

PLYMOUTH CITY COUNCIL

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

Committee: Audit Committee

Date: 13th March 2014

Cabinet Member: Councillor Peter Smith

CMT Member: Carole Burgoyne (Corporate Director for People)

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Ref: RIPA Annual Report 2013/14

Key Decision: No

Part: I

Purpose of the report:

Surveillance is a tool that may be required for 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.

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

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.

This report was delayed from the December 2013 Audit Committee, due to a relevant inspection taking place. The result of that positive inspection by the Interception of Communications Commissioner is now reported to Members and is available to the public.

The current Policy requires some minor updates and is submitted for reapproval.

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

Audit Committee are requested to note the recent positive inspection, accept this report and the updated Surveillance and Covert Activities Policy.

The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:

This report is relevant to the Co-operative values of 'We are Responsible', 'We are Fair', the objective 'Caring Plymouth' and the outcome – 'People are treated with dignity and respect'.

**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 surveillance and covert activities is a departmental casework related process. There is not a specific budget cost code and all costs are subsumed within service team budgets. Thus 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.

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

- Child Poverty – none.
- Community Safety - the purpose of the surveillance tool is to promote community safety, prevent crime and disorder, undertake fraud investigation and provide environmental protection.
- Health and Safety – in particular the use of CCTV can promote safety, but officers undertaking surveillance are potentially at risk.
- Risk Management - there is the possibility of loss of reputation and monetary penalties for the Council, through surveillance breaching privacy and that evidence obtained for an investigation will not be accepted. However implementing and monitoring the Surveillance Policy prevents the Council breaching its obligations under the Human Rights Act and associated legislation; as well as enabling the product of surveillance to be used in accordance with the requirements of legislation and good practice.

Equality and Diversity:

Has an Equality Impact Assessment been undertaken? Yes/No due to the low use of surveillance.

Recommendations and Reasons for recommended action:

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

To note that the recent Inspection demonstrates that staff have appropriately implemented powers available under RIPA.

Alternative options considered and rejected:

The alternative option is for Members to limit the option for Officers to use surveillance as an investigatory tool by:

- a) deciding that Officers will not undertake surveillance or covert activities on behalf of the Council, or
- b) Officers may only use this covert activities when a serious crime is being investigated.

These alternative options are rejected as the oversight Commissioners have not found Officers to be irresponsible, the Council has only initiated necessary investigations and has always been proportionate in its use of covert activities.

Thus Officers have been found to have the expertise to deploy the available powers appropriately and to now limit the use of surveillance would have a detrimental impact on Officers ability to undertake investigations in order to fulfill responsibilities of the Council.

Published work / information:

[Home Office explanation to Local Authorities](#) of the current arrangements for using directed covert surveillance to obtain evidence for an investigation of a serious crime, the underage sale of alcohol and tobacco and the acquisition of the less intrusive types of communications data: service use and subscriber information.

Statutory codes of practice which staff must implement are available [on this web page](#)

The latest Inspection report and previous reports are available on the Council's [RIPA web page](#).

The [surveillance camera code of practice](#) sets out new guidelines for CCTV and automatic number plate recognition. In addition to the [Information Commissioners CoP on CCTV](#).

Background papers:

Title	Part I	Part II	Exemption Paragraph Number							
			1	2	3	4	5	6	7	

Sign off:

Fin		Leg	1967 7/NJ	Mon Off		HR	2014 0220	Assets		IT		Strat Proc	
Originating SMT Member – Carole Burgoyne (Corporate Director for People)													
Has the Cabinet Member(s) agreed the content of the report? Yes / No on 26/02/2014													

1.0 Introduction

- 1.1 The last annual report was submitted and a Surveillance policy adopted at [Audit Committee on 13 December 2012](#) item 40.
- 1.2 The intention was to submit the annual report for 2013 at the 12 December 2013 Audit Committee meeting but due to an impending relevant inspection the annual report was delayed [see item 40](#) of that meeting.
- 1.4 This latest positive [Interception of Communication Commissioner Inspection report](#) is now available to read on the [Council's web site](#).
- 1.3 An updated Surveillance policy is submitted for approval and the authorisations obtained since the last annual report are summarised for Members information.
- 1.4 The Office of the Surveillance Commissioner (OSC) is due to inspect the Council in 2015.
- 1.5 A Surveillance Camera Commissioner (SCC) is also now in place and has issued statutory principles to be followed for the deployment and use of cameras. The CCTV & Parking Development Officer is reviewing the implications for the Council.

2.0 Interception of Communications Commissioner's Office (IOCCO) inspection report

- 2.1 This inspection report states:
 - 2.1.1 "The Council emerged very well from this inspection. The Inspectors were satisfied that the public authority is acquiring communications data for a correct statutory purpose and for investigations where they have a clear statutory duty and responsibility to conduct a criminal investigation. Overall the Council has a good level of compliance with the Act and CoP."
 - 2.1.2 "In light of the good level of compliance it will not be necessary to conduct a further inspection for at least 18 months."
- 2.2 There are two procedural recommendations for the Council which are being considered by the relevant staff and our response will be provided to the IOCCO by the deadline date 26 March 2014.
 - 2.2.1 Page 5 - "The DP should promptly consider applications to ensure that the requests applicants can meet their investigative objectives in a timely fashion."
 - 2.2.2 Page 9 - "streamline the process when dealing with number porting, as well as in cases where it is necessary to take a more proactive approach to widen the data capture..."

