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**REGULATION OF INVESTIGATORY POWERS**

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**Responsible Cabinet Member - Councillor Chris McEwan  
Efficiency and Resources Portfolio**

**Responsible Director - Paul Wildsmith, Director of Corporate Services**

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**SUMMARY REPORT**

**Purpose of the Report**

1. The purpose of this report is to inform and update Members about the Regulation of Investigatory Powers Act 2000 and developments that have taken place since the last report to Cabinet in July 2010.

**Summary**

2. The Regulation of Investigatory Powers Act 2000 (RIPA) enables Local Authorities to carry out certain types of surveillance activity provided that specified procedures are followed. The Local Authority is able to rely upon the information obtained from those surveillance activities within Court proceedings.
3. The Office of the Surveillance Commissioner (OSC) provides regulatory oversight of the way in which public authorities use RIPA. The Council was inspected by the OSC on 23 November 2010. This was a follow up inspection from the full inspection and audit that was carried out on the 8 April 2010. The inspection went well and the Council received positive feedback.
4. Members are advised about the case of Jenny Patton v Poole Borough Council, decided by the Investigatory Powers Tribunal about an inappropriate use of RIPA in connection with an investigation undertaken by the local authority into the correct parental residence for school admission purposes.
5. This report also gives details of the production of a new Human Resources Advisory Circular dealing with Surveillance and Employment issues.
6. The Office of Surveillance Commissioners (OSC) produces guidance to help public authorities to interpret and understand RIPA. In September the OSC produced revised guidance entitled 'Procedures and Guidance'. A copy of this Guidance will be made available on the Council's intranet, for officers dealing with RIPA.
7. This report gives details of RIPA applications that have been authorised since July 2010 and updates the tabulated information of RIPA applications.

## Recommendation

8. It is recommended that Members :
- (a) Note the developments that have taken place since July 2010.
  - (b) Receive the quarterly report on the use of RIPA.

## Reasons

9. The recommendations are supported by the following reasons:
- (a) To ensure appropriate use of powers contained within relevant legislation.
  - (b) To ensure compliance with the Codes of Practice and Guidance.

**Paul Wildsmith**  
**Director of Corporate Services**

## Background Papers

Office of Surveillance Commissioners – Procedures and Guidance, September 2010

L.Swinhoe: Extension 2055

S17 Crime and Disorder	The appropriate use of and oversight of RIPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime.
Health and Well Being	There are no specific implications for Health and Well Being
Carbon Impact	There are no issues which this report needs to address
Diversity	The policy treats all groups equally.
Wards Affected	All wards
Groups Affected	All groups equally
Budget and Policy Framework	This does not represent a change to the Council's budget and policy framework.
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	The appropriate use of powers is a legislative requirement.
Efficiency	The additional legislative requirements will be met within existing resources but will create additional pressures within the People Team of Legal Services and for officers using RIPA powers across the authority.

## MAIN REPORT

### Information and Analysis

#### Inspection

10. The Council was inspected by the Office of the Surveillance Commissioner on 23 November 2010. This was a follow up inspection from the full inspection and audit that was carried out on the 8 April 2010. The inspection went well and the feedback received was positive about the way in which the recommendations received from the April inspection had been implemented. The Inspector felt that the central record of authorisations was well maintained, he was impressed with the standard of the authorisations, the training that had been provided and the amended RIPA policy. The full inspection report has not yet been received by the Council, but if there is anything further to report this will be dealt with in the next quarterly Cabinet report.

#### Non RIPA investigations

11. The Regulation of Investigatory Powers Act 2000 enables the Local Authority to lawfully carry out directed covert surveillance and to use Covert Human Intelligence Sources (CHIS) (under cover officers, agents, informants) as long as the legislation is properly complied with and the Codes of Practice followed.
12. The only purpose that a local authority can carry out directed surveillance or use a CHIS is for preventing or detecting crime or of preventing disorder. Surveillance that is undertaken by a local authority not for that purpose will be outside of RIPA.
13. In July this year the case of *Jenny Patton v Poole Borough Council*, was decided by the Investigatory Powers Tribunal. The case concerned an issue about surveillance had been undertaken by the Council to see if the parents had given the correct place of residence relating to a school admission. The Tribunal was not persuaded that crime or disorder was being prevented or that criminal proceedings would have followed if the place of residence was found to be false or that the actions taken by the Council were proportionate. This led to the Tribunal making a declaration that there had been a breach of Article 8 (right to family life) and that the authority could not rely on the RIPA authorisation to provide lawful authority to defeat the human rights claim.
14. The implications for a Local Authority of being less than clear about the purpose of the investigation are well highlighted by the Poole case. In using RIPA it must be clear from the outset that a potential crime is being investigated and that it is sufficiently serious to be dealt with by the use of surveillance and that all of the other considerations (such as necessity, proportionality, non discrimination, the risks of collateral inclusion of obtaining confidential information have been fully considered). Otherwise a local authority will not be able to rely on RIPA.
15. As well as the limitation that a Local Authority can only rely on RIPA when the purpose of the surveillance is for preventing or detecting crime, or of preventing disorder, the Investigatory Powers Tribunal, in a case decided in late 2006 made a distinction between the ordinary functions eg management and core functions eg regulatory functions of a local authority. In the Tribunal's view there was no reason why RIPA should apply when a Local

Authority is operating within its ordinary functions, but only in relation to its core functions. Core functions are the functions that distinguish a Local Authority as a public sector body. This would include the authorities' regulatory functions, such as trading standards, environmental health and licensing. Functions such as the employment of staff would be ordinary functions and not functions that were particular to a local authority.

