

Report on the use of the Regulation of Investigatory Powers Act 2000

Report of the Head of Legal and Democratic Services

Recommended:

That OSCOM receives the report of the Head of Legal and Democratic Services on the Council's use of its powers under the Regulation of Investigatory Powers Act 2000.

SUMMARY:

- This report updates members as to the Council's use of its powers under the Regulation of Investigatory Powers Act 2000.

1 Introduction

- 1.1 The Home Office Covert Surveillance and Property Interference Code of Practice recommends regular reporting to elected members of a local authority's powers under the Regulation of Investigatory Powers Act 2000.
- 1.2 This report provides members with such an update.

2 Background

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a legal basis for certain authorities to carry out certain invasive investigations.
- 2.2 Insofar as Local Authorities are concerned, this includes carrying out "directed surveillance" or use of "covert human intelligence sources" (CHIS) for authorised purposes.
- 2.3 Directed surveillance or use of CHIS may only be authorised where prescribed criteria are met; namely in relation to investigations relating to an offence punishable by a maximum term of six months' imprisonment or more, or relating to the sale of alcohol, tobacco or nicotine products to minors.
- 2.4 'Directed surveillance' is covert, cannot be 'intrusive' (see below), is undertaken for the purposes of a specific investigation or a specific operation, is carried out in a such a manner which is likely to result in obtaining private information about a person and is planned (it cannot be an immediate response to events or circumstances).
- 2.5 'Intrusive' surveillance cannot be carried out in any circumstances by a Local Authority. Intrusive surveillance includes the presence of an officer or use of a surveillance device in a residence or private vehicle, or use of a device (e.g. a long lens camera) which would provide information of the same quality as would be obtained from a person or device in a residence or private vehicle.

- 2.6 Use of a 'covert human intelligence source' (CHIS) occurs where a person establishes or maintains a relationship with a person:
 - a. for the covert purpose of using that relationship to obtain information or to provide access to any information to another person or
 - b. to covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.
- 2.7 Certain Officers have authority to authorise directed surveillance or use of CHIS *however* that authorisation must be approved by a Justice of the Peace in order to become effective. The Council's Legal Service will advise and assist in obtaining authorisation.
- 2.8 Before authorising surveillance/CHIS the authorising officer must be satisfied that the authorisation is:
 - a. necessary for the purpose of preventing or detecting crime or preventing disorder; and
 - b. proportionate (for example, the action will not be proportionate if the objective could be achieved by less intrusive means).
- 2.9 The authorising officer must also consider the risk of any collateral intrusion i.e. the intrusion into the privacy of persons who are not the subject of the investigation.
- 2.10 An additional layer of assurance is required where the personal information to be obtained is 'confidential information'. Confidential information for these purposes is information subject to legal privilege or information held in confidence concerning an individual (living or dead) who can be identified from it and the material relates to the person's physical or mental health or to 'spiritual counselling'. In these cases, authority (which still must be approved by a Justice of the Peace) can only be given by the Chief Executive or in his absence the Deputy Chief Executive.
- 2.11 Authority does not take effect and the surveillance or use of CHIS cannot take place until it has been approved by a Justice of the Peace.
- 2.12 Authorisation may be renewed if necessary.
- 2.13 An authorisation for directed surveillance will last for three months from the date of Justice of the Peace approval and an adult CHIS authorisation for twelve months unless renewed or cancelled.
- 2.14 The Home Office Covert Surveillance and Property Interference Code of Practice recommends that elected members of a Local Authority should consider internal reports on the use of the 2000 Act on a regular basis.
- 2.15 The objective of this document is to provide such a report.
- 2.16 Local Authority use of RIPA powers is infrequent. Members are asked to note that Test Valley Borough Council has not utilised its powers under the 2000 Act since 2018 and so this is something of a 'nil return' but members are nonetheless requested to note the position.

3 Corporate Objectives and Priorities

- 3.1 Having procedures in place to enable surveillance and/or use of covert human intelligence sources in appropriate cases supports the Council's corporate objectives of growing the potential of the Borough's town centres, communities, people and the local environment.

4 Risk Management

- 4.1 No risks arise as a result of this report.

5 Resource Implications

- 5.1 There are no resource implications of this report.

6 Legal Implications

- 6.1 There are no legal implications of this report.

7 Equality Issues

- 7.1 No equality issues arise out of this report. Equality considerations will be taken into account on a case by case basis as and when authorisations are considered.

8 Conclusion and reasons for recommendation

Members are requested to receive this report and endorse its content.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
1. Home Office Covert Surveillance and Property Interference Code of Practice https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742041/201800802_CSPI_code.pdf			
2. Corporate Surveillance Policy			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	None	File Ref:	N/A
Portfolio: Corporate			
Officer:	Karen Dunn	Ext:	8401
Report to:	Overview and Scrutiny Committee	Date:	3 November 2021