

North Tyneside Council Report to Cabinet Date: 9 September 2013

ITEM 7(d)

Title: Annual Review of
Council Policy on Covert
Surveillance

Portfolio(s): Elected Mayor

Cabinet Member(s): Mrs Norma
Redfearn,

Report from Directorate: Chief Executive's Office

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Governance and Employment

Wards affected: All

PART 1

1.1 Purpose:

This report seeks Cabinet's approval of an updated Covert Surveillance Policy. In accordance with the Codes of Practice applying to the Regulation of Investigatory Powers Act 2000 (RIPA) the Council Policy should be reviewed annually. A copy of the revised draft Policy is attached at Appendix 1.

1.2 Recommendation(s):

It is recommended that Cabinet:

1. approves the Authority's draft Policy on Covert Surveillance (attached at Appendix 1); and
2. notes the use of surveillance by the Authority in the preceding year.

1.3 Forward plan:

The item first appeared on the Forward Plan that was published on 1 May 2013.

1.4 Council plan and policy framework

There is no reference in the Council Plan to this item of business.

1.5 Information:

1.5.1 Introduction

The Authority's current Surveillance Policy was approved by Cabinet in November 2012 and is subject to annual review. The Policy has been reviewed and the revised draft policy is attached at Appendix 1. The revised draft policy reflects the comments and

recommendations made following an inspection by the Assistant Surveillance Commissioner, HH Norman Jones QC of the Officer of Surveillance Commissioners referred to at paragraph 1.5.4. The draft Policy has been considered by the Regulation and Review Committee and has been referred to Cabinet.

The aims of the Authority's Policy are to:

- Set out the Authority's arrangements for complying with RIPA; the relevant Codes of Practice and guidance issued by the Home Office; and guidance from the Office of the Surveillance Commissioner (OSC) and the Interception of Communications Commissioner's Office (IOCCO);
- Give effect to the rights of citizens to respect for their private and family lives (pursuant to the Human Rights Act 1998); and
- Protect the Authority from legal challenge when undertaking surveillance.

1.5.2 The RIPA Shield

The Regulation of Investigatory Powers Act 2000 (RIPA) puts covert surveillance on a statutory basis. RIPA enables certain public authorities, including this Authority, to carry out surveillance operations with statutory protection from legal challenge. It is often referred to as the "RIPA shield".

Three covert investigatory techniques are available to local authorities under RIPA:

- i. the acquisition and disclosure of communications data such as telephone billing information or subscriber details e.g. to tackle rogue traders;
- ii. directed surveillance - covert surveillance of individuals in public places e.g. to tackle criminal activity arising from anti social behaviour; and
- iii. covert human intelligence sources (CHIS) such as the deployment of undercover officers.

The RIPA provisions may only be used to authorise surveillance activities in order to detect and prevent serious crime and any authorisation is subject to a requirement to seek authorisation from an 'Authorising Officer' and to obtaining judicial approval from the Magistrates' Court before any surveillance is undertaken. The Authorising Officers within the Authority are:

Fiona Rooney – Head of Paid Service;
Ian Conway – Head of North Tyneside Homes; and
Colin MacDonald – Senior Client Manager

Officers from Law and Governance accompanied by the relevant Authorising Officer will present any authorisation to the Magistrates' Court for judicial approval. All authorisations will be subject to an internal scrutiny process prior to being submitted for judicial approval.

Local authorities may undertake surveillance for other purposes but such surveillance will not benefit from the RIPA shield and will leave a local authority more vulnerable to challenge. For this reason all surveillance activity undertaken by the Authority, whether inside or outside of the RIPA regime, must be appropriately authorised by one of the Authorising Officers and is subject to central monitoring and challenge.

1.5.3 Central Register

The Authority has a Central Register of all RIPA and non-RIPA surveillance activity. The Central Register is maintained and monitored by the Head of Law and Governance.

1.5.4 Inspection

Organisations using RIPA are subject to regular inspection by:

1. The Office of Surveillance Commissioners (OSC) in relation to the use of direct surveillance and CHIS; and
2. The Interception of Communications Commissioner's Office (IOCCO) in relation to the interception of communications data.

The Authority received an inspection visit from the OSC in April 2013. The purpose of the OSC inspection was to examine the policies, procedures, operations and administration the Authority has in place in relation to directed surveillance and covert human intelligence sources.

