
REPORT TO:	Overview and Scrutiny Committee	AGENDA ITEM: 5
DATE OF MEETING:	12th December 2012	CATEGORY: DELEGATED
REPORT FROM:	Head of Corporate Services	OPEN
MEMBERS' CONTACT POINT:	Ardip Kaur – 595715 ardip.kaur@south-derbys.gov.uk	DOC:
SUBJECT:	Regulation of Investigatory Powers Act 2000 (RIPA) – Policy and Guidance Document	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE:

1.0 Recommendations

1.1 To approve the Council's Regulation of Investigatory Powers Act 2000 ('RIPA') Policy and Guidance document following implementation of the Protection of Freedoms Act 2012 and amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010.

2.0 Purpose of Report

2.1 To receive a report regarding two significant changes affecting the Council's use of RIPA and approve the Council's Regulation of Investigatory Powers Act 2000 Policy and Guidance document, as set out in **Appendix A**.

3.0 Detail

3.1 From the 1st November 2012, sections 37 and 38 of the Protection of Freedoms Act 2012 came into force. In line with this legislation, if the Council wishes to authorise the use of directed surveillance, the acquisition of communications data and use a covert human intelligence source (CHIS) under RIPA, it will need to obtain an Order approving the grant or renewal of an authorisation or Notice from a District Judge or lay Magistrate (JP) before it can take effect. If the JP is satisfied the statutory tests have been met and the use of the technique is necessary and proportionate he/she will issue an Order approving the grant or renewal for the use of the technique as described in the application.

3.2 The new judicial approval mechanism is in addition to the existing authorisation process under the relevant parts of RIPA as outlined in the Codes of Conduct. The current process of assessing necessity and proportionality, completing the RIPA authorisation/application form, and seeking approval from an Authorising Officer will remain the same.

3.3 Further change by way of amendment to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 also

came into effect on 1st November 2012. The amendments relate to the directed surveillance crime threshold. The crime threshold applies only to the authorisation of directed surveillance by the Council under RIPA, not to the authorisation of local authority use of CHIS or the acquisition of communications data. The amendments to the 2010 Order have the following effect:

- The Council can only authorise the use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months imprisonment or are related to the underage sale of alcohol and tobacco.
- The Council cannot authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months imprisonment.
- The Council may therefore continue to authorise directed surveillance in more serious cases as long as other tests are met, i.e. that it is necessary and proportionate, and where prior approval from a JP has been granted.
- The Council may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco, where the necessity and proportionality test is met and prior approval from a JP has been granted.
- The Council may not authorise the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences, or to investigate low level offences such as littering, dog control and fly-posting.

3.4 The inspection regimes of the independent RIPA Commissioners will continue to apply and the frequency and nature of their independent inspections is not expected to change. The Commissioners will continue to advise the Council of the procedures and training to adopt, on what is best practice, and will continue to report to Parliament on relevant trends and findings.

3.5 The role of Members will not be affected by the legislative changes identified above. Members will continue to receive quarterly reports on the Council's usage of RIPA, approve the Council's Policy and Guidance document and be informed of the outcome of inspections held by the Office of Surveillance Commissioners.

4.0 Conclusions

4.1 From 1st November 2012 the Council is required to obtain judicial approval prior to using covert techniques. Authorisations and Notices under RIPA will only be given effect once an Order has been granted by a JP.

4.2 From 1st November 2012 the Councils use of directed surveillance under RIPA will be limited to the investigation of crimes which attract a six month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco.

4.3 The Council's Policy and Guidance document has been amended in line with legislative changes and is attached at **Appendix A**.

5.0 Financial Implications

5.1 None arising directly from this report.

6.0 Corporate Implications

- 6.1 The Council's Scheme of Delegation to Officers will be amended to include the authorisation necessary for Officers to appear before a JP.

7.0 Community Implications

- 7.1 Covert surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. The Council carries out directed surveillance which is covert, not intrusive, is not carried out in an immediate response to events, and is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual.
- 7.2 Section 8 of the application form asks the applicant to supply details of any potential collateral intrusion and to detail why the intrusion is unavoidable. The idea behind collateral intrusion is to identify who else, apart from the subject of the surveillance, can be affected by the nature of the surveillance. Any application for authorisation should include an assessment of the risk of the collateral intrusion and this should be taken into account by the Authorising Officer when considering proportionality. The Authorising Officer needs to know by those carrying out the surveillance if the investigation or operation would unexpectedly interfere with the privacy of individuals not covered by the authorisation. An Authorising Officer must be made aware of any particular sensitivities in the local community.

8.0 Background Papers

None