire Regulatory Service. As referred to at para 4.6 officers are working to resolve this issue.

16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998

16.1 None

17. HEALTH INEQUALITIES IMPLICATIONS

17.1 None

18. LESSONS LEARNT

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18.1 N/a

19. COMMUNITY AND STAKEHOLDER ENGAGEMENT

19.1 N/a

20. OTHERS CONSULTED ON THE REPORT

Portfolio Holder	Yes
Chief Executive	Yes
Executive Director (S151 Officer)	Yes
Executive Director – Leisure, Cultural, Environmental and Community Services	No
Executive Director – Planning & Regeneration, Regulatory and Housing Services	No
Director of Policy, Performance and Partnerships	No
Head of Service	Yes
Head of Resources	No
Head of Legal, Equalities & Democratic Services	Yes
Corporate Procurement Team	No

21. WARDS AFFECTED

All wards

22. APPENDICES

Appendix 1 Bromsgrove District Council – Regulation of Investigatory Powers Act 2000 : Policy – updated March 2010

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23. BACKGROUND PAPERS

OSC Inspection Report dated 25th October 2010

24. KEY

AUTHOR OF REPORT

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