

| | | | |
|-------------------------|--|---------------------------------------|---------------------|
| Subject: | Surveillance Policy | | |
| Date of Meeting: | 23 September 2010 | | |
| Report of: | Director of Finance and Resources | | |
| Contact Officer: | Name: | Jo Player | Tel: 29-2488 |
| | E-mail: | jo.player@brighton-hove.gov.uk | |
| Key Decision: | No | | |
| Wards Affected: | All | | |

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The purpose of this report is to apprise the Cabinet of the activities that have been undertaken utilising the powers under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last report to Cabinet in June 2010 and to confirm that these activities were authorised in line with the necessity and proportionality rules and the council's priority of fair enforcement of the law.

2. RECOMMENDATIONS:

- 2.1 That Cabinet approves the continued use of covert surveillance and the accessing of communications data as an enforcement tool to prevent and detect all crime and disorder investigated by its officers, providing the necessity and proportionality rules are stringently applied.
- 2.2 That Cabinet notes the surveillance activity undertaken by the authority since the last report to Cabinet in June.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Human Rights Act 1998 requires the City Council to respect the private and family life of citizens. This is a qualified right and, in certain circumstances, the City Council may interfere in an individual's right, providing that interference is in accordance with the law.
- 3.2 The Regulation of Investigatory Powers Act 2000 (RIPA) is the statutory mechanism for authorising covert surveillance, and accessing communications data. It seeks to ensure that any interference with an individual's right is both necessary and proportionate. An explanation of the meaning of these terms is included in the Policy document.
- 3.3 Following concern that Public Authorities were using surveillance techniques in an inappropriate manner, the Home Office issued revised Codes of Practice on Covert Surveillance and Interference with Property and another covering Access to Communications Data. These Codes came into force on 6th April 2010.

- 3.4 The Codes provide guidance for officers who operate under the RIPA regime as well as setting down a series of recommendations, which if adopted by a public authority, are considered best practice. The recommendations concern the appointment of a Senior Responsible Officer and the role of members within the regime.
- 3.5 Cabinet approved the appointment of the Director of Finance and Resources as the Senior Responsible Officer at the last Cabinet meeting on 17th June 2010.
- 3.6 The Codes of Practice also make recommendations as to the role of elected members with regard to surveillance activity. The Codes recognise that members should not be involved in making decisions on specific authorisations. They should review the authority's use of the 2000 Act and set the policy annually. An annual report on the Council's use of surveillance has gone before Cabinet since 2008. A full report on the Council's surveillance activity will go before Cabinet in November.
- 3.7 Elected members should also consider internal reports on the use of the 2000 Act on a quarterly basis to ensure that it is being used consistently with the authority's policy and that the policy remains fit for purpose. Attached at appendix 1 is a break down of the last quarter's surveillance activity.

4. CONSULTATION

- 4.1 There has been no consultation in the compilation of this report.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are no direct financial implications arising from the recommendations in this report.

Finance Officer Consulted: Karen Brookshaw Date: 17/8/2010

Legal Implications:

- 5.2 The legal framework governing the use of covert surveillance and accessing communications data is addressed in the body of the report. As set out in the report, the use of these powers may interfere with qualified Convention rights incorporated into UK law by the Human Rights Act 1998. It is therefore important for the council to rigorously monitor the use of covert surveillance and to follow the revised policy and reporting requirements to ensure that the powers are exercised lawfully and proportionately. This report properly complies with the relevant Codes of Practice in seeking members' involvement in reviewing the use of covert surveillance activity.

Lawyer Consulted: Elizabeth Culbert Date: 17/8/2010

Equalities Implications:

- 5.3 The proper and consistent application of the RIPA powers should ensure that a person's basic human rights are not interfered without justification. Each

application will be assessed by a gatekeeper for necessity and proportionality prior to authorisation by a senior manager and the 'authorisations' reviewed by a third manager who has responsibility for maintaining a central register. This process should identify any inconsistencies or disproportionate targeting of minority groups and enable action to be taken to remedy any perceived inequality.

Sustainability Implications:

- 5.4 There are no sustainability implications.

Crime & Disorder Implications:

- 5.5 If used appropriately, the activities described in the report should enhance our capacity to tackle crime and disorder.

Risk & Opportunity Management Implications:

- 5.6 Any failure to comply with the provisions of the legislation could render any evidence obtained as inadmissible, resulting in a failed prosecution, and have a detrimental impact on the council's reputation.

Corporate / Citywide Implications:

- 5.7 Proper application of the powers will help to achieve the 'fair enforcement of the law' objective and help to protect the environment and the public from rogue trading.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 Consideration was given to recommending that Cabinet stipulate those crimes that were trivial and therefore the powers referred to in the report should never be used. This approach is not considered necessary given the level at which authorisations are made.
- 6.2 A review of 'surveillance activities' could be the subject of the normal scrutiny process and this option has equal merit.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The introduction of the Corporate Enforcement Policy should help to ensure that identified breaches of the law are dealt with in the most appropriate manner. However, it is essential that officers are able to use the RIPA powers for all crimes regardless of how trivial some may be perceived, but only after exhausting all other methods of enforcement. As authorisation is generally given at Head of Service level and above, it is unlikely that these powers will be abused.
- 7.2 The implementation of an Annual Review has made the whole process transparent and demonstrated to the public that the correct procedures are followed.

SUPPORTING DOCUMENTATION

Appendices:

1. RIPA activity between June-August 2010

Documents in Members' Rooms

None

Background Documents

None