
REPORT TO:	Overview and Scrutiny Committee	AGENDA ITEM: 10
DATE OF MEETING:	30th June 2010	CATEGORY: RECOMMENDED
REPORT FROM:	Chief Executive	OPEN
MEMBERS' CONTACT POINT:	Andrea McCaskie – 595831 andrea.mccaskie@south-derbys.gov.uk	DOC: U:\JAYNE\Committee\COMMREP\RIPA Overview Scrutiny 30 Jun 10.doc
SUBJECT:	Regulation of Investigatory Powers Act 2000 (RIPA) – Revised Code of Practice	REF:
WARD(S) AFFECTED:	All	

1.0 Recommendations

- 1.1 That Full Council is recommended to authorise the Overview and Scrutiny Committee to:
- review annually the Council's use of RIPA
 - set the Council's general surveillance policy
 - consider internal reports on the use of RIPA quarterly to ensure that it is being used as per the Council's Policy
- 1.2 That Full Council is recommended to approve the Council's Regulation of Investigatory Powers Act 2000 Policy and Guidance document in light of the amendments to the legislation and the revised Code of Practice, as set out in **Appendix A**, and officers be authorised to update the Constitution accordingly.

2.0 Purpose of Report

- 2.1 The Home Office has published new Regulation of Investigatory Powers Act 2000 (RIPA) Orders and a Code of Practice that came into force on 6th April 2010. These documents ensure that covert surveillance techniques can continue to be used by public authorities, but only where they are necessary and proportionate.
- 2.2 Full Council is recommended to amend the Overview and Scrutiny Procedural Rules in line with the requirements under the revised Code of Practice.
- 2.3 Full Council is recommended to approve the Council's RIPA Policy and Guidance document in light of the amendments to the legislation and the revised Code of Practice and authorise the Overview and Scrutiny Committee to annually review the use of RIPA and set the Council's Policy and Guidance, quarterly considering internal reports on the use of RIPA to ensure compliance with the Policy.

3.0 Detail

- 3.1 RIPA, which came into force in 2000, is intended to regulate the use of investigatory powers exercised, amongst others, by Local Authorities, and ensure that they are used in accordance with human rights. This is achieved by requiring certain investigations involving covert surveillance to be authorised by an appropriate Authorising Officer before they are carried out.
- 3.2 Directed surveillance is often conducted by local authorities to investigate benefit fraud or to collect evidence of anti-social behaviour. It may involve covertly following people, covertly taking photographs of them or using hidden cameras to record their movements.
- 3.3 RIPA stipulates that the person (Authorising Officer) granting an authorisation for directed surveillance must believe that the activities to be authorised are necessary on one or more statutory grounds. A member of the Corporate Management Team will consider all applications for authorisation in accordance with the legislation. Any incomplete or inadequate application forms will be returned to the applicant for amendment. The Authorising Officer shall in particular ensure that there is satisfactory reason for carrying out the surveillance, the covert nature of the investigation is necessary, proper consideration has been given to collateral intrusion, and the proposed length and extent of the surveillance is proportionate to the information being sought. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation against the need for the activity in investigative and operational terms. All authorisations must be reviewed and cancelled. Records of all authorisations must be sent to the Head of Legal and Democratic Services for entry on the Central Register.
- 3.4 The Head of Legal and Democratic Services ensures that training and refresher training is offered once a year to all directorates of the Council and advice and training is also given on request.
- 3.5 The Office of Surveillance Commissioners undertakes an inspection every 2 – 3 years. The Council will usually be given at least two weeks' notice prior to a visit by a Surveillance Inspector. The inspections vary according to the authority to be visited and generally take one day to complete. However all inspections include the following: interviews with key personnel from a number of departments, an examination of RIPA applications and authorisations for directed surveillance, an examination of the central record of authorisations, an examination of policy documents, an evaluation of processes and procedures, feedback to the Chief Executive (or nominee). Following the inspection, a report is submitted to the Chief Surveillance Commissioner who then writes to the Chief Executive. There was an inspection in February 2009 and the Inspectors report concluded that the Council was a very moderate user of Directed Surveillance. The report stated that excellent policies and regular training were in place to ensure that high standards were achieved. The Inspector made four recommendations in terms of the Council's Policy and Guidance document and stated compliance with the four recommendations would secure excellence. The Inspectors recommendations were accepted and applied to the Policy and Guidance document immediately.

