

**POLICY & RESOURCES  
COMMITTEE**

**Agenda Item 55**

11 October 2012

Brighton & Hove City Council

**Subject:** Annual Surveillance Policy.  
**Date of Meeting:** 11 October 2012  
**Report of:** Interim Chief Executive  
**Contact Officer: Name:** Jo Player **Tel:** 29-488  
**Email:** jo.player@brighton-hove.gov.uk  
**Ward(s) affected:** All

**FOR GENERAL RELEASE**

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The purpose of the report is to appraise Committee of the activities that have been undertaken utilising the powers under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last report to Committee in June 2012 and to confirm that these activities were authorised in line with the necessity and proportionality rules.
- 1.2 The report also informs Committee of the outcome of the recent audit of the Council's surveillance activity by the Office of the Surveillance Commissioners in June 2012.
- 1.3 The report also introduces a revised Policy and Guidance document that reflects the forthcoming changes to the legislation and the findings of the Surveillance Commissioner during her audit in June 2012.

**2. RECOMMENDATIONS:**

- 2.1 That Committee approves the continued use of covert surveillance as an enforcement tool to prevent and detect crime and disorder investigated by its officers, providing the activity is in line with the revised Policy and Guidance and the necessity and proportionality rules are stringently applied;
- 2.2 That Committee notes the surveillance activity undertaken by the authority since the report to Committee in June 2012 as set out in Appendix 1;
- 2.3 That Committee notes the findings of the Office of the Surveillance Commissioners' audit of the authority in June 2012;

- 2.4 That Committee approves the publication and use of the revised policy and Guidance document as set out in Appendix 2.
- 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**
- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is the law governing the use of covert surveillance techniques by Public Authorities, including local authorities. RIPA was enacted as part of a suite of legislation flowing from the implementation of the Human Rights Act 1997. The Act requires that when public authorities need to use covert techniques to obtain information about someone, they do it in a way that is necessary and proportionate and compatible with human rights.
- 3.2 RIPA regulates the interception of communications, directed and intrusive surveillance and the use of covert human intelligence sources (informants). Local authorities may only carry out directed surveillance, access certain communications data and use informants.
- 3.3 Appendix 1 details the uses made by the Council in the previous quarter and for the year as a whole.
- 3.4 The Protection of Freedoms Act has received Royal Assent and will be enacted from 1<sup>st</sup> November 2012. From this time, approval will need to be sought from a Magistrate when local authorities wish to conduct surveillance activity, access communications data or use an informant. This is in addition to the authorisation by an Authorising Officer who meets the criteria regarding their position within the authority.
- 3.5 In addition to seeking the approval of a Magistrate, all applications must meet the Serious Offence test. This stipulates that any directed surveillance is restricted to the investigation of offences that carry a custodial sentence of six months or more. The only offence where this will not apply is in regard to underage sales of alcohol and tobacco.
- 3.6 In June 2012 the Office of the Surveillance Commissioners (OSC) audited the authority's use of RIPA over the last three years, since the previous audit. The inspector reported that there have been improvements in the quality of applications since her last visit in 2009 that the agreed action plan had been implemented and that we continue to use the powers appropriately. She made further recommendations about the documentation maintained on the council's central register which have been implemented straight away to ensure full compliance with the Codes of Practice. A full day's training session had been provided for all relevant staff earlier in the year and she stressed the need to ensure ongoing guidance and training for applicants and authorising officers. She also

recommended that we update our Policy and Procedures to take into account the changes to be introduced with the implementation of the Protection of Freedoms Act and to provide further guidance on how to fill out the documentation required and an amended policy is attached at Appendix 2 for approval.

#### **4. COMMUNITY ENGAGEMENT AND 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 the report.

*Finance Officer Consulted: Karen Brookshaw Date: 06/09/12*

##### 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. The revised policy and reporting measures will ensure that the powers are exercised lawfully, proportionately and consistently.

*Lawyer Consulted: Elizabeth Culbert Date:05/09/12*

##### 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 with, without justification. Each application will be assessed by the gatekeeper for necessity and proportionality prior to the authorisation by a restricted number of 'Authorising Officers'. The application will also be signed off by a Magistrate from 1 November 2012. 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 and 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.

Public Health Implications:

- 5.7 There are no public health implications.

Corporate / Citywide Implications:

- 5.8 Proper application of the powers will help to achieve fair enforcement of the law and help to protect the environment and public from rogue trading and illegal activity.

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 The only alternative is to curtail the use of RIPA, but this is not considered an appropriate step.

**7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1 It is essential that officers are able to use the RIPA powers where necessary and within the new threshold, but only after excluding all other methods of enforcement. An authorisation will only be given by the relevant 'Authorising Officer' following vetting by the 'Gatekeeper'; therefore it is unlikely that the powers will be abused. From 1<sup>st</sup> November there will be the additional safeguard that a magistrate will also need to 'sign off' any application that falls within the RIPA regime.
- 7.2 The implementation of the Annual review and quarterly oversight has made the whole process transparent and demonstrates to the public that the correct procedures are followed.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Details of the use of RIPA since previous report in June 2012
2. Revised Policy and Guidance document.

**Documents in Members' Rooms**

None

**Background Documents**

None

