

Item

## REVIEW OF USE OF THE REGULATION OF INVESTIGATORY POWERS ACT



**To:**

Councillor Nicky Massey, Executive Councillor for Transport and Community Safety

Environment & Community Scrutiny Committee 16/01/20

**Report by:**

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**Wards affected:**

All

### Not a Key Decision

#### 1. Executive Summary

- 1.1 A Code of Practice introduced in April 2010 recommends that Councillors should review their authority's use of the Regulation of Investigatory Powers Act 2000 (RIPA) and set its general surveillance policy at least once a year. The Leader and Executive Councillor for Strategy and Transformation and Strategy and Resources Scrutiny Committee last considered these matters on the 17 January 2019.
- 1.2 The City Council has not used surveillance or other investigatory powers regulated by RIPA since February 2010.
- 1.3 This report sets out the Council's use of RIPA and the present surveillance policy.

#### 2. Recommendations

The Executive Councillor is recommended to:

- 2.1 To review the Council's use of RIPA set out in paragraph 3.5 of this report.
- 2.2 To note and endorse the steps described in paragraph 3.7 and in Appendix 1 to ensure that surveillance is only authorised in accordance with RIPA.
- 2.3 To approve the general surveillance policy in Appendix 1 to this report.

### **3. Background**

- 3.1 The Regulation of Investigatory Powers Act imposes controls on the circumstances in which public bodies can use covert investigative methods in connection with their statutory functions. Local authorities may only use these methods for the purpose of preventing or detecting crime or of preventing disorder.
- 3.2 These are the activities that are regulated by RIPA:

#### **a) Covert directed surveillance**

Surveillance is "covert" if it is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place. It is "directed" if it 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. Surveillance is not directed if it is an immediate response to events or circumstances; for instance if a police officer sees someone acting suspiciously and decides to follow them. The Council uses covert directed surveillance very sparingly – and has not used it at all in the period covered by this report.

#### **b) Covert human intelligence source ("CHIS")**

A covert human intelligence source is someone who establishes or maintains a relationship with a person for the purpose of covertly obtaining or disclosing information. In practice, this is likely to cover the use of an informer or Council officer to strike up a relationship with someone as part of an investigation to obtain information "under cover". The Council has never authorised the use of a "covert human intelligence source" under RIPA.

#### **c) Access to Communications Data**

There are stringent controls placed on access by the Council to “communications data”. The Council is not entitled to obtain access to the content of communications between third parties but can, in some circumstances, obtain information relating to the use of a communications service. “Communications services” include telecom providers, postal services and internet service providers. The Council has never authorised access to communications data under RIPA.

3.3 More detail of the nature of the scope of RIPA and controls and procedures are set out in the general surveillance policy in Appendix 1.

### 3.4 **Member Supervision of the Use of RIPA**

- a. A Home Office Code of Practice provides for a wider supervisory role for councillors. The code states that, at least once a year, councillors should review the Council’s use of RIPA and set the general surveillance policy. This report gives members this opportunity.
  
- b. The Council has not used RIPA powers since the Code of Practice came into effect. If RIPA powers are used, Councillors should consider internal reports on their use at least on a quarterly basis to ensure that they are being used consistently with the council's policy and that the policy remains fit for purpose. The Code emphasises that councillors should not be involved in making decisions on specific authorisations.

### 3.5 **The Council’s Use of RIPA**

- a. The City Council is very sparing in its use of RIPA powers. In fact, it has not authorised the use of RIPA powers in the period covered by this report (January 2018 to January 2019) and not used these powers since February 2010.
- b. As mentioned in Section 3.2 (b) and (c), the Council has never used RIPA powers to authorise the use of “confidential human intelligence sources” or the powers relating to the obtaining of communication data.
- c. When members previously reviewed the Council’s use of RIPA, they asked for information about surveillance etc. carried out by the Council under an authorisation given by a third party. This might arise where an investigation is being led by another agency (e.g. Police or HMRC) and the Council is asked to assist. There were two occasions in 2015 in which the Council assisted the Police in directed surveillance carried out through of the Council’s CCTV. Both related to a single investigation into suspected sexual assault.

