

<b>Body:</b>	<b>Cabinet</b>
<b>Date:</b>	<b>31<sup>st</sup> May 2006</b>
<b>Subject:</b>	<b>Regulation of Investigatory Powers Act 2000 (RIPA)</b>
<b>Report of:</b>	<b>Monitoring Officer</b>
<b>Ward(s)</b>	All
<b>Purpose</b>	To seek Members' approval of the draft RIPA Policy
<b>Recommendation:</b>	<ol style="list-style-type: none"><li>1. Members approve the draft RIPA Policy.</li><li>2. The Monitoring Officer is given authority to liaise with the Office of the Surveillance Commissioners in order to seek approval of the draft Policy.</li><li>3. The Council formally adopts the draft RIPA Policy (amended as necessary) with effect from 1<sup>st</sup> August 2006.</li><li>4. The Monitoring Officer, after consultation with the Cabinet spokesperson, is authorised to amend the Policy following adoption to ensure compliance with statutory requirements and best practice is maintained.</li></ol>
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## **1.0 Introduction**

- 1.1 The Human Rights Act 1998 (which brought much of the European Convention on Human Rights and Fundamental Freedoms 1950 into UK domestic law) requires the Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, their homes and their correspondence.
- 1.2 The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council may interfere in the citizen's right mentioned above, if such interference is in accordance with the law, necessary and proportionate.
- 1.3 RIPA provides a statutory mechanism (i.e. 'in accordance with the law') for authorising covert surveillance and the use of a 'covert human intelligence source' ('CHIS') – e.g. undercover agents. It now also permits Public Authorities to now compel telecommunications and postal companies to obtain and release communications data to themselves, in certain circumstances. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary

and proportionate. In doing so, the RIPA seeks to ensure both the public interest and the human rights of individuals are suitably balanced.

- 1.4 Directly employed Council staff and external agencies working for the Council are covered by the Act for the time they are working for the Council. All external agencies must, therefore, comply with RIPA and the work carried out by agencies on the Council's behalf must be properly authorised.
- 1.5 If the correct procedures are not followed, evidence may be disallowed by the courts, a complaint of maladministration could be made to the Ombudsman, and/or the Council could be ordered to pay compensation. Such action would not, of course, promote the good reputation of the Council and will, undoubtedly, be the subject of adverse press and media interest. It is essential, therefore, that the Council adopts a policy to ensure that any actions governed by RIPA are properly authorised and recorded. It is also essential to ensure that any officers involved in work potentially governed by RIPA are aware of the Act and Policy and are properly trained.

## **2.0 The Draft Policy**

- 2.1 In October 2001 officers of the Council met with Assistant Surveillance Commissioner, Jeremy Fordham who concluded that the Council had a, "wholly responsible attitude to the need for appropriate, policies, procedures and training." The visit also reinforced the need for the Council to adopt a formal RIPA Policy.
- 2.2 Pursuant to the October 2001 meeting work commenced on an initial draft policy began. However, due to a high level of staff movement in Legal Services between 2001 and 2005, progress on this matter has been slower than anticipated.
- 2.3 On 11<sup>th</sup> January 2006 Lord Colville of Culross, Assistant Surveillance Commissioner attended a meeting with the Chief Executive, the Monitoring Officer and the Counter Fraud Manager to discuss the draft policy (which was still in its initial form). As a result of this meeting, Lord Colville concluded that the draft policy must be completely overhauled.

## **3.0 Consultation**

- 3.1 The Monitoring Officer has worked closely with the Counter Fraud Manager in preparing the draft Policy annexed to this report. Extensive research has also been undertaken into other local authority policies. The full text of the draft Policy has been sent to Cabinet members, the Opposition Leader and Opposition Spokesperson. A copy is on the Council's website, in the Members' Room and at Reception for public inspection purposes. To view please go to: <http://www.eastbourne.gov.uk/council/meetings/cabinet>

## **4.0 Resource Implications**

- 4.1 **Financial** - None

4.2 **Staffing** – There will be a need for ‘Authorised Officers’ to be trained. It is envisaged that the training will be provided in-house. Once the Policy is operational there will be a minimal impact on the Monitoring Officer’s time.

## **5.0 Other Implications - Human Rights**

5.1 Without a policy in place there is a definite possibility that any actions taken that are governed by RIPA may not be properly authorised or recorded and this exposes the Council to the risks contained in paragraph 1.5 of this Report. There is also the possibility that any actions taken that are not properly authorised could breach an individual’s Human Rights.

## **6.0 Summary of Options**

- 6.1
1. To approve the draft Policy.
  2. Not to approve the draft Policy.

## **7.0 Conclusion**

7.1 The need for a RIPA Policy is overdue. Failure to adopt a formal policy detailing how the Council deals with authorisations under the Regulation of Investigatory Power Act 2000 leaves the Council open to a number of potential legal challenges. Members are asked to approve the recommendations contained in this Report.

**Jeremy Chambers**  
**Legal Services Manager & Monitoring Officer**

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### **Background Papers:**

The Background Papers used in compiling this report were as follows:

The Regulation of Investigatory Powers Act 2000

To inspect or obtain copies of background papers please refer to the contact officer listed above.