

TONBRIDGE & MALLING BOROUGH COUNCIL

SCRUTINY COMMITTEE

8 February 2011

Report of Central Services Director

Part 1- Public

Matters for Recommendation to Council

1 USE OF SURVEILLANCE POWERS

Summary

The purpose of this report is to review the use of the Council's powers under the Regulation of Investigatory Powers Act 2000.

1.1 Introduction

1.1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) introduced a statutory framework for those carrying out surveillance as part of an investigation.

1.1.2 Covert surveillance is surveillance that is carried out in a manner to ensure that persons subject to the surveillance are unaware it is taking place. Covert surveillance can be intrusive (e.g. hiding cameras and microphones in a person's home) or directed.

1.1.3 Intrusive surveillance cannot be authorised by a local authority.

1.1.4 Directed surveillance is covert but not intrusive and 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 (whether or not one specifically identified for the purpose of the investigation or operation) and
- Otherwise than by way of an immediate response to events or circumstances

1.1.5 For the Council, such activities are most likely to be carried out within the areas of benefit fraud & environmental health.

1.1.6 RIPA also regulates the use of Covert Human Intelligence Sources (CHIS). A CHIS is a person who establishes or maintains a relationship with someone in order to covertly obtain information, to provide another person with access to

information or to disclose information as a result of that relationship. A common example of a CHIS would be a police informant.

- 1.1.7 The Act requires that specific authorisation be given by approved persons for any directed surveillance undertaken, and for the use of a CHIS.
- 1.1.8 The Council can only authorised directed surveillance if it is necessary for the purpose of preventing or detecting crime or of preventing disorder. In seeking an authorisation, the key considerations for the local authority will be to determine whether the surveillance is necessary, and proportionate to the purpose in question.
- 1.1.9 Paragraph 3.30 of the Code of Practice on Covert Surveillance and Property Interference recommends that elected members of a local authority should review the authority's use of RIPA and set policy at least once a year. They should also consider internal reports on the use of RIPA on at least a quarterly basis to ensure it is being used consistently with the authority's policy and that the policy remains fit for purpose.

1.2 Use of powers by Tonbridge and Malling Borough Council

- 1.2.1 As a matter of policy, Tonbridge and Malling Borough Council seeks to carry out enforcement activity by overt means. The result of this is that covert activity is undertaken only as a last resort. For example, when investigating complaints of noise nuisance through the use of a monitoring device, officers will advise the alleged perpetrator of our intention to install noise monitoring equipment.
- 1.2.2 If the desired information can be obtained in this way, then it will not be necessary to undertake any covert surveillance and engage the provisions of RIPA. Indeed, the Council has granted very few authorisations for directed surveillance, as set out in the table below.

Year	Number of authorisations	Nature of investigation(s)
2009/10	2	Benefit fraud
2008/09	3	Benefit fraud
2007/08	2	Benefit fraud

Importantly, all authorisations at Tonbridge & Malling B.C need to be personally approved by the Chief Executive. Any prospective applications that arise during his absence must wait until he returns.

- 1.2.3 No authorisations have been granted for the use of a CHIS during the above periods.

- 1.2.4 Whilst this practice of carrying out overt enforcement activity will continue, it is of course important to keep the surveillance policy under continual review to ensure that, when covert surveillance or the use of a CHIS is necessary, the Borough Council acts in a lawful manner. A copy of our Corporate Surveillance guidance is attached at Annex 1, which has been reviewed to take into account any comments made by the OSC during their most recent visit.
- 1.2.5 Additionally, all officers involved in surveillance activities at the Council (including the Chief Executive) are required to attend regular training sessions on the discharge of their responsibilities.
- 1.2.6 In order to ensure that public authorities carry out covert activities in a lawful manner, the Office of the Surveillance Commissioners (OSC) conducts regular reviews of our policies and procedures. The last inspection of Tonbridge and Malling Borough Council was carried out in November 2008. A copy of the inspection report is attached at Annex 2. Members are asked to note that this report contains exempt information, and therefore appears in the private part of the agenda.
- 1.2.7 Members will note that the report is very complimentary about the manner in which Tonbridge and Malling Borough Council approaches its powers under RIPA. The Surveillance Inspector praised the rigorous approach adopted by the Council towards authorisation of surveillance activities, and in particular was impressed by the informed and conscientious approach of the Chief Executive. The report only makes 4 recommendations, all of which relate to minor procedural matters. These are listed below together with the action taken in response to each

Recommendation	Action taken
The Council's RIPA policy document should be reviewed in light of the comments made during the inspection and provided in note form to Mr Cochrane	Revised guidance attached at Annex 1
All authorisations for directed surveillance must be authorised for 3 months less a day and cancelled as soon as no longer required	All authorisations granted since the previous inspection have complied with this recommendation
All reviews and cancellations must be completed by the Authorising Officer and by an officer holding the necessary rank	All authorisations granted since the previous inspection have complied with this recommendation

<p>Applicants and Authorising Officers should take note of the various matters discussed in paras 4.8 to 4.9 of the report in order to raise the standard of RIPA documentation accordingly</p>	<p>These have been addressed within the revised guidance, attached at Annex 1</p>
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1.3 The Future

1.3.1 The Coalition government's programme for change indicated an intention to ban the use of RIPA powers by local authorities, unless they were signed off by a magistrate and required for stopping serious crime. This will undoubtedly have practical and financial implications for local authorities.

1.3.2 On 7 January 2011 the Deputy Prime Minister announced that measures to 'properly control the way Councils use surveillance powers' will be contained within the forthcoming Freedom Bill. The exact details of the Bill are currently unknown, although in light of the intention signalled in the programme for change, it is likely that future RIPA authorisations will need to be signed off by a magistrate. Details of the Bill will be reported to Members in due course.

1.4 Legal Implications

1.4.1 It is important for the Council to have a policy that meets with OSC approval and for the policy to be complied with. Any failure may mean a breach of the Human Rights Act 1998.

1.5 Financial and Value for Money Considerations

1.5.1 The operation of the surveillance policy has negligible financial impact upon the Council.

1.6 Risk Assessment

1.6.1 Authorisations under RIPA provide lawful authority for the Council to carry out covert surveillance. Failure to comply with the requirements of the Act may render the enforcement activity unlawful, and lead to the exclusion of evidence obtained through surveillance.

1.7 Equality Impact Assessment

1.7.1 See 'Screening for equality impacts' table at end of report

1.8 Conclusions and Recommendations

1.8.1 The Council has little resort to covert surveillance, adopting instead a policy of carrying out overt surveillance wherever possible. The use of covert surveillance

is only ever undertaken as a last resort, and is subject to a rigorous application procedure. This approach has been praised by the Office of the Surveillance Commissioners, and no changes are proposed to our working practices.

Members are therefore asked to

- 1) **endorse** the conclusions in this report; and
- 2) **RECOMMEND** to Council that the revised guidance at Annex 1 be approved.

Background papers:

Nil

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Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	NO	
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	NO	
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.