

Ward: All

Portfolio: Cross-cutting

FROM: Deputy Leader of the Council and the Portfolio Holder for Services

Date: 9 May 2016

SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

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Report Sign off	Seen by:	Name	Date
	Legal	Lesley Dolan	25/04/16
	Finance		
	Chief Executive Officer	Stuart Brown	26/04/16
	Corporate Manager	Donna Nolan	25/04/16
Summary:	<p>The Office of the Surveillance Commissioner (OSC) is responsible for RIPA compliance and the Commissioner reports annually to parliament on the use of the powers by the police, security services and authorised public bodies, including local government.</p> <p>The Council is subject to audit inspections, every three years by an Assistant Surveillance Commissioner. The last audit inspection took place on 5 November 2015 and the Inspector's report containing recommendations has been subsequently received.</p> <p>An Action Plan to address four of the five recommendations in the Inspector's report has been considered by Scrutiny Board on the 22 February and Cabinet on the 7 March and amendments to the "<i>Corporate Policies and Procedures on RIPA</i>" to address the fifth recommendation have been considered by Cabinet on the 11 April 2016.</p> <p>This matter has been considered and approved by both Scrutiny and Cabinet. The matter is presented to Council with a recommendation from both Committees.</p>		
Recommendation:	<p>That Council</p> <ol style="list-style-type: none"> 1. Note this report; 2. Adopts the 'Action Plan' as set out as Appendix 2 to this report with immediate effect; 		

	<p>3. Adopts the amended “<i>Corporate Policies and Procedures on RIPA</i>” as set out at Appendix 3 to this report with immediate effect;</p> <p>4. Delegate authority to the Portfolio Holder and Corporate Manager for Governance, Assets and Public Spaces and Monitoring Officer to make minor amendments; and</p> <p>5. Delegate authority to Cabinet to keep the Policy updated as appropriate.</p>
Direct and/or indirect impact on service delivery to our customers and communities	The audit inspection provides assurance to the Council and the public that the proper controls are in place to ensure that any covert surveillance carried out during the course of investigations is undertaken properly and the surveillance is necessary and proportionate to the alleged offence/s.
Financial Implications:	<p>The costs associated with RIPA are generally met within existing budgets.</p> <p>However, post 1 November 2012 judicial consent for authorisations for directed surveillance and CHIS is required before such directed surveillance or CHIS can be conducted. There will accordingly be costs associated with the requirement, for a lawyer, to attend the Somerset Magistrates’ Court sitting to secure the necessary judicial approval.</p>
Legal Implications:	Failure to comply with RIPA could result in the exclusion from court of evidence needed to secure a conviction for a criminal offence. In addition, it presents the risk of a claim for compensation to be made against the Council for alleged breaches of privacy.
Crime and Disorder Implications:	Directed surveillance under RIPA may only be used in relation to the investigation of alleged criminal offences where the offence is punishable by a maximum term of at least 6 months imprisonment or would constitute certain offence under the Licensing Act 2004 and the Children and Young Persons Act 1993. Accordingly RIPA may be employed to gather evidence in the more serious offences that the Local Authority may investigate.
Equalities Implications:	The proper and consistent application of RIPA ensures that a person’s human rights are not interfered with without justification. The Council’s policy and reporting measures ensure that the use of RIPA (which may interfere with a qualified right under the Human Rights Act 1998) is lawful, proportionate and consistent.

Risk Assessment and Adverse Impact on Corporate Actions:	Please see legal implications above.
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INTRODUCTION

1. RIPA, which came into force on 25 September 2000, was enacted in order to regulate the use of a range of investigative powers by a variety of public authorities. It gives a statutory framework for the authorisation and conduct of certain types of covert surveillance. Its aim is to provide a balance between preserving people's right to privacy and enabling enforcement agencies to gather evidence for effective enforcement action.
2. It is consistent with the Human Rights Act 1998 and creates a system of safeguards, reflecting the requirements of Article 8 of the European Convention on Human Rights (right to respect for a person's private and family life, home and correspondence).
3. Compliance with RIPA means that any conduct authorised under it is "lawful for all purposes". The protection derives from section 27(1) of RIPA, which gives the authorised person an entitlement to engage in the conduct which has been authorised. Compliance with RIPA will assist the Council in any challenges to the way in which evidence has been gathered and will enable the Council to demonstrate that it has acted lawfully.
4. Non-compliance may result in evidence being disallowed by the courts: a complaint of maladministration to the Ombudsman; or the Council being ordered to pay compensation. It is essential, therefore, that the Council's policies and procedures are followed.

AUDIT BY THE SURVEILLANCE COMMISSIONER

5. The Council is subject to audit inspections, every three years by an Assistant Surveillance Commissioner. The last audit inspection took place on 5 November 2015 and the Inspector's report containing recommendations has been subsequently received and is attached at Appendix 1.
6. The Inspector made five recommendations:
 - (i) Amend the Central record to include columns for self authorisation and review;
 - (ii) Address by future training the issues remaining from the last inspection, those identified in the examination of documents and those pertinent to the training of *CHIS* managers;
 - (iii) Raise *RIPA* awareness throughout the Council;

- (iv) Amend the “Corporate Policies and Procedures on *RIPA*;
- (v) Ensure Elected Members receive annual and regular *RIPA* reports.

RESPONSE TO THE AUDIT

- 7. To address all of the above recommendations an Action Plan has been drawn up and amendments proposed to the “*Corporate Policies and Procedures on RIPA*”.
- 8. On the 7 March 2016 Cabinet resolved to recommend to Council that the proposed Action Plan together with timescales for completion of the various actions (as recommended by Scrutiny Board on the 22 February 2016) be approved with immediate effect. The Action Plan is attached at Appendix 2.
- 9. On the 11 April 2016 Cabinet resolved to recommend to Council that the amended “*Corporate Policies and Procedures on RIPA*” at Appendix 3 be adopted with immediate effect.

RECOMMENDATION

That Council

- 1. Note this report;
- 2. Adopt the ‘Action Plan’ as set out as Appendix 2 to this report with immediate effect;
- 3. Adopt the amended “*Corporate Policies and Procedures on RIPA*” as set out at Appendix 3 to this report with immediate effect;
- 4. Delegate authority to the Portfolio Holder and Corporate Manager for Governance, Assets and Public Spaces and Monitoring Officer to make minor amendments; and
- 5. Delegate authority to Cabinet to keep the Policy updated as appropriate.

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Background Papers

Appendix 1 – Inspection Report: 5 November 2015
Appendix 2 – Action Plan
Appendix 3 – Amended “*Corporate Policies and Procedures on RIPA*”