### **3.6 The Protection of Freedoms Act 2012**

a. From 1 November 2012, all local authority surveillance authorised under the Regulation of Investigatory Powers Act 2000 (RIPA) has been subject to approval by a Magistrate.

b. Approval can only be given if the Magistrate is satisfied that:

(i) There were reasonable grounds for the authorising officer approving the application to believe that the Directed Surveillance or deployment of a Covert Human Intelligence Source (CHIS) was necessary and proportionate and that there remain reasonable grounds for believing so.

(ii) The authorising officer was of the correct seniority within the organisation i.e. a Director, Head of Service, Service Manager or equivalent.

(iii) The granting of the authorisation was for the prescribed purpose, which is preventing or detecting crime or disorder and, in the case of directed surveillance, is confined to cases where the offence under investigation carries a custodial sentence of six months or more.

There are also additional safeguards in relation to the use of a CHIS. (As mentioned in paragraph 3.2, The Council has never authorised the use of a “covert human intelligence source” under RIPA.)

### **3.7 The Council’s Surveillance Policy**

a. The Council’s surveillance policy is set out at Appendix 1. It sets out the tests to apply in determining whether the use of RIPA powers is necessary and proportionate.

b. The policy was updated in 2016 to reflect the Office of Surveillance Commissioners Inspection Report carried out on the 25<sup>th</sup> April 2016. The report commended the Council on their management of surveillance and made minor amendments to the policy to reflect the Protection of Freedoms Act 2012, which restricted the Local Authorities powers of surveillance. Local Authorities were previously permitted under s.28 (3)(b) to authorise surveillance where it is necessary “for the purpose of preventing or detecting crime or preventing disorder”. This was subsequently amended in 2012 under 7A (3)(a) and (b) to only permit surveillance for criminal offences which are set to be prevented or detected, whether on summary conviction or on indictment by a max term of at least six months and

would constitute an offence under s.146,147,147A of the Licensing Act 2003 or s.7 of the Children's & Young Persons Act 1993. The latter are all offences involving the sale of tobacco and alcohol to underage children.

- c. The previous Head of Legal Services revised the policy in 2016 following the report.
- d. No further changes to the policy are recommended at present.

## **4. Implications**

### **(a) Financial Implications**

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None.

### **(b) Staffing Implications**

None.

### **(c) Equality and Poverty Implications**

A formal equality impact assessment has not been carried out in preparing this report. Equality impact issues are addressed, and safeguards contained, within the body of the general surveillance policy which the Executive Councillor is being asked to endorse. Paragraph 10.5 of the policy highlights the need to consider equality issues as part of considering whether to use RIPA powers. Paragraph 10.7 highlights the special care needed if surveillance might involve obtaining access to religious material. The Head of Legal Services receives copies of all authorisations and takes an overview of the use of RIPA. The member supervision outlined in section 3.4 of this report would also help ensure that the policy is being applied properly.

### **(d) Environmental Implications**

The proposals in this report have a "nil" climate change impact.

### **(e) Procurement Implications**

None.

### **(f) Community Safety Implications**

Although the Council's use of RIPA has been very sparing, there have been, and will be, occasions on which the use of the powers are justified and necessary to ensure community safety.

## **5. Consultation and communication considerations**

The RIPA general surveillance policy is based on legal requirements and the guidance contained in Home Office codes of practice and there has been no external consultation on this.

## **6. Background papers**

Background papers used in the preparation of this report:

(a) These background papers were used in the preparation of this report:

Report to the Leader and Strategy and Resources Scrutiny Committee:  
Review of Use of The Regulation Of Investigatory Powers Act (19 January 2015) This is a published source available at

<http://democracy.cambridge.gov.uk/ieListDocuments.aspx?CId=159&MId=2551&Ver=4>

House of Commons Library briefing paper dated 19 November 2015: Draft Investigatory Powers Bill. This is a published source available at

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7371#fullreport>

## **7. Appendices**

City Council RIPA Procedure Guide.

## **8. Inspection of papers**

To inspect the background papers or if you have a query on the report please contact Tom Lewis, Head of Legal Practice, tel: 01223 - 457041, email:

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