

TEWKESBURY BOROUGH COUNCIL

Report to:	Audit Committee
Date of Meeting:	25 September 2013
Subject:	Regulation of Investigatory Powers Act 2000 (RIPA)
Report of:	Sara Freckleton, Borough Solicitor
Corporate Lead:	Sara Freckleton, Borough Solicitor
Lead Member:	Councillor Mrs J M Perez
Number of Appendices:	1

Executive Summary:

To update Audit Committee on the changes to the Regulation Investigatory Powers Act 2000 (RIPA) and codes of practice; to summarise the new duties and responsibilities this legislation places on local authorities, their Officers and Members; and to recommend amendments to the procedural guide to meet these.

Recommendation:

- 1. To APPROVE the amended RIPA Procedural Guide set out at Appendix 1 and RECOMMEND TO THE EXECUTIVE COMMITTEE that it be ADOPTED.**
- 2. To APPROVE the designation of the Borough Solicitor and Monitoring Officer as the Council's Senior Responsible Officer for the purposes of RIPA.**
- 3. To NOTE the Office of Surveillance Commission inspection due on 21 November 2013.**

Reasons for Recommendation:

The revisions set out in the draft Procedural Guide is required to implement the recommendations made by the OSC inspection report in 2010 and to take into account legislative changes that have come into effect.

Resource Implications:

Minimal – considered at Paragraph 7.0.

Legal Implications:

These are set out in the main body of the report.

Risk Management Implications:

Having a procedural guide that complies with the legislation and guidance and ensuring that Officers using RIPA powers are fully trained in the use of the powers will help to reduce the risk of the Council using its RIPA powers unlawfully.

Performance Management Follow-up:

N/A

Environmental Implications:

None

1.0 INTRODUCTION

- 1.1** The Regulation of Investigatory Powers Act 2000 (RIPA) provides a legal framework for the control and regulation of surveillance and information gathering techniques which public authorities undertake as part of their duties.
- 1.2** The use of covert surveillance by the Council is rare and since 2010 the Council has not undertaken any covert surveillance or information gathering techniques that would fall under the scope of RIPA. There may, however, be cases such as benefit fraud cases where the use of covert surveillance is necessary and proportionate.
- 1.3** It is necessary, therefore, for the Council to have an up to date procedural guide to ensure that Officers comply with RIPA requirements before they undertake any covert surveillance or information gathering techniques.
- 1.4** The Council's use of its RIPA powers is subject to annual reporting and triennial inspection by the Office of Surveillance Commissioners (OSC). The Council received its most recent inspection by the OSC on 9 August 2010 and the OSC's report following the inspection made a small number of suggestions for amendment and improvement of the Council's RIPA Procedural Guide and these have been incorporated into the draft Procedure Guide at Appendix 1. The next visit from the OSC is due on the 21 November 2013.

2.0 KEY CHANGES

- 2.1** The Home Office carried out a review of Counter-Terrorism and Security Powers in 2010 and the outcomes were included in the Protection of Freedoms Act 2012. The Act has changed the Council's RIPA powers as follows:
- (i) Magistrates' approval is now required for Directed surveillance and Covert Human Intelligence Source (CHIS) surveillance before any authorisation granted by Authorising Officers within the Council can take effect;
 - (ii) urgent oral authorisations are no longer available, because of the judicial approval process; and
 - (iii) RIPA directed surveillance can only be authorised when the offence carries a maximum custodial sentence of 6 months or more or the offence relates to underage sales of tobacco and alcohol.
- 2.2** The effect of the changes is that an authorisation made by the Authorising Officers within the Council will not come into effect until it has been approved by a Magistrate. The Magistrate will be required to consider whether it is, reasonable for the local authority to believe that the use of the covert technique in question is necessary and proportionate. A Magistrate is able to exercise his or her own discretion and judgement when deciding whether to approve the authorisation.

2.3 Under the new arrangements, a Magistrate may approve the application if satisfied that it:

- is necessary for the purposes set out in RIPA (for local authorities this is the prevention or detection of crime) and proportionate in human rights terms to what it seeks to achieve;
- has been authorised by a person in the authority at the level designated in RIPA (that is, at Director level for Directed Surveillance and Chief Executive level for a CHIS);
- meets any other restriction imposed by order – such as the serious crime threshold that applies to directed surveillance;
- sets out, in the case of a CHIS, that the relevant procedures and supporting Officers are in place to protect the welfare and safety of the CHIS.

2.4 Where a Magistrate refuses a local authority application he or she will have the power to quash the local authority authorisation and the proposed surveillance will not be possible. Judicial approval is also now required for renewal of authorisations, but not for reviews and cancellations.

2.5 In view of the changes to the Council's RIPA powers, refresher training will be provided at regular intervals to ensure that Officers' knowledge of RIPA is kept up-to-date and that Officers are aware of the factors they need to take into account in requesting or authorising use of the Council's surveillance powers.

2.6 It is also recommended that the Borough Solicitor and Monitoring Officer be designated as the Senior Responsible Officer for the purposes of RIPA in accordance with the Home Office Covert Surveillance Code of Practice. It is considered good practice that a Senior Responsible Officer should be responsible for:

- the integrity of the process in place within the Council to authorize directed surveillance;
- compliance with the legislation and the Code of Practice;
- engagement with the Commissioners and inspectors when they conduct their inspections; and
- where necessary, overseeing the implementation of any post-inspection action plans recommended by the OSC.

2.7 It is also proposed that Members of the Council's Audit Committee review the use of RIPA and this Policy. In order to facilitate this, the Senior Responsible Officer will provide yearly reports to Audit Committee on how RIPA has been used in the previous year and whether there are any concerns as to the Policy.

3.0 OTHER OPTIONS CONSIDERED

3.1 None.

4.0 CONSULTATION

4.1 All Group Managers, the Borough Solicitor and the Chief Executive have been asked to consider the draft procedural guide and comment.

5.0 RELEVANT COUNCIL POLICIES/STRATEGIES

5.1 None

6.0 RELEVANT GOVERNMENT POLICIES

6.1 Home Office Guidance on the use of 5 Directed Surveillance and Covert Human Intelligence Source surveillance.

7.0 RESOURCE IMPLICATIONS (Human/Property)

7.1 There are no direct financial implications arising out of this report. At present, there is no fee payable to the Magistrates' Court for the judicial approval process. The authorisation process now has additional steps - the application for judicial approval will have to be prepared and at least one Officer will need to attend the Magistrates' Court to make the application – and these will be met from within existing resources. As the Council uses its RIPA powers sparingly, it is not anticipated that the additional steps will be particularly burdensome.

8.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

8.1 The use of RIPA powers by the Council can contribute to ensuring community safety.

9.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

9.1 Ensuring that the Council complies with the Act and the Code of Practice will ensure that covert surveillance is used only as a last resort in respect of preventing and detecting crime and only if it is necessary and proportionate to crime being committed.

10.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

10.1 None

Background Papers: The Regulation of Investigatory Powers Act 2000.
The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010/521)
Home Office Guidance on the use of 5 Directed Surveillance and Covert Human Intelligence Source surveillance
The Criminal Procedure Rules 2012 (SI 2012/1726)

Contact Officer: Vikki Fennell, Solicitor
01684 272015 Vikki.fennell@teWKesbury.gov.uk

Appendices: Appendix 1 – Procedural Guide – Regulation of Investigatory Powers Act 2000 (with appendices)