

# **SURVEILLANCE POLICY – REPORT OF THE CHIEF SURVEILLANCE COMMISSIONER**

**Council – 1 October 2013**

Report of Chief Officer Legal and Governance

Status: For Decision

Also considered by: Audit Committee – 10 September 2013

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## **Executive Summary:**

This report recommends the adoption of a revised surveillance policy, following a recent inspection by the Office of the Surveillance Commissioner and the approval of reporting arrangements to Elected Members.

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**This report supports the Key Aim of** effective management of Council resources.

**Portfolio Holder** Cllr. Ramsay

**Contact Officer(s)** Leslie Roberts – ext. 7475

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**Recommendation to Audit Committee:** That Council be RECOMMENDED

- (a) to note the report of the Chief Surveillance Commissioner;
- (b) to adopt the revised Surveillance Policy as set out at Appendix B; and
- (c) to agree that an annual report with quarterly updates be made to Councillors through the Members Electronic Portal.

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**Reason for recommendation:** To have a policy that meets with the Office of Surveillance Commissioners' Approval and for the policy to be complied with in order for the Council to carry out lawful covert surveillance.

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## **Introduction and Background**

- 1 On the 19<sup>th</sup> June 1013 the Council was inspected by the Office of the Surveillance Commissioner (OSC). These inspections are carried out on a 3 yearly basis.
- 2 A copy of the report of the Chief Surveillance Commissioner is attached at Appendix A.
- 3 Contained within the report are a small number of recommendations, including some minor changes to the Council's surveillance policy. This report therefore seeks the approval of Members to make the required changes to policy as set out at Appendix B.

- 4 The Regulations of Investigatory Powers Act 2000 (RIPA) introduced a statutory framework for those carrying out a surveillance as part of an investigation. The Protection of Freedoms Act 2012 (2012 Act) amended RIPA to provide additional controls. The internal authorisation process is now followed by external authorisation from a Justice of the Peace.
- 5 Covert surveillance is surveillance that is carried out in a manner to ensure that persons subject to the surveillance are unaware it is taking place. Covert surveillance can be intrusive (e.g. hiding cameras and microphones in a person's home) or directed.
- 6 Intrusive surveillance cannot be authorised by a local authority.
- 7 Directed surveillance is covert but not intrusive and is undertaken
  - For the purpose of a specific investigation or operation
  - In such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purpose of the investigation or operation) and
  - Otherwise than by way of an immediate response to events or circumstances
- 8 For the Council, such activities are most likely to be carried out within the areas of benefit fraud & environmental health.
- 9 RIPA also regulates the use of Covert Human Intelligence Sources (CHIS). A CHIS is a person who establishes or maintains a relationship with someone in order to covertly obtain information, to provide another person with access to information or to disclose information as a result of that relationship. A common example of a CHIS would be a police informant.
- 10 The Act requires that specific authorisation be given by approved persons for any directed surveillance undertaken, and for the use of a CHIS. The Council's policy provides that three named Chief Officers may authorise surveillance. The 2012 Act introduced a further tier of authorisation, which requires that following internal authorisation the Council obtain external authorisation from a Justice of the Peace.
- 11 The Council can only authorise directed surveillance if it is necessary for the purpose of preventing or detecting crime that would be punishable on conviction with a sentence of at least six months imprisonment. This requirement was introduced by the 2012 Act and prevents surveillance being used for what might be considered minor criminal activity.
- 12 In practice, the District Council seeks to carry out enforcement activity by overt means. For example, when investigating complaints of noise nuisance through the use of monitoring device, officers will advise the alleged perpetrator of its intention to install noise monitoring equipment.
- 13 If the desired information can be obtained in this way, then it will not be necessary to undertake any covert surveillance and engage the provisions of RIPA. The

Council has granted very few authorisations for directed surveillance. No authorisations have been granted for the use of a CHIS.

- 14 Whilst this practice of carrying out overt enforcement activity will continue, it is important to keep the surveillance policy under review to ensure that, when covert surveillance or the use of a CHIS is necessary, the District Council can act in accordance with the Human Rights Act 1998.

### **Recommendations of OSC**

- 15 Members will note that the report makes 3 recommendations-

- Elected members of a local authority should review the authority's use of the 2000 Act and set out the policy at least once a year. They should also consider internal reports on the use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. They should not however, be involved in making decisions on specific authorisations.
- The Council ensure that the extant recommendations of 2010 with regard to training is acted upon without delay.
- The future training encompasses the following issues:

The applicant for directed surveillance understands that they not only have to set out the investigation objectives of the covert activity along with a narrative of the intelligence but an outline of the provenance of the intelligence.

That the covert activity should be reviewed during the period of authorisation.

16. The above recommendations have been addressed in that it is recommended to Council to agree that an annual report with quarterly updates be made to Councillors through the Members' Electronic Portal.

17. The following training programme has been organised as follows:

Training has been organised for the 11<sup>th</sup> November 2013 for officers of this Council with Act Now Training which provides practical training sessions with an emphasis on allowing delegates to do their job whilst respecting the law. Delegates will work through a number of real life case studies and exercises in order to discuss issues that commonly arise.

18. An additional matter referred to by the OSC is that the Surveillance Policy would benefit from the addition of a narrative section outlining the process for seeking 'Judicial Approval', which is currently only shown in a flow chart at the end of the document. The Surveillance Policy has been revised accordingly to take into account this suggestion.

## Key Implications

### Financial

- 19 The operation of the policy has some financial impact upon the Council. The forms to request authorisation are freely available electronically, and links to these are on 'SIMON'. Training on the revised requirements and refresher training was required and incurs both a direct cost in the fees for the external trainer and the loss of productive staff time.

### Legal Implications and Risk Assessment Statement.

- 20 It is important for the Council to have a policy that meets with OSC approval and for the policy to be complied with. Any failure may mean a breach of the Human Rights Act 1998.

Authorisations under RIPA provide lawful authority for the Council to carry out covert surveillance. Failure to comply with the requirements of the Act may render the enforcement activity unlawful, and lead to the exclusion of evidence obtained through surveillance. Any such failure carries both financial and reputational risks to the Council

The attached revised policy set out at Appendix B, training of relevant staff and regular oversight through reporting to Members will ensure that all officers comply with the requirements of RIPA when seeking authorisation under the Act.

### Community Impact Outcomes

- 21 The Council has always sought to carry out surveillance in an overt manner, thus reducing the impact of our enforcement activities on the human rights of our residents. Nevertheless, the use of directed surveillance, where necessary and proportionate, remains an important tool in the prevention or detection of crime or the prevention of disorder.

### Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	Complies with the Human Rights Act 1998
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	Yes	

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		Not applicable

### **Conclusions**

Members are asked to agree the recommendations as set out at the start of this report.

### **Appendices**

Appendix A – Report of the Chief Surveillance Commissioner

Appendix B – Council’s Surveillance Police Revised

### **Background Papers:**

Regulatory of Investigatory Powers Act 2000

Protection of Freedoms Act 2012

**Mrs Christine Nuttall**  
**Chief Officer for Legal and Governance**