- 3.6 The current changes to the Council's Policy and Guidance document include the revision of prescribed officers for who can sign authorisations (Authorising Officers). Previously, this was set at Heads of Service. The new provisions suggest that all local authorities should revise their list of authorising officers. It is recommended that all future authorisations must be signed off by a member of the Corporate Management Team or the Head of Legal & Democratic Services. The Chief Executive's authorisation is required where legal, medical, and clerical issues are involved. Any authorisations regarding minors and vulnerable people must also be signed by the Chief Executive.
- 3.7 Further amendments to the Council's Policy and Guidance document in terms of internal scrutiny include that the Head of Legal and Democratic Services, the Monitoring Officer, is responsible for the integrity of the process within the Council, to authorise directed surveillance, compliance with the legislation and Codes of Practice, engagement with the Commissioners and Inspectors when they conduct their inspections, and where necessary to oversee the implementation of any post-inspection action plans recommended or approved by a Commissioner.
- 3.8 Councillors in local authorities have been given a formal scrutiny role in relation to RIPA. The new code states that, at least once each year, Members should review the authority's use of RIPA and set the general surveillance policy. It is proposed that Full Council delegates this role to the Overview and Scrutiny Committee who should also consider internal reports on the use of RIPA at least on a quarterly basis to ensure that it is being used consistently as per the Council's policy and that the policy remains fit for purpose. It is, however, emphasised that Councillors should not be involved in making decisions on specific authorisations.
- 3.9 A copy of the Council's Policy and Guidance document, showing the tracked changes in light of the amendments to the legislation and the revised Code of Practice as set out in paragraphs 3.5 – 3.7, is attached at **Appendix A**.
- 3.10 During the period March 2009 to April 2010, seventeen directed surveillance authorisations were granted by the Council. In future, it is proposed that a yearly report will be submitted to the Overview and Scrutiny Committee outlining the number of authorisations for the previous year and to ensure that the Council's Policy and Guidance document remains fit for purpose. On a quarterly basis, it is proposed that the Overview and Scrutiny Committee will receive details of the number of authorisations granted in that period with information of the departments that requested such authorisations.

4.0 Financial Implications

- 4.1 None arising directly from this report.

5.0 Corporate Implications

- 5.1 The Government, in the recently published coalition programme have stated that they will 'ban the use of powers in the RIPA by Councils, unless they are signed off by a magistrate and required for stopping serious crime'. Once this has been formally introduced, the Council's Policy and Guidance will need to be amended to reflect these changes.

6.0 Community Implications

- 6.1 Covert surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. The Council carries out directed surveillance which is covert, not intrusive, is not carried out in an immediate response to events, and is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual.
- 6.2 Section 8 of the application form asks the applicant to supply details of any potential collateral intrusion and to detail why the intrusion is unavoidable. The idea behind collateral intrusion is to identify who else, apart from the subject of the surveillance, can be affected by the nature of the surveillance. Any application for authorisation should include an assessment of the risk of the collateral intrusion and this should be taken into account by the Authorising Officer when considering proportionality. The Authorising Officer needs to know by those carrying out the surveillance if the investigation or operation would unexpectedly interfere with the privacy of individuals not covered by the authorisation. An Authorising Officer must be made aware of any particular sensitivities in the local community.

7.0 Background Papers

- 7.1 Regulation of Investigatory Powers Act 2000 (as amended)
Covert Surveillance and Property Interference – revised Code of Practice