16. This means that some surveillance that the Local Authority may wish to engage in will fall outside RIPA. For instance the surveillance of staff in relation to disciplinary issues. However, though a RIPA authorisation will not be needed any such surveillance must still, be compliant with the Human Rights Act. All that RIPA does is provide a framework for a Local Authority to provide a lawful justification for potential breaches of human rights in certain circumstances. Other areas of law may also apply depending on what action is proposed, these include The Data Protection Act (there is a Code of Practice from the IOC, The Employment Practices Code, Part 3 of which deals with monitoring at work), and regulations dealing with Lawful Business Practice. The relevant law and guidance will need to be complied with and where RIPA does not apply, a process of justification will be necessary. What needs to be done is a similar exercise to the application and authorisation process carried out under RIPA. This will be able to evidence the need for, methodology and scope of the investigation and deal with issues of necessity, proportionality, collateral inclusion, and so on. It is recommended that the Council develop its own procedure for achieving this and therefore a new Human Resources Advisory Circular will be developed for this purpose.

### **Revised Guidance from the Office of Surveillance Commissioners**

17. In September 2010 revised 'Procedures and Guidance' was issued by the Office of Surveillance Commissioners (OSC). This updates and replaces a document of the same title issued in December 2008. It is aimed at assisting in providing guidance on a range of matters that have either been raised in questions to the OSC or that have been identified during inspections of public authorities carried out by the OSC.
18. The OSC are keen for the revised Guidance to be made available to members of public authorities and for it to be referred to by officers, in particular authorising officers in dealing with RIPA applications.
19. While a fair amount of this guidance relates to more serious categories of surveillance activities undertaken by the police there is a lot of useful and helpful guidance of a more general nature. The guidance is attached at **Appendix A**. To give an idea of content it amongst other matters, and most relevant to this authority, covers the concept of proportionality, the need for authorising officers to fully understand the capability of surveillance equipment used, the importance of avoiding form completion by cut and paste from templates, the importance of wet signatures on authorisations or verification of electronic signatures, the use of tracking devices, test purchase sales to juveniles and CHIS (covert human intelligence sources), noise monitoring equipment.
20. The current 'Key Facts' document that provides an overview of RIPA has been amended, with links to the revised Guidance to enable officers dealing with RIPA to have ready access.

## Quarterly Report

21. The table below provides details of RIPA authorisations that have been made by this Council in the calendar years since 2007. Since 13 July 2010 (when the last report was presented to Cabinet) there have been two new authorisations. These authorisations both related to an exercise that was conducted by Trading Standards into the sale of Tobacco to underage children. The operation involved a number of visits to suppliers of tobacco products, using an under age volunteer (accompanied by an officer from Trading Standards) to carry out test purchases of tobacco. The operation was carried out between 14 September 2010 and 27 September 2010. As a result of the operation 6 potential offences were identified. Since then interviews have been conducted with a view to obtaining additional evidence. Some letters of warning and cautions have been issued and with one case the investigation is still proceeding.

Type of investigation	Year				Total
	2007	2008	2009	2010	
Statutory noise nuisance	17	21	12	0	50
Trading standards	2	1	1	0	4
Underage sales	20	4	2	4	30
Illegal storage/sale of fireworks	0	1	0	0	1
Trespassing	1	0	0	0	1
Anti-social behaviour	6	14	6	0	26
Benefits investigation	1	0	0	0	1
Theft	2	0	0	0	2
Failure to educate	1	0	0	0	1
Criminal damage	0	0	2	4	6
Illegal waste disposal	0	0	0	1	1
Duplicate Car Park Passes	0	0	1	0	1
<b>Totals</b>	<b>50</b>	<b>41</b>	<b>24</b>	<b>9</b>	<b>124</b>

22. Members will appreciate that there has been a reduction in the usage of RIPA by this Council, year on year and also this year. This can be explained. One of the issues highlighted by the Inspection in April 2010 was that there was a difference of practice in the use of RIPA when noise recording equipment was being installed. Environmental Health advised the target resident that they were installing surveillance equipment, but did not get a RIPA authority because the surveillance was overt rather than covert. Housing Services also

advised the target tenant that they were installing surveillance equipment but also completed a RIPA authorisation process. The inspector said that this was not necessary. Accordingly Housing Services no longer use RIPA for this type of surveillance. Another factor in the reduction of RIPA usage has been that, following the April 2010 inspection and also in the light of general media comments about RIPA usage, officers have been more hesitant about the use of covert surveillance. While the use of covert surveillance does need to be fully justified, it does remain an important way of gathering evidence in appropriate cases. Ways of helping officers in any concerns they may have about the use of RIPA are being considered, one of which is the formation of a RIPA User group to allow a forum for officers to discuss issues of concern relating to this area. We have also put additional material on the intranet including a 'Key Facts' advice page.

### **Outcome of Consultation**

23. There has been no consultation on the contents of this report.