

Body:	CABINET
Date:	1 April 2009
Subject:	The Regulation of Investigatory Powers Act 2000 (RIPA)
Report of:	The Lawyer to the Council
Ward(s)	All
Purpose	To inform Members of the recent inspection of the Council's RIPA policies and procedures and to update them on the work being carried out in response to that inspection and generally.
Recommendations:	<ol style="list-style-type: none">1. That Members note the recommendations of the Inspector from the Office of Surveillance Commissioners.2. The Cabinet notes its adoption of the RIPA policy on 1 August 2006.3. Members authorise the Monitoring Officer to amend the above policy in consultation with the responsible Cabinet member insofar as minor amendments and updating is concerned and to ensure compliance with statutory requirements as an interim measure.4. Members authorise Victoria Simpson and Alice Rowland (Monitoring Officer and Deputy Monitoring Officer respectively on a rotating basis) to act as Officer portfolio holders in respect of RIPA and authorising officers.5. Members authorise the training of those Officers with potential to use the powers conferred by RIPA as a priority draw on the Corporate Training Fund.6. Members note the progress which has been made in relation to the recommendations of the Inspector.7. Members approve proposals that an audit of RIPA policies, procedures and training needs be carried out annually and overseen by the officer who is the RIPA portfolio holder. The results of this audit will be reported back to Cabinet.

8. A comprehensive periodic review of the RIPA policy and associated procedures should be carried out at intervals of no less than three years to test and enhance safeguards and develop the democratic accountability and openness of the council's use of these powers. This review should be led by the relevant cabinet portfolio holder and the RIPA officer portfolio holder(s).
9. Members to approve measures to ensure that the RIPA policy can be accessed via the internet and the intranet.

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1.0 Introduction to RIPA

- 1.1 The Regulation of Investigatory Powers Act 2000 ("RIPA") provides a statutory framework wherein directed surveillance may be carried out and/or covert human intelligence sources ("CHIS") used, for enforcement purposes, if prior authorisation is first given. RIPA also allows public authorities to compel telecommunications and postal companies to obtain and release communications data in certain circumstances.

Directed surveillance is surveillance which is covert but not intrusive (and not an immediate response to events) but is undertaken for a specific investigation or operation in a way likely to obtain private information about a person. It must be contrasted with intrusive surveillance, which the Council is at not permitted to carry out. A CHIS is someone who establishes or maintains a personal or other relationship with a person for the covert purpose of obtaining information.

From time to time, as described below, Eastbourne Borough Council may wish to make use of the powers exercisable under RIPA to aid in its investigation of serious violations of the law.

This Council's RIPA policy outlines the rigorous safeguards which have been put in place to ensure that the powers available under RIPA are only used in appropriate circumstances. The authorising officer must in each particular case believe the activity to both be proportionate to what is sought to be achieved and necessary to prevent crime or disorder, protect public health, collect or assess any tax, or for other specified purpose.

In any successful application for authorisation to use the powers conferred under RIPA, any proposed interference with an individual's rights under the European Convention must be necessary and proportionate. RIPA seeks to ensure that the rights of individuals are suitably balanced with the public interest and the Council's RIPA policy

has established a framework to ensure that this weighing-up exercise is executed effectively at all times.

The use of RIPA is to be seen as a last resort which is to be deployed in circumstances where overt means of surveillance are insufficient.

- 1.2 Directly employed Council staff and external agencies working for the Council are covered by the Act during the time they are working for the Council. All external agencies must, therefore, comply with RIPA, and any work carried out by agencies on the Council's behalf must be properly authorised in accordance with this Council's RIPA policy.
- 1.3 If the correct procedures are not followed, the consequences can be far-reaching in terms of possible impact on individuals' human rights. RIPA does not make unlawful conduct which is otherwise lawful. Any evidence inappropriately or improperly obtained under RIPA is likely to be disallowed by the Courts while in appropriate circumstances, complaints of maladministration may be made to the Ombudsman and the Council ordered to pay compensation.

It is essential that actions governed by RIPA are properly authorised and recorded and that officers involved in work potentially governed by RIPA understand the requirements of RIPA legislation and policy and are properly trained.

2.0 Background

- 2.1 Cabinet approved the RIPA policy in draft on 31 May 2006 and formally adopted it with effect from 1 August 2006. It may be viewed at <http://www.eastbourne.gov.uk/council/meetings/?assetdet=3431&category=441>
- 2.2 The need for recourse to RIPA in any given period will depend on the particular circumstances that apply. That said, the fact that the powers available under RIPA have been exercised by this Council on just one occasion since the policy came into force in 2006 is an indicator of the cautiousness and rigour of this authority's approach to it.

3.0 Inspection

- 3.1 The Council's arrangements in relation to RIPA were inspected by Clare Ringshaw-Dowle, Inspector of the Surveillance Commissioners Office, on 23 October 2008.
- 3.2 The Council's RIPA policy was described by the Inspector as 'very good'.
- 3.3 The Inspector however expressed dissatisfaction with Eastbourne Borough Council's approach to internal policy and procedures and to the inspection process. She made various recommendations in her report. These can be summarised as follows:
 - A Central Record, as required by paragraphs 2.14 and 4.14 of the Covert Surveillance Code of Practice and its CHIS Code of Practice

equivalents, should be established. This, together with any RIPA authorisation paperwork, should be held in a secure manner to avoid inadvertent access to those without a "need to know".

