

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

24 JUNE 2013

Report of Director of Central Services

Part 1- Public

For recommendation to Council

1 REVIEW OF SURVEILLANCE POLICY

Summary

The purpose of this report is to review the Council's Corporate Guidance 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. As a result of changes introduced in 2012, the crime which is sought to be prevented or detected must be one that is punishable by a maximum term of at least 6 months imprisonment, or constitute an offence under specified provisions of the Licensing Act 2003 or Children & Young Persons Act 1933 i.e. offences relating to the sale of tobacco or alcohol to underage children.
- 1.1.9 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. The Protection of Freedoms Act 2012 amended RIPA so as to require local authorities to obtain the approval of a Magistrate for the use of any of the covert investigatory techniques available to them. In practical terms, this means that any internal authorisation/ renewal will not take effect until such time (if any) as a Magistrate has made an order approving it.

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 – since April 2011 only 2 authorisations have been granted for directed surveillance (both relating to benefit fraud investigations), and none for the deployment of a CHIS.
- 1.2.3 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 changes to the legislative framework since 2011. The key changes to the policy are as follows
- (a) The policy has been updated to take account of the changes introduced in 2012 by the Protection of Freedoms Act 2012 and other statutory instruments (as summarised in 1.1.8 and 1.1.9 above);
- (b) Following the departure of David Hughes, it has been necessary to update the management structure within the Council for RIPA compliance. Paragraph 7 of the policy sets out the proposed new management structure – I will act as Senior Responsible Officer and Cliff Cochrane, Senior Legal Officer will act as RIPA Monitoring Officer. It is proposed that Julie Beilby, Chief Executive, will be the Authorising Officer for surveillance activities but in her absence authority can be given by the member of Management Team responsible for

the service concerned with the RIPA application. It is intended to provide appropriate refresher training to all Authorising Officers.

- 1.2.4 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.
- 1.2.5 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 2011. 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.
- 1.2.2 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 Council's 'sparing and judicious use of Directed Surveillance', and in particular was impressed by the leading role played by the Chief Executive. The sole recommendation made by the report (paragraph 16) was to consider the training of another Authorising Officer so as to provide a degree of resilience and ensure that the Council could act in urgent cases. This has been addressed in paragraph 7 of the amended policy at **Annex 1**.

1.3 Financial and Value for Money Considerations

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

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 Risk Assessment

- 1.5.1 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.

1.6 Equality Impact Assessment

- 1.6.1 See 'Screening for equality impacts' table at end of report.

1.7 Conclusions and Recommendations

1.7.1 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.

1.7.2 Save for the appointment of additional Authorising Officers, no further changes are proposed to our working practices.

1.7.3 Members are therefore asked to

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

Background papers:

contact: Adrian Stanfield
Director of Central Services

None

| 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? | N/A | |
| c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above? | | |