

## PLYMOUTH CITY COUNCIL

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

**Committee:** Audit Committee

**Date:** 30 June 2016

**Cabinet Member:** Councillor Ian Darcy

**CMT Member:** Lesa Annear Strategic Director for Transformation and Change

**Author:** John Finch, Information Governance Manager

**Contact details** Tel: 01752 307294  
email: John.Finch@plymouth.gov.uk

**Ref:** RIPA Annual Report 2015/16

**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.

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. 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. Examples of the Council's use of covert surveillance are listed in Appendix A.

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

Audit Committee are requested to note the inspection report from 2015, and accept the subsequent actions and also accept the updated Surveillance and Covert Activities Policy.

---

### **The 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? No, due to the low use of surveillance.

---

**Recommendations and Reasons for recommended action:**

- 1) To acknowledge that covert activities can be a necessary and proportionate response for achieving the Council's objectives through approval 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.
- 2) To note that the recent Inspection by the Office of Surveillance Commissioners concerning use of Covert Surveillance and Covert Human Intelligence Sources (CHIS) demonstrates that staff have appropriately implemented those powers available under RIPA. The 2013 report by the Office of Surveillance Commissioners demonstrated that staff had appropriately implemented those powers available under RIPA to obtain Communications Data.

The Protection of Freedoms Act 2012 created a judicial approval process for all Local Authority RIPA applications. Now, after internal authorisation the Local Authority will seek judicial approval for their RIPA authorisation. The authorisation will not come into effect unless or until it is approved by a JP.

Further changes were implemented by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012. Local Authorities can now only authorise directed surveillance or CHIS under RIPA to prevent or detect criminal offences that are punishable, by a maximum term of at least 6 months imprisonment or are related to the underage sale of alcohol and tobacco.

The Data Retention and Investigatory Powers Act 2014 received Royal Assent on 17 July 2014. The Act ensures that critical capabilities to fight crime and protect the public are maintained and clarifies the existing law without extending current powers.

The Act introduced additional safeguards for the use of Investigatory Powers to respond to criticisms raised by the European Court of Justice. Under the new measures certain public bodies lost the right to acquire communications data under RIPA. Local authorities including Plymouth City Council have retained their powers but are required to use the National Anti-Fraud Network (NAFN) to assess communication data applications.

- 3) To ensure that the recommendations in the report are fully implemented.

---

#### **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 covert activities when a serious crime is being investigated.

This option is 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 fulfil 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 Code of Practice on CCTV.

#### **Background papers:**

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

---

**Sign off:**

RIPA Annual Report 2015/16

Fin	djn l6 17.09	Leg	dvs. 2589 4	Mon Off		HR		Assets		IT		Strat Proc	
Originating SMT Member: Lesa Annear													
Has the Cabinet Member(s) agreed the contents of the report? No													

## **I Introduction**

- 1.1 The last annual report was submitted and a Surveillance policy adopted at Audit Committee in June 2014.
- 1.2 This latest positive Interception of Communication Commissioner Inspection report issued in 2013 is now available to read on the Council's web site. The recent Office of Surveillance Commissioners report will be available on line soon.
- 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) has not notified the Council of any future inspection.

## **2.0 Office of the Surveillance Commissioners inspection report**

- 2.1 This inspection report positively reflected the importance that that officers place on RIPA compliance and the enthusiasm with which it is being moved forward after a series of major restructures.
- 2.2 The report made 8 major recommendations, with all of the recommendations being completed.
  - 2.2.1 Re-create a central record matrix
    - This has been completed and is being managed by Legal services
  - 2.2.2 Ensure that future training addresses the weaknesses disclosed by the examination of the documents and otherwise as indicated in the report.
    - This has been completed. The main weakness were with the documents which have been addressed
  - 2.2.3 Consider the designation of an officer as RIPA Co-ordinating officer and ensure that a system is developed whereby immediate oversight may be exercised on RIPA applications, authorisations, reviews renewals and cancellations.
    - This has been completed.
    - An officer in legal services has been nominated as the Coordinating Officer for RIPA
  - 2.2.4 Raise RIPA awareness in all Council departments.
    - This has been completed.
    - Public protection have provided RIPA awareness training to most of the DMT and CMT, apart from The Director of Public Health.
    - All staff on the Authorising Manager's list attended a 1 day training course on 13 May 2015
  - 2.2.5 Ensure that the statutory and Codes and Practice requirements for the management of CHIS are satisfied and officers receive training to enable them to satisfy those provisions.
    - This has been completed.
    - All CHIS forms were amended in line with the requirements.
  - 2.2.6 Amend the CHIS forms to include page 1 of the Home office forms.

- This has been completed.

2.2.7 Amend the Surveillance and Covert Activities policy and the Directed Surveillance Working Practises for Authorising and Investigating Officers – RIPA –

- This has been completed.
- The Directed Surveillance Working Practises for Authorising and Investigating Officers has been amended.
- The Surveillance and Covert Activities policy was reviewed and did not need an update.

2.2.8 Ensure regular reports are submitted to elected members.

- This report will be provided to Audit committee on an annual basis.

### **3.0 Surveillance Policy**

3.1 An updated Policy is submitted for approval.

3.1.1 Updated to remove the monitoring of staff, which will be put into a new policy.

3.1.2 The Senior Responsible officer is now identified as the Strategic Director For Transformation & Change

3.2 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.

### **4.0 Use of Surveillance and covert activity since last report**

4.1 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.

4.2 2014/15

4.2.1 During the year 2014/2015 there were x 2 judicial applications that were made and approved by the Court. Both of these were made by the Trading Standards team and were each in respect of a 'CHIS', a covert human intelligence source. Both were for test purchase operations in respect of legal highs.

4.2.2 There was also an application for the authorisation of the use of Directed Surveillance. This was again by the Trading Standards team and was in response to intelligence received as to the supply of counterfeit goods. As a result of the urgency required, no judicial approval was possible. The application was approved in accordance with the appropriate prescribed procedures.

4.3 2015/16

4.3.1 There was one communications Data application made during the year 2015/2016. The application was made by the Trading Standards Team who requested subscriber details for two telephone numbers and a website being used by Rogue Traders.

## **Appendix A: Examples of Surveillance in operation:**

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.

### **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.

### **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.

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

### **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.

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

### **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.

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

### **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.

- 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.