- The Chief Executive should determine, in accordance with the Council's RIPA policy, who will manage the RIPA portfolio on his behalf, to ensure that all potential or actual covert activity by his Council is known about centrally and can be appropriately managed and quality assured.
- The Chief Executive should determine afresh which officers are to be designated as authorising officers for Eastbourne Borough Council and they should receive the necessary training for this quasi-judicial role.
- Once identified, those responsible for the central oversight of RIPA should undertake a training needs analysis and thereafter organise suitable RIPA training, to cover directed and intrusive surveillance, and CHIS matters, for all those officers likely to act as either applicants or authorising officers. This should include the Chief Executive.
- A regular audit should be undertaken by the RIPA portfolio holder(s) to see which departments do, or might need to in future, make use of the legislative powers. This will ensure that they have received copies of all authorised documentation at the centre, and provide a regular update of any fresh training needs.
- It should be checked that the RIPA policy approved by Cabinet is that to which the Council is working, assuming that the Cabinet's approval is mandatory.
- All future RIPA applications and authorisations should be completed using the latest available RIPA forms, obtained through the Home Office's RIPA website. Any future authorisations must be cancelled and ensuring surveillance product auditably managed.

3.4 A further inspection will be carried out by the Office of the Surveillance Commissioner on 11 May 2009.

4.0 Response to the Inspection

4.1 The Monitoring Officer and Deputy Monitoring Officer (on a rotating basis), Victoria Simpson and Alice Rowland, have worked with the Chief Executive to implement the recommendations of the report. A Working Group has been established and those Officers from all departments who might potentially consider using RIPA powers have attended the Working Group and/or been consulted by it.

4.2 The Chief Executive has provisionally determined that Alice Rowland and Victoria Simpson should be the portfolio holders of RIPA. This is in line with the previous regime and Cabinet is asked to approve this approach.

4.3 An assessment of the training needs of Officers across the Council has

been undertaken and can be summarised as follows:

- 7 Officers received training in 2008.
- 35 Officers are now in need of training/will require update training this year. This includes two Officers from Eastbourne Homes as well as the Chief Executive and the Lawyers to the Council.

The purpose of the proposed training is to ensure that all relevant officers are fully aware of the limits of what is and is not permissible under RIPA, thereby ensuring that any recourse to it is proportionate, necessary and in accordance with the law.

- 4.4 It has been provisionally decided that as there is an urgent need for a large number of officers to be trained in the powers available under RIPA, that the appropriate way to deal with this need is to secure the services of an external trainer. This will be cost effective and will also ensure that the Council is approaching the use of RIPA powers in a co-ordinated and uniform way. It will further ensure that Officers be made aware of who else in the Council is aware of the uses of RIPA so that they might draw on the expertise of others where appropriate. Cabinet is therefore asked to approve this cost as a priority draw on the Corporate Training Fund.
- 4.5 At the time of publication of this Report the Lawyer to the Council is seeking estimates in respect of the proposed training. She anticipates being able to update Cabinet as to likely cost at the meeting when this Report is considered.
- 4.6 A Central Record has been established and is being held in a secure manner by the Lawyers to the Council.
- 4.7 The proposal is for an audit to be carried out on an annual basis by the Lawyers to the Council and reported back to Cabinet.
- 4.8 It is further proposed that a comprehensive periodic review of the Council's policy and procedures relating to RIPA should be conducted no less than every three years. This review should include members and relevant officers and will be led by the Cabinet portfolio holder and the RIPA officer portfolio holder(s).

The purpose of the review will be to test and enhance safeguards in the council's policy and procedures and to develop the democratic accountability and openness of the council's use of RIPA powers.

- 4.9 Members are further asked to approve the plan to make the policy accessible via the intranet and the internet. This is the practice at most other Local Authorities and is appropriate in the interests of open government.

5.0 Consultation

- 5.1 Representatives from Environmental Health, Planning, Cleansing, Internal Audit, Eastbourne Homes, and the Community Enforcement Team have attended the Working Group and/or been consulted.

6.0 Resource Implications

6.1 Financial – There is a need for training to be funded centrally as Officers across a range of services need to be uniformly trained.

6.2 Staffing – The training has implications for staff time.

7.0 Human Rights Implications

7.1 It is vital that RIPA is correctly applied across the Council to protect the Human Rights of the residents of Eastbourne.

8.0 Summary of Options

- 8.1
1. To approve the recommendations.
 2. Not to approve the recommendations.

9.0 Conclusion

9.1 The powers available under RIPA have the potential to be highly effective as an enforcement tool – as long as appropriate circumstances apply and the proper processes are followed. It is a pre-requisite of the relevant legislation that only covert surveillance activities which are necessary and proportionate in all of the circumstances are authorised. Implementing the recommendations of this Report will ensure that appropriate safeguards exist to ensure that the appropriate balance is struck.

Alice Rowland, Lawyer to the Council

Background Papers:

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

- The Office of Surveillance Commissioners Inspection Report – 23 October 2008
- The Regulations of Investigatory Powers Act 2000.
- Eastbourne Borough Council's RIPA policy, approved on 31 May 2006 and adopted with effect from 1 August 2006.
- The report to Cabinet of Jeremy Chambers, Monitoring Officer – 31 May 2006.
- The Minutes of the Cabinet meeting on 31 May 2006.

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

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