A number of issues were identified through the inspection process. The issues raised in the main related to the authorisation process and a lack of understanding with respect to the application of the necessity and proportionality "tests" Authorising Officers are obliged to consider before agreeing to surveillance being undertaken. In addition the general awareness of the requirements of RIPA needed to be highlighted with Officers to ensure that no unauthorised surveillance is undertaken. The Inspector recommended that:

- i. a RIPA Training Programme be undertaken to address the above matters;
- ii. a RIPA Co-ordinating Officer be appointed to ensure that robust oversight of authorisations is maintained;
- iii. particular care be exercised when covert surveillance not authorised under RIPA is undertaken;
- iv. RIPA awareness be strengthened; and
- v. the Surveillance Policy be amended accordingly.

Actions to address the issues raised in the inspection are being progressed. These actions focus in the main on the provision of training for Authorising Officers and raising awareness of the requirements of the RIPA regime amongst Officers. The Lawyer Specialist: Governance and Employment has already undertaken the role of RIPA Co-ordinating Officer. The Head of Law and Governance will monitor the implementation of the requirements of the Action Plan.

A number of minor amendments are required to the Surveillance Policy as a result of the inspection. The amendments are highlighted in bold in the revised Policy attached at Appendix 1.

1.5.5 Summary of Use of Surveillance, Acquisition of Communications Data and CHIS

Between 1st April 2012 and 31 March 2013, the Authority used the RIPA directed surveillance provisions on 6 occasions. All the authorisations related to investigations of instances of anti social behaviour and provided authorisation for the use of covert cameras.

Between 1 April 2012 and 31 March 2013 the Authority has acquired communications data on 1 occasion. The acquisition related to telephone subscriber information connected to investigations undertaken by the Trading Standards team. Information obtained has subsequently supported court proceedings and sharing of intelligence with other local authorities.

The Authority has not used the covert human intelligence source (CHIS) provisions. The Policy requires that if the use of a CHIS is being contemplated, the Officers concerned should seek appropriate advice from Legal Services and from other organisations that more commonly use CHIS, such as the Police. Approval for the use of a CHIS can only be given by the Head of Paid Service.

It should be noted that following the changes to the RIPA regime from 1 November 2012 reported to Cabinet in November 2012, there have been no authorisations granted. The anti-social behaviour ground for authorising covert surveillance was removed on 31 October 2012. Authorisations may now only be sought on the grounds that it relates to the prevention and detection of serious crime. Serious crime is defined as crime punishable, whether on summary conviction or on indictment, by a maximum term of at least 6 months of imprisonment, or would constitute an offence under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933. The latter are all offences involving sale of tobacco and alcohol to underage children.

The Head of Law and Governance, as the Senior Responsible Officer for RIPA, keeps the Central Record of authorisations under review and advises Authorising Officers/Designated Persons of changes in approach or procedure.

1.5.6 Corporate Responsibilities

The Codes of Practice advise that a Senior Responsible Officer (SRO) should be identified to ensure the Authority has appropriate policies and processes that accord with RIPA and the related Codes of Practice.

The Officer Delegation Scheme places the Senior Responsible Officer role with the Head of Law and Governance.

Each Strategic Director and Head of Service is responsible for ensuring effective and legally compliant systems and procedures are in place for surveillance work within their Directorates and Service Areas.

All employees connected with surveillance and handling of evidence are responsible for ensuring that they act only in accordance with their level of responsibility and training and in accordance with this Policy and associated documents. To assist in this an 'Employee Handbook: Use of Covert Surveillance, Covert Human Intelligence Sources and Communications Data', has been prepared. The Handbook provides key information for Officers and directs them towards key sources of detailed guidance. It will be kept under review and revised as necessary to ensure it reflects current procedures and best practice.

If Officers wish to undertake surveillance that falls outside of the RIPA regime they must take legal advice and seek appropriate authorisation. Information regarding surveillance (whether under RIPA or not) must be held centrally by the Senior Responsible Officer to

enable the Authority to have an overview of all surveillance activities being undertaken by the Authority.

1.5.7 Compliance and Oversight

The Codes of Practice indicate that elected members of a local authority should review its use of RIPA and set the general surveillance policy at least annually. A local authority should also consider internal reports on the use of RIPA at least quarterly to ensure that it is being used consistently in compliance with the Authority's Policy and that the Policy remains fit for purpose.

To meet these requirements the Policy Statement provides that:

- Cabinet receives an annual report covering the Authority's use of RIPA powers, and review of the Policy for the following year;
- Reports are presented to the Regulation and Review Committee on the Council's use of RIPA powers. The Committee's role is to look at compliance, oversight and use of RIPA. The Committee will also consider whether the Policy remains fit for purpose and recommend changes to the Policy as appropriate for Cabinet's consideration; and
- The Cabinet Member with responsibility for RIPA related activities will receive regular updates from the Senior Responsible Officer regarding the use of the Authority's powers.

