



REPORT TO: OVERVIEW AND SCRUTINY COMMITTEE

DATE: 25 JUNE 2015

REPORT OF THE: COUNCIL SOLICITOR
ANTHONY WINSHIP

TITLE OF REPORT: UPDATE ON USE OF REGULATION OF INVESTIGATORY
POWERS ACT 2000 (RIPA)

WARDS AFFECTED: ALL

EXECUTIVE SUMMARY

1.0 PURPOSE OF REPORT

1.1 This report provides details of the use of covert surveillance under the Regulation of Investigatory Powers Act by Ryedale District Council .

2.0 RECOMMENDATION(S)

2.1 To reaffirm the Council's RIPA policy and agree the new format as set out in Appendix 1 to this report.

2.2 To delegate to the Council Solicitor and Monitoring Officer the authority to update and amend the policy as necessary.

2.3 Members note that no application for covert surveillance has been made to the Council's approved "Authorising Officers" and as a consequence no application to the Magistrates Court requesting approval of any such grant has been made.

3.0 REASON FOR RECOMMENDATION(S)

3.1 To ensure oversight by Members of the Council's compliance with the legislation.

4.0 SIGNIFICANT RISKS

There are no significant risk management/assessment implications arising from this proposed decision.

REPORT

5.0 BACKGROUND AND INTRODUCTION

- 5.1 The role of local government is bound by a wide breadth of statutory duties and powers. In an attempt to quantify the full extent of legal duties placed on local government, the Department of Communities and Local Government undertook a review of local government statutory duties in 2011 and identified 1,294 statutory duties that central government places on local authorities. Local authorities have a wide range of prosecution powers in discharging its regulatory roles.
- 5.2 Currently (in England and Wales) local authorities can bring their own prosecutions based on their own investigations by their own departments – including housing benefit, environmental health, fly tipping, dangerous dogs, food safety, listed building control, planning control and health and safety.
- 5.3 When taking enforcement action, the Council's enforcing officers may on occasion consider it necessary to undertake covert surveillance work in order to undertake the Council's statutory duties or "core work". For example, covert surveillance may be necessary to observe individuals who may be suspected of benefit fraud.
- 5.4 The Regulation of Investigatory Powers Act 2000 (RIPA) was enacted to protect the human rights of individuals who are the subject of covert investigatory techniques, and others who might be affected by collateral intrusion. Contrary to widespread misreporting in the media, it is not anti-terrorism legislation and it did not give local authorities access to covert investigatory techniques for the first time. RIPA merely provides a regulatory framework for the exercise of existing powers which is transparent, addresses human rights issues and has clearly defined authorisation processes.
- 5.5 RIPA controls the use of covert surveillance operations by the Council when undertaking its various enforcement functions.
- 5.6 In essence, RIPA imposes a requirement that an investigating officer cannot use covert surveillance as a method of gathering evidence unless they have first obtained a proper authorisation by an officer of senior rank. RIPA requires that formal "Authorisation" from a senior officer must be obtained before carrying out covert surveillance, monitoring and other evidence-gathering activities.
- 5.7 The investigating officer must make a written application describing the proposed surveillance activity and giving details of the reasons for it, the person or persons who will be the subject of the surveillance, and what evidence the surveillance is intended to obtain. The authorising officer must be satisfied that the proposed surveillance is both **necessary** and **proportionate** in the circumstances and that there is no other reasonable method of achieving the desired outcome.
- 5.8 RIPA requires the Council to have in place procedures to ensure that when required, surveillance is necessary and is properly authorised. Surveillance is usually a last resort that an investigator will use to prove or disprove an allegation. RIPA sets out a statutory mechanism for authorising covert surveillance and the use of covert human intelligence sources.

5.9 Any such Authorisation granted must be supported by an Order approving the grant or renewal of such Authorisation from a JP (either a District Judge or lay magistrate) before it can take effect.

6.0 POLICY CONTEXT

6.1 Surveillance of illegal activity can take place as part of a number of Council regulatory functions which contribute to improving the district as a place to live.

6.2 Whilst the Council is not usually a user of covert surveillance, such methods are used where it is considered necessary and proportionate to do so in order to help achieve the Council's priorities, particularly in relation to the protection of the public and the environment.

7.0 CONSULTATION

7.1 Senior Council officers have contributed to the preparation of the report.

8.0 REPORT DETAILS

8.1 Systems have been in place since RIPA came into force and include guidance notes on the Council's Intranet, periodic training for officers, and advice and oversight from Legal Services . One of the requirements of the regime is that a central record of authorisations be kept. This is kept and maintained securely by the Legal Services Manager.

8.2 The Home Office has issued detailed Codes of Practice on compliance with RIPA's provisions together with standard authorisation forms. RIPA requires that only a "Director, Head of Service or Service Manager or equivalent are lawfully entitled to authorise covert techniques. Currently this is limited to the Chief Executive, Corporate Director, Council Solicitor, Head of Planning and Housing, Health and Environment Manager and the Finance Manager. Further key guidance notes, distilled from the Home Office codes of practice, are available to the Authorising Officers.

8.3 It is emphasised that the use of covert investigatory techniques should, in all cases, be the last resort and the only ground upon which an authorisation may be granted is for the purposes of preventing or detecting a criminal offence, which must be punishable by a maximum term of at least 6 months' imprisonment (with an exception relating to sale of alcohol and tobacco to children). In addition, as previously mentioned, local authority RIPA authorisations must be approved by the Magistrates' Court.

