

PLYMOUTH CITY COUNCIL

Subject: Covert Activities, Surveillance and the Regulation of Investigatory Powers Act 2000 (RIPA)

Committee: Audit

Date: 13 December 2012

Cabinet Member: Councillor Peter Smith

CMT Member: Adam Broome (Director for Corporate Services)

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Ref: RIPA Annual Report 2012

Key Decision: No

Part: I

Purpose of the report:

Council are required to be informed about the use of covert surveillance by staff when undertaking criminal investigations and to agree a policy.

Audit Committee are requested to note the two recent positive inspections, accept this report and the proposed Covert Activities and Surveillance Policy.

Members are required to have oversight of the use of covert activities and surveillance for Council purposes; but do not take decisions on individual cases.

These are necessary tools to have available for enabling the Council to fulfil its obligations to investigate crime, prevent disorder, recover debt, protect the public and establish the facts about situations for which the Council has responsibility.

This report informs Members about covert surveillance that has taken place, changes to legislation and the steps being taken to ensure that the Council is compliant in respect of covert activities.

Staff may consider that it is appropriate to undertake covert activities that result in the subject of enquires being unaware that their actions are being monitored, or enquires are being undertaken without their knowledge and managers may wish to covertly monitor staff activities. However, covert activities compromise an individual's 'right to privacy', so the use of a covert activity must be lawful, necessary and proportionate in order to comply with the Human Rights Act.

A change of legislation concerning Local Authority use of RIPA requires that the Council's current approach to covert activities is amended. Since the 01 November 2012 Local Authorities are no longer entitled to make authorisations under RIPA to the same extent as previously and thus the current procedures, which were approved by Audit Committee in 2003, require replacing and the proposed Covert Activities and Surveillance Policy is recommended for approval in their place.

Corporate Plan 2012 – 2015:

Undertaking covert activities contributes to the Corporate Plan through assisting in developing an outstanding quality of life to be enjoyed by everyone. The contribution is through assisting safeguarding – reducing crime, making people feel safe, making the most of our environment and promoting inclusive communities by reducing the impact of unwanted behaviour on the community. Covert activities are often jointly undertaken with other agencies, so as to assist with developing a safer and greener Plymouth.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

There are no significant implications for the medium term financial plan as the undertaking of covert activities is a departmental casework related process and any equipment that is required is obtained through current budgets.

However in order to ensure compliance with the requirements of the HRA and other relevant legislation; sufficient trained managers and staff are required to be available and the resourcing of specialist staff role profiles must be incorporated into Directorate action plans.

There is not a specific budget cost code and all costs are subsumed within service team budgets.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

The Covert Activities and Surveillance Policy is recommended so that authorised covert methods are available to support community safety, environmental protection, fraud investigation, individual casework and to investigate employment disputes. Implementing this Policy will prevent the Council breaching its obligations under the HRA and associated legislation.

There is a risk to the Council of loss of reputation and that evidence obtained for an investigation will not be accepted; if covert activities are not in accordance with the requirements of legislation and good practice. The recommended policy provides for processes and procedures to be in place so that the Council will be able to successfully use the product of covert surveillance.

There is a risk to staff involved in undertaking covert activities, as they are potentially at greater risk from the perpetrators of crime, than other employees. The council is also required to implement a duty of care towards the public who assist investigations by providing a base (their own property) from where surveillance is undertaken. There could be an impact on community cohesion through the activities of the investigators and through the use of the product of the surveillance. These implications will be controlled through adherence to the proposed Policy.

Recommendations & Reasons for recommended action:

To note that the recent Inspections demonstrate that staff have appropriately implemented powers available under RIPA.

To acknowledge that covert activities can be a necessary and proportionate response for achieving the Council's objectives by accepting the Covert Activities and Surveillance Policy; which allows covert activities to be deployed where necessary and proportionate, under the control of a good practice process based on the RIPA requirements.

Alternative options considered and reasons for recommended action:

The alternative option is for Members to limit the options for undertaking investigatory activities by staff by:

- a) deciding that Officers will not undertake covert activities or surveillance on behalf of the Council, or
- b) Officers they may only use this option when a serious crime is being investigated, which would then limit Officers to only deploying surveillance that was in accordance with the revised RIPA controls which do not include previous uses of covert surveillance.

