

## COUNCIL

16 MAY 2017

### REPORT OF THE SOLICITOR TO THE COUNCIL

#### REGULATION OF INVESTIGATORY POWERS ACT 2000 ADOPTION OF POLICY AND PROCEDURE

##### EXEMPT INFORMATION

None

##### PURPOSE

This report advises Members of the proposed amendments to the Corporate Policy governing the Regulation of Investigatory Powers Act 2000 in light of the new requirements introduced by recent legislative change and Home Office Guidance and seeks their consideration and recommendations in relation thereto.

##### RECOMMENDATIONS

**That the Council**

- 1. considers the changes to the RIPA policy on Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition of Communications Data,**
- 2. satisfies itself that the changes meet the requirements imposed on the Council in terms of the legislation and Codes of Practice, and**
- 3. approves the Policy.**

##### EXECUTIVE SUMMARY

The Council has a number of statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them. The Council has also been given powers under the Regulation of Investigatory Powers Act 2000 (RIPA) which enable it to carry out Directed Surveillance in certain strict circumstances. RIPA provides a legal framework for the control and regulation of surveillance and information gathering techniques which public bodies such as Tamworth Borough Council have to comply with. These powers have been amended and changed in accordance with various pieces of legislation. The last change resulted in a revised RIPA Policy being approved by the Council on 16 March 2016. The Protection of Freedoms Act 2012 now requires that local authority authorisations under RIPA for Directed Surveillance or CHIS can only become effective on the granting of an order approving the authorisation by a Justice of the Peace. Further a local authority can now only have an authorisation under RIPA for the use of Directed Surveillance where the local authority is investigating criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco under the Licensing Act 2003 of the Children

and Families Act 2014.

| No Directed Surveillance has been carried out by the Council since 2011 and it is not envisaged that there will be any appreciable change in the foreseeable future. By adhering to this proposed Policy the Council will ensure that the acquisition and disclosure of data is lawful, necessary and proportionate so that the Council is not held to be in breach of Article 8 (the right to respect for private family life, home and correspondence ) of the European Convention on Human Rights.

The current policy prepared in 2016 did not reflect recent changes to legislation and Home Office Codes of Practice.

The attached draft policy and protocol, the proposed changes are tracked in the document, will ensure that the acquisition and disclosure of data is lawful, necessary and proportionate, so that the Council is not held to be in breach of the Human Rights Act and that data obtained under such measures would be used to assist in the successful prosecution of relevant criminal offences. The draft policy and protocol was considered by Audit and Governance Committee on 9 February 2017 and Cabinet on 27 April 2017, they considered the changes to the RIPA policy on Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition of Communications Data, were satisfied that the changes met the requirements imposed on the Council in terms of the legislation and Codes of Practice, and recommended approval.

## **OPTIONS CONSIDERED**

The Policy is to a large extent defined by the requirements of RIPA and the most recent Home Office Codes of Practice. The recommended policy is consistent with the new policies and guidance; there is little scope if any to do otherwise.

## **RESOURCE IMPLICATIONS**

There are no direct resource implications arising from the adoption of the policy and procedure. Any applications and training costs will be met from existing budgets.

## **LEGAL/RISK IMPLICATIONS**

Failure to follow the policy and procedure could result in the Council being open to challenge, unnecessary legal risk and ultimately responsible in damages for any breach of the Codes of Practice and Human Rights legislation. The Office of Surveillance Commissioners would also severely criticise such failure and the adverse publicity arising therefrom could damage the Council's reputation and not serve in its best interests.

The policy and procedure will provide guidance to staff on the processing and procedure to obtain a RIPA authorisation, reducing the risk of legal challenge to the procedure itself and the evidence obtained.

Risk has been identified in the following areas: training of Officers, Collateral Intrusion and changes to legislation and procedures surrounding RIPA, However this has been addressed, regular training of Officers takes place, the Netconsent function and email is used to disseminate the policy and inform training events. The Solicitor

to the Council reviews the policy regularly to ensure legislative and Home Office compliance. Quarterly reports are made to Audit & Governance Committee and an annual report to full Council. Finally provision exists in the policy itself to mitigate any other associated risks.

## **SUSTAINABILITY IMPLICATIONS**

Under current arrangements the Policy and training requirements are currently sustainable and remain so for the foreseeable future.

## **REPORT AUTHOR**

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## **LIST OF BACKGROUND PAPERS**

Regulation of Investigatory Powers Act 2000

Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012

The Protection of Freedoms Act 2012

Home Office – Covert Surveillance and Property Interference Code of Practice

Home Office – Covert Human Intelligence Sources Code of Practice

## **APPENDIX 1**

Proposed RIPA Policy and Procedure

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