

13 DECEMBER 2012

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 the Protection of Freedoms Act 2012 and seeks approval thereof.

RECOMMENDATIONS

That the Council adopts the RIPA policy on Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition of Communications Data

EXECUTIVE SUMMARY

The Council has been given powers under the Regulation of Investigatory Powers Act 2000 (RIPA). 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 in September 2011. The Protection of Freedoms Act 2012 require 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 or the Children and Young Persons Act 1933.

RIPA provides a legal framework for the control and regulation of surveillance and information gathering techniques which Public Bodies such as Tamworth Borough Council undertake in the conduct of their duties. By adhering to this proposed Policy the Council will be using its powers lawfully and not be 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 2011 does not reflect recent changes to the legislation as mentioned above. To date these powers have been used primarily to detect those suspected of committing benefit fraud and anti social behaviour including criminal damage. In addition there have been no RIPA applications since August 2010.

The new policy and protocol 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 evidence of data obtained can be used to assist in the successful prosecution of criminal offences.

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 and ultimately responsible in damages for any breach of the Codes of Practice and Human Rights Legislation. 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.

Should the recommendation be rejected, the Council will face an increased risk of being found in breach of the Codes of Practice and the Human Rights Act 1998 and in addition be at risk that any evidence obtained by the RIPA process is then excluded from use in legal proceedings

SUSTAINABILITY IMPLICATIONS

Staff training seminars have taken place and it is recognised that there is a need to be trained from time to time to keep up to date with RIPA. Additionally, the Council will have to ensure at all times it has sufficient staff appointed as Authorised Officers as they play a key role in the process. Currently four members of staff have been appointed to the role of Authorised Officer and it is considered that this is sufficient number of officers to carry out this role for the Council.

REPORT AUTHOR

Jane M Hackett, Solicitor to the Council and Monitoring Officer tel 01827 709258

LIST OF BACKGROUND PAPERS

Regulation of Investigatory Powers Act 2000

Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010

The Protection of Freedoms Act 2012

APPENDICES

Proposed RIPA Policy and Procedure