8.4 Although RIPA covers a number of activities undertaken by investigatory bodies (e.g., phone tapping by the Security Services and Police) its principle use in respect of Local Authorities relates to:-

- covert surveillance, and
- covert human intelligence sources.

8.5 Covert surveillance covers the monitoring, observing or listening to persons, their movements, conversations or other activities and communications in a way that is calculated to ensure that persons who are subject to surveillance are unaware. It may be conducted with or without the assistance of a surveillance device and

includes the recording of any information obtained. RIPA is most relevant to the Council's activities in effecting enforcement procedures such as the investigation and prosecution of offences. This would not include the initial investigation of contraventions such as planning enforcement or noise investigations. The Council's use of the powers has been very limited in recent years. For example, the Council has not used authorisations under the Act in the last four years.

- 8.6 Covert human intelligence sources relate to the use of a third party to gather information. For example, this could be an informer or someone used to undertake test purchases. This is not an activity that the Council engages in at all. The Council also needs the approval of a magistrate to carry out this activity.
- 8.7 The only area in which the Council very occasionally involves itself where RIPA might be relevant is covert surveillance. It is necessary for the Council therefore to follow the legislation and the requirements of Government Codes of Practice. Most of the requirements of the Code are dealt with at an Officer level. However, Members are expected to approve a Policy on RIPA and to have some involvement in the monitoring of how the Council implements RIPA requirements.
- 8.8 Members are asked to consider and the reaffirm the Council's RIPA policy and agree the new format as set out in Appendix 1 to this report.

9.0 IMPLICATIONS

9.1 The following implications have been identified:

- a) Financial
None arising from the report.
- b) Legal

Article 8 of the European Convention on Human Rights provides: "Everyone has the right to respect for his private and family life, his home and his correspondence."

There can be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society for the purpose of the prevention of disorder or crime.

The right to non interference with an Article 8 right is not absolute. It is a qualified right. This means that in certain circumstances the Council *may* interfere with the right if the interference is:

- in accordance with the law
- necessary, and
- proportionate

- c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

None arising from the report.

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Background Papers:

1. [Home Office Guidance- Covert Surveillance and Property Interference\(December 2014\)](#)
2. [Home Office Guidance – Covert Human Intelligent Sources \(December 2014\)](#)
3. [Home office Guidance- Protection of Freedoms Act 2012- changes to the provisions under the Regulation of Investigatory Powers 2000 \(October 2012 \)](#)
4. [Office of Surveillance Commissioners- procedures and Guidance \(December 2014\)](#)

Background Papers are available for inspection at:

www.ryedale.gov.uk or Ryedale House, Malton, North Yorkshire, YO17 7HH

COVERT SURVEILLANCE POLICY STATEMENT

Introduction

1. Ryedale District Council is committed to building a fair and safe community for all by ensuring the effectiveness of laws designed to protect individuals, businesses, the environment and public resources.
2. Ryedale District Council recognises that most organisations and individuals appreciate the importance of these laws and abide by them. The Council will use its best endeavours to help them meet their legal obligations without unnecessary expense and bureaucracy.
3. At the same time the Council has a legal responsibility to ensure that those who seek to flout the law are the subject of firm but fair enforcement action. Before taking such action, the Council may need to undertake covert surveillance of individuals and/or premises to gather evidence of illegal activity.

Procedure

4. All covert surveillance shall be undertaken in accordance with the procedures set out in this document.
5. Ryedale District Council shall ensure that covert surveillance is only undertaken where it complies fully with all applicable laws, in particular the:
 - Human Rights Act 1998
 - Regulation of Investigatory Powers Act 2000
 - Protection of Freedoms Act 2012
 - Data Protection Act 1998
6. The Council shall, in addition, have due regard to all official guidance and codes of practice particularly those issued by the Home Office, the Office of Surveillance Commissioners (OSC), the Security Camera Commissioner and the Information Commissioner.
7. In particular the following guiding principles shall form the basis of all covert surveillance activity undertaken by the Council:
 - Covert surveillance shall only be undertaken where it is absolutely necessary to achieve the desired aims.
 - Covert surveillance shall only be undertaken where it is proportionate to do so and in a manner that it is proportionate.
 - Adequate regard shall be had to the rights and freedoms of those who are not the target of the covert surveillance.

- All authorisations to carry out covert surveillance shall be granted by appropriately trained and designated authorising officers.
- Covert surveillance [regulated by RIPA] shall only be undertaken after obtaining judicial approval.

Training and Review

8. All Council officers undertaking covert surveillance shall be appropriately trained to ensure that they understand their legal and moral obligations.
9. Regular audits shall be carried out to ensure that officers are complying with this policy.
10. This policy shall be reviewed at least once a year in the light of the latest legal developments and changes to official guidance and codes of practice.
11. The operation of this policy shall be overseen by the Council's Overview and Scrutiny Committee by receiving reports every 12 months.

Conclusion

12. All citizens will reap the benefits of this policy, through effective enforcement of criminal and regulatory legislation and the protection that it provides.
13. Adherence to this policy will minimise intrusion into citizens' lives and will avoid any legal challenge to the Council's covert surveillance activities.
14. Any questions relating to this policy should be addressed to:

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