1.5.8 Closed Circuit Television (CCTV) Systems

North Tyneside Council's CCTV control room operates cameras throughout the Borough. Overt surveillance as conducted through the use of CCTV is covered by the Data Protection Act 1998 and not by RIPA. Signage is in place informing the public when they enter zones covered by CCTV equipment. The Council's CCTV control room is registered with the Information Commissioner under the Data Protection Act 1988.

If the CCTV cameras are used for covert surveillance (whether by the Authority or the Police), a RIPA authorisation is required. The Police may make formal written requests for surveillance of a target for which they have a RIPA authorisation. The CCTV Control Room Co-ordinator will seek written confirmation of this authorisation.

1.6 **Decision options:**

Option 1

Cabinet may:

1. Approve the Authority's Policy on Covert Surveillance (attached as Appendix 1);
2. Review and note the use of surveillance by the Authority in the preceding year; and
3. Note the changes to the use of surveillance by local authorities.

Option 1 is the recommended option.

Option 2

Cabinet may ask Officers to revise the draft Policy and/or provide additional information regarding any matters contained in the report.

1.7 Reasons for recommended option:

Approving the Authority's Policy on Covert Surveillance will secure adherence to the recommended best practice contained within the Codes of Practice. In particular, paragraph 3.30 of the Code of Practice – Covert Surveillance and Property Interference indicates that elected members should review the Authority's use of Part II of the Regulation of Investigatory Powers Act 2000 and set the policy at least once a year.

1.8 Appendices:

Appendix 1: Authority Policy on Covert Surveillance (draft)

1.9 Contact officers:

Stephen Ballantyne, Lawyer Specialist – Governance and Employment (0191 643 5329)
Alison Campbell, Finance Business Manager (0191 643 7038)

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- Regulation of Investigatory Powers Act 2000 and relevant Orders
- Code of Practice – Covert Surveillance and Property Interference
- Code of Practice – Covert Human Intelligence Sources
- Code of Practice – Acquisition and Disclosure of Communications Data
- Protection of Freedoms Act 2012

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The provisions of the Policy can be implemented within the Service's existing resources.

2.2 Legal

The Policy has been prepared with reference to the relevant law and Codes of Practice. A number of Statutory Instruments and Codes of Practice published by the Home Office that govern the operation of RIPA.

The Authority may only authorise directed surveillance where it is both necessary and proportionate to the investigation or operation being undertaken and to what is being sought to achieve in terms of evidence gathering. Senior Officers are appointed as Authorising Officers and have a key role in carefully scrutinising all applications for the use of RIPA powers under a specific authorisation.

Authorising Officers must ensure that authorisations are granted only in appropriate cases and that the extent of all authorisations are clearly set out.

The Authority cannot authorise intrusive surveillance under RIPA. Intrusive surveillance would involve placing an investigator on residential premises or in a private vehicle or allowing the use of an external surveillance device outside of the premises or vehicle that gives the same quality of information as if it was on the premises or in the vehicle.

The Policy, together with the Employee Handbook covers the procedures to be followed in seeking authorisations, maintaining appropriate oversight of the Policy and the central record of decisions.

2.3 Consultation/community engagement

The Policy is aimed at ensuring adherence to the best practice contained within the Codes of Practice and feedback from the Office of Surveillance Commissioners and the Interception of Communications Commissioner's Office as well as the law.

Internal consultation has taken place with officers with responsibility for the management and supervision of surveillance activity as well as the Cabinet Member for Community and Regulatory Services and the Regulation and Review Committee.

2.4 Human rights

Human rights implications are addressed within the report and the Policy. RIPA provides a framework under which surveillance activity can be authorised and conducted in a way that is compatible with the rights of individuals.

The Authority must also ensure that activity that falls outside of the RIPA regime is subject to careful scrutiny and authorisation to ensure that human rights are respected and the activity is lawfully undertaken.

2.5 Equalities and diversity

There are no equalities and diversity implications directly arising from the report.

2.6 Risk management

The Authority's Policy and the procedures contained in the Employee Handbook are designed to ensure the Authority complies with the law and Codes of Practice and thereby reduce the risks associated with surveillance activity.

2.7 Crime and disorder

RIPA may only be utilised by the Authority for the purposes of detecting and preventing crime.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

PART 3 - SIGN OFF

- Chief Executive X
- Mayor/Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Strategic Manager for Policy and Partnerships X