

FULL COUNCIL – 16 DECEMBER 2010

SURVEILLANCE POLICY – REPORT OF THE CHIEF SURVEILLANCE COMMISSIONER

Report of the: Deputy Chief Executive & Director of Corporate Resources

Also considered by: Performance and Governance Committee – 16 November 2010

Status: For Decision

Executive Summary:

This report recommends the adoption of a revised surveillance policy, following a recent inspection by the Office of the Surveillance Commissioner.

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

Portfolio Holder Cllr. Mrs Bracken

Head of Service Head Legal & Democratic Services – Mrs. Christine Nuttall

Recommendations:

- (a) The report of the Chief Surveillance Commissioner be noted; and
 - (b) The Council be recommended to adopt the revised Surveillance Policy
-

General Background

- 1 On 15 July 2010 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 Annex 1.
- 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.

Introduction

- 4 The Regulation of Investigatory Powers Act 2000 (RIPA) introduced a statutory framework for those carrying out a surveillance as part of an investigation.
- 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 purposes 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.
- 11 The Council can only authorise directed surveillance if it is necessary for the purpose of preventing or detecting crime or of preventing disorder.
- 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 a 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. Indeed, the Council has granted very few authorisations for directed surveillance, the last of which was in

November 2007. 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 of course important to keep the surveillance policy under continual review to ensure that, when covert surveillance or the use of a CHIS is necessary, the District Council acts in a lawful manner.

Recommendations of OSC

- 15 Members will note that the report makes 3 recommendations –
- Reduce the number of authorising officers and identify them by rank and name
 - Establish a structured training programme
 - Amend the surveillance policy in 3 areas
 - Original copies of applications/ authorisations etc be submitted to the RIPA Monitoring Officer, with copies retained within departments
 - A new section be included to describe the RIPA management structure
 - A requirement that all authorising officers be RIPA trained before being permitted to authorise, and a list of authorising officers, identifying them by name and rank be included in the policy
- 16 The above recommendations have been addressed within the Surveillance Policy at paragraphs 13, 14, 25 and 26 respectively.
- 17 In accordance with the revised Code of Practice on Covert Surveillance and Property Interference, it is proposed that the policy will be reviewed by Members on an annual basis, with quarterly internal reports on the use of RIPA powers.

The Future

- 18 The Coalition government's programme for change indicated an intention to ban the use of RIPA powers by local authorities, unless they were signed off by a magistrate and required for stopping serious crime.
- 19 In July 2010 the Home Secretary Theresa May announced a review of the RIPA. This review will cover the use of RIPA by local authorities, and it is due to report back very soon.

Key Implications

Financial implications

- 20 The operation of the policy has negligible financial impact upon the Council. The forms are freely available electronically, and links to these are on 'SIMON'.

Legal, Human Rights etc.

- 21 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.

Impact on and Outcomes for the Community

- 22 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.

Conclusions

- 23 Members are asked to consider the revised surveillance policy and approve it for recommendation to Council.

Risk Assessment Statement

- 24 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.
- 25 The attached policy will ensure that all officers comply with the requirements of RIPA when seeking authorisation under the Act.

Sources of Information:

Regulatory of Investigatory Powers Act 2000
and associated Codes of Practice

Contact Officer(s):

Adrian Stanfield – ext. 7475

Dr. Pav Ramewal

Deputy Chief Executive & Director of Corporate Resources