These alternative options are rejected as the current changes to RIPA are in response to concerns that Local Authorities have been irresponsible; whereas successive Inspection reports of the Council have found that Officers act in accordance with requirements and the Council has not initiated unnecessary investigations and has always been proportionate in its use of covert activities. Thus staff have been found to have the expertise to deploy the available powers appropriately and to now limit the use of the powers that are available would have a detrimental impact on implementing the investigation responsibilities of the Council.

Covert activities are kept to a minimum through the professionalism of Authorising Officers.

The adoption of this Policy will implement a consistent approach to any covert activity and require consideration of necessity and proportionality by a trained manager, before any covert activity proceeds.

An annual report to Committee will provide Members with the opportunity to review the operation of this Policy.

Background papers:

1. Office of the Surveillance Commissioner Inspection report from the last inspection on 30 May 2012
<http://www.plymouth.gov.uk/homepage/councilanddemocracy/information/investigatorypowersact2000.htm>
2. Interception of Communications Commissioner Inspection report from the last inspection on 31 July 2012
<http://www.plymouth.gov.uk/homepage/councilanddemocracy/information/investigatorypowersact2000.htm>
3. RIPA Authorising Managers internal list – not for public distribution (only available from a computer attached to the council system)
http://documentlibrary/documents/RIPA_Authorising_Managers_internal_list.pdf
4. Home Office guidance for Local Authorities on the use of RIPA
<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/>

Sign off:

Fin	DJN 1213. 013	Leg	TH 2012 1129	HR	JS 2012 1203	Corp Prop		IT		Strat Proc	
Originating SMT Member: Adam Broome – Director for Corporate Services											
Have you consulted the Cabinet Member(s) named on the report? Yes 25/09/2012											

1.0 Introduction

- 1.1 Since the Human Rights Act 1998, until 31st October 2012, the Council has undertaken covert activities in line with the Regulation of Investigatory Powers Act (RIPA) and has been subject to inspection by the regulatory bodies.
- 1.2 All covert activity to support service area based criminal investigations, or to prevent disorder, has been undertaken through a process of internal authorisation in accordance with RIPA Codes of Practice. These covert activities have been monitored by Inspectors.
- 1.3 Any employee related or civil offence investigations have been undertaken in compliance with the Data Protection Act and the Lawful Business Practice Regulations; but these activities have not been monitored as there is no direct inspection process.
- 1.4 RIPA compliant authorisations of covert surveillance enable the Council to demonstrate that a covert activity is compliant with the Human Rights Act (HRA). However this year, the ability of Local Authorities to self-authorise covert activities has been removed, as an internal authorisation must now be confirmed by a Justice of the Peace. Also a RIPA authorisation is now only available for the investigation of serious crime (apart from investigating the sale of alcohol or tobacco to underage children and the acquisition of communications data) rather than for any offence and now excludes covert activity in respect of 'disorder', whereas previously the Anti-Social Behaviour Unit were able to deploy a covert intervention.
- 1.5 These changes to RIPA do not take away the ability to undertake covert activities, but remove the ability of Local Authorities to obtain a RIPA authorisation to justify any covert activity. The Council is still empowered to undertake covert activities, providing it does not contravene the HRA.
- 1.6 As the RIPA authorisation process is intended to demonstrate compliance with the HRA, it is therefore proposed that in order for covert activities to be available for investigations, that the Council uses a RIPA based authorisation process for all proposed covert investigations.
- 1.7 This would be through adopting a Covert Activities and Surveillance Policy that requires all covert activities to be considered in line with the RIPA authorisation process, so that the standards of the regulated activities would also be applied to all other non-regulated covert activities.
- 1.8 The benefit of this approach is to provide a structure that enables staff to have available covert activity as a tool, where it is appropriate for an investigation and for managers to be confident that they can deploy this tool.
- 1.9 Members are also required to annually consider whether RIPA authorisations to undertake covert activity are compliant with the Policy. Adopting the proposed Policy and through quarterly updates to the lead Member and an annual report, will enable Committee to monitor not only RIPA authorisations, but also the use of all covert activities.