3.0 Surveillance Policy

- 3.1 An updated Policy is submitted for approval.
- 3.2 The changes to the original Covert Activities and Surveillance Policy approved at [Audit Committee on 13 December 2012](#) item 40.
 - 3.2.1 The name of this policy has been revised to Surveillance and Covert Activities Policy in order to make its purpose more obvious,
 - 3.2.2 Updated to include the use of Body Worn Video which is available to the Anti-Social Behaviour team members

3.2.3 The Senior Responsible officer is now identified as the Strategic Corporate Director holding the role of Chief Information Officer rather than the Director of Corporate Services

3.2.4 The glossary and reference is updated.

3.3 The continued 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.

3.4 An annual report to Committee provides Members with the opportunity to review the operation of the Surveillance and Covert Activities Policy.

4.0 Examples of Surveillance in operation:

4.1 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.

4.1.1 However the Department of Work and Pensions (DWP) are now undertaking the authorisations of covert activity and Council staff assist in the implementation of any authorisation by the DWP for covert activity, rather than taking the lead as previously. Thus there have not been any Council authorised covert surveillance activities since the last report.

4.2 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.

4.2.1 The Trading Standards service is currently the only Council service team who seek authorisations under RIPA to progress criminal investigations.

4.3 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, there may be a need to undertake covert filming of the anti-social behaviour, to provide evidence for a Court.

4.3.1 However all evidence gathering is currently covert, due to cooperation from local communities and the use of BWV is verbally announced.

4.3.2 Any video or CCTV held by the Council can be requested by the person who has been filmed in line with the Data Protection Act.

4.4 Cooperation with law enforcement agencies:

A law enforcement agency such as the Police may request use of Council CCTV in order to investigate or prevent crime.

4.4.1 For example the City Centre CCTV cameras could be used to observe a particular individual. 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.

4.4.2 Joint operations may also be undertaken with other investigation and enforcement agencies.

4.5 Employment issues:

Managers may require evidence of staff behaviour through monitoring their whereabouts or activities. There may also be a necessity to obtain details of computer use or document access, where there is evidence of contravention of Council policy.

4.5.1 Investigations into issues that may bring the Authority into disrepute are internally authorised using the RIPA process as a guide; so as to avoid any contravention of an employee's privacy rights.

5.0 Regulation of Investigatory Powers Act (RIPA) authorised covert activities to support departmental case work.

5.1 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.

6.0 Use of Surveillance and covert activity since the previous annual report

6.1 The Policy provides for staff to undertake authorised investigations to enforce legislation. These authorised covert activities are intended to confirm or identify who has been involved in a crime, what has taken place and when events have taken place.

6.2 Surveillance Authorisations to undertake investigations since the last annual report 2012

Team	Authorised Date	Completed Date	Type	Purpose	Outcome
External magistrate authorisations					
Public Protection Service	19/09/2012	19/10/2012	Directed Surveillance	To identify the storage of counterfeit goods	Entry warrants executed resulting in seizure of counterfeit tobacco and evidence of illegal money lending – suspect on bail pending further enquiries. Now a Joint Operation with National Illegal Money Lending Team.
Public Protection Service	04/12/2012	11/12/2012	Comms Data - Subscriber Information	To link a suspect to a business engaged in fraudulent trading	Joint Operation with D&C Police (lead). CPS considered that proceeding with the case was not in the public interest after the defendant provided refunds to victims.

Team	Authorised Date	Completed Date	Type	Purpose	Outcome
Public Protection Service	08/05/2013	15/05/2013	Comms Data - Subscriber Information	To identify potential witnesses – purchasers of counterfeit items	Witnesses identified. Prosecution pending – Defendant on bail for next court appearance.
Public Protection Service	10/06/2013	13/08/2013	Comms Data - Subscriber Information	To link suspects to the sale of misdescribed goods	Subscriber details successfully link suspects to offences. Report with Legal Services with a view to prosecution.
Internal senior officer authorisations					
Public Protection Service	21/09/2012 (Pre-magistrate approval requirement)	10/10/2012	Comms Data - Subscriber Information	To identify the seller of pirate DVDs via Facebook	Offender identified and prosecution resulting in fine of £1,808 and curfew for 12 weeks.
Street Services	Liaison meeting with unions	02/12/2013	Surveillance Policy	Concern expressed by Union representative that a manager may have undertaken surveillance of staff without authorisation	HR reminded managers of Surveillance Policy requirements.
Social Care	29/11/2013	16/01/2014	Surveillance Policy	Case work documents transferred using insecure methods	Computer and memory sticks belonging to employee reviewed by agreement, to inform management investigation.