

Joint Audit and Governance Committee



Report of Head of Legal and Democratic

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DATE: 22 September 2020

Regulation of Investigatory Powers Act 2000 Policy and Procedures

Recommendations

- (1) That the committee notes that surveillance is one of the tools available to the councils as part of their law enforcement functions.
- (2) That the committee endorses the attached document, Regulation of Investigatory Powers Act 2000 Policy and Procedures, for use by council teams as part of their work.
- (3) That the committee authorises the Head of Legal and Democratic to make such changes to the Policy and Procedures document as she may consider necessary from time to time to ensure ongoing compliance with the requirements of the 2000 Act and associated guidance.

Purpose of Report

1. To inform the committee how the councils have deployed and will seek to deploy the use of covert surveillance in our enforcement work having proper regard to the principles of necessity, proportionality and lawfulness; and for the committee to endorse a policy and procedures document, designed to ensure compliance with the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA).

Strategic Objectives

2. South 'be tough on enforcement' and Vale 'running an efficient council'. Working to adopted and agreed RIPA policies and procedures will facilitate the use of covert surveillance as a legitimate and effective tool in enforcement investigations. It will also help ensure the lawfulness of such activity, thereby avoiding potentially costly and harmful legal challenges to our actions.

Background

3. The councils carry out a number of statutory functions that may require resort to enforcement action of many different types, and investigations carried out into breaches or suspected breaches of the law may lead the councils to take action in the courts, including criminal prosecutions. Protecting the environment from harm, particularly from illegal waste disposal (fly-tipping), fraud, licensing, planning and various aspects of health and safety are all areas of the councils' work where the councils and our residents are concerned to see effective enforcement action being taken against illegal activity. The ability to take such effective action may give rise to a need for investigative work, and the deployment of a range of techniques by the service teams who are charged with regulatory enforcement. Directed covert surveillance, and the use of covert human intelligence source (CHIS) are techniques that the councils may deploy in investigative work, and RIPA establishes a legislative framework within which the councils may seek to legitimately undertake such activity.
4. The 'law of RIPA', and the parameters of the legislation, are set out in a degree of detail in the attached document, Regulation of Investigatory Powers Act 2000 Policy and Procedures, which this committee is asked to endorse. The detail that is included in that document will therefore not be repeated in the body of this report. It may be helpful however for councillors to understand that RIPA does not of itself provide local authorities with powers to undertake covert surveillance that they