2.0 Inspection Reports:

- 2.1 Until 31 October 2012 all covert surveillance deployed to investigate a criminal offence was authorised under procedures arising from the Regulation of Investigatory Powers Act (RIPA) and the Council earlier this year had two inspections from two separate bodies that monitor compliance with the two different covert activities that Local Authorities can authorise under RIPA.
- 2.2 On 30 May 2012 an Inspector from the Office of the Surveillance Commissioner (OSC) visited the Council and in the subsequent report concerning directed surveillance activities, stated that “good standards are being maintained” and no recommendations for improvement were made.
- 2.3 On 31 July 2012 an inspector from the Interception of Communications Commissioner (IOCCO) visited the Council for the first time. No previous inspection visit had been made due to the Council’s low use of the power to access communications data.
The summary was: “Overall Plymouth City Council emerged reasonably well from this their first inspection. The Council has a satisfactory level of compliance with the Act and Code of Practice. The Inspector was satisfied that the Council is acquiring communications data for the correct statutory purpose and importantly the Inspector found no evidence that the Council’s powers under Part I Chapter II of RIPA had been used to investigate trivial offences. However there is some room to improve the systems and processes in place for acquiring communications data.”
Recommendations from the Inspector are being implemented by staff.

3.0 Requirements for the Council:

- 3.1 The RIPA Code of Practice requires that the Senior Responsible Officer (SRO) reports annually to Council in respect of RIPA authorisations and the surveillance policy so that Councillors can determine whether the covert surveillance being undertaken is consistent with policy. This role has been undertaken by the Audit Committee and the Deputy Leader will receive quarterly updates.

4.0 Covert Activities and Surveillance Policy

- 4.1 The current surveillance policy comprises the explanations and procedures which are on the Council’s web site at: <http://www.plymouth.gov.uk/homepage/councilanddemocracy/information/investigatorypowersact2000.htm> these have been sufficient until now and have been accepted by Inspectors.
- 4.2 However, with the change to RIPA there is now a lack of clarity for staff as to when and how they can undertake covert activities. Thus a new Policy is presented which seeks to provide standard practices for all types of covert activities and its intention is to enable staff to be able to make use of covert activities when to do so would be lawful, necessary and proportionate in the circumstances.
- 4.3 The proposed policy requires that covert activities are considered in the same way that we have been successfully done so up to now and where the new Magistrate authorisation process is required, that is to be implemented.

The effect of this Policy should be to demonstrate that the Council will be compliant with legislation when undertaking any covert activity and thus enable the product of covert activity to be usable as evidence.

5.0 Staff Development and funding implications:

- 5.1 training of staff who could make use of covert activities, so that they meet the regulatory standards
- 5.2 specific training for senior managers as to requirements to be considered before authorising a covert activity or surveillance
- 5.3 an accredited officer for obtaining communications data (Single Point of Contact) or funding of an external provider (National Anti Fraud Network)
- 5.4 maintenance of surveillance equipment
- 5.5 developing the Councils web site information for staff and the public
- 5.6 documentation and the authorisation process to be fit for purpose
- 5.7 achieving annual reporting and biannual inspection requirements
- 5.8 maintenance and development of the current ICT application for logging covert activities, to enable the tracking and reporting on all authorisations

6.0 Examples of RIPA in operation:

- 6.1 **Fraud Investigation**
Sometimes facts about a claim for benefit payments are called into question and to assist the gathering of evidence about a person's relationships or activities, the Investigating Officer may need to covertly observe a person's contacts and work activities.
- 6.2 **Public Protection**
Investigating whether goods or services are being obtained or sold within the relevant legislation, may involve obtaining details about traders and their activities, which they have not made public.
- 6.3 **Anti-Social Behaviour Unit**
In order to obtain evidence of any person engaging in activities that disrupt other individuals, when witnesses are reluctant to come forward, may require covert filming of the anti-social behaviour, in order to support the implementation of controls.
- 6.4 **Cooperation with law enforcement agencies**
A law enforcement agency such as the Police may request use of Council facilities in order to investigate or prevent crime.
The City Centre CCTV cameras could be used to observe a particular individual and if a properly authorised application is made to the control room manager then covert tracking of the person may be undertaken by the camera operator. Normally a camera operator does not follow any individual without obvious justification.

Appendix I

Regulation of Investigatory Powers Act (RIPA) authorised covert activities to support departmental case work 2010 to 2012:

Members are reminded that contrary to popular statements, RIPA is not anti-terror legislation; but was enacted to provide an accredited process to follow by any crime investigating agency (including the Council) when there was likely to be an interference with a person's 'right to privacy' under Human Rights Act Article 8 (HRA).

An authorisation made in accordance with RIPA is a statutory defence against an allegation that the Council has contravened the HRA.

The departments, who have made use of RIPA, are the Anti-Social Behaviour Unit, the Housing Benefit Fraud Investigations Team and the Public Protection Service.

In order for these departments to undertake Council investigations to enforce legislation, they have used an authorised activity to confirm or identify who has been involved in a crime, what has taken place and when events have taken place.

The types of use are offences in connection with fraud investigations, dealings in counterfeit goods, traders who prey on vulnerable people or sell banned goods to children and identifying those whose behaviour causes distress to others.

Authorisations under RIPA since 2010						
Team	Authorised Date	Cancelled Date	Number of Working days	Type	Purpose	Outcome
Benefits Fraud	14/01/2010	05/03/2010	36	Directed Surveillance	To link a suspected cohabitee with the claimants address	Prosecution successful
Anti-Social Behaviour Unit	15/06/2010	23/06/2010	11	Directed Surveillance	Use of camera to view behaviour of individuals in street	No incidents captured Camera seen and operation aborted
Trading Standards	22/06/2010	29/06/2010	5	Communications data	Consumer Protection from Unfair Trading Regs	Subscriber details fail to identify alleged offender.

Team	Authorised Date	Cancelled Date	Number of Working days	Type	Purpose	Outcome
Benefits Fraud	22/09/2010	11/10/2010	13	Directed Surveillance	To gain sufficient evidence to link a suspected cohabitee with the claimants address	Both interviewed under caution but due to the circumstances of this particular case it was decided not to proceed with a prosecution
Trading Standards	15/10/2010	22/10/2010	5	Communications data	Consumer Protection - Unfair Trading Regulations	Unable to positively ID offender
Trading Standards	02/11/2010	17/11/2010	11	Communications data	Consumer Protection - Unfair Trading Regulations	Confirming registered address was not possible
Environmental Health	23/08/2011	24/08/2011	1	Communications data	Food Hygiene Regulations	Trader interviewed then untraceable for service of documents – case open
Benefits Fraud	22/11/2010	03/03/2011	70	Directed Surveillance	To ascertain whether a cohabitee was at a claimants address	Interview Under Caution. This is a joint case with DWP decision pending on sanction
Benefits Fraud	06/12/2011	23/12/2011	13	Directed Surveillance	To see whether the vehicle of a potential cohabitee was parked near a claimants address	No sighting of the vehicle at the claimants property

Team	Authorised Date	Cancelled Date	Number of Working days	Type	Purpose	Outcome
Benefits Fraud	24/01/2012	14/02/2012	15	Directed Surveillance	To ascertain whether a cohabitee was at a claimants address	Cohabitee regularly left the property for work. This a joint case with DWP and a decision is pending on prosecution
Public Protection Service	04/04/2012	06/04/2012	2	Directed Surveillance	To identify if illicit goods being sold	Evidence obtained for prosecution
Public Protection Service	24/04/2012	11/05/2012	13	Directed Surveillance	To identify if illicit goods being sold	Not able to find the person
Public Protection Service	25/04/2012	11/05/2012	12	Directed Surveillance	To identify if illicit goods being sold	Not able to find the person
Trading Standards	07/09/2012	09/10/2012	23	Communications data	To identify apparent contravention of Copyright, Designs and Patents Act 1988	Trader interviewed, the data was used to link trader to adverts on Facebook
Public Protection Service	19/09/2012	19/10/2012	30	Directed Surveillance	To identify the storage of counterfeit goods	Observation not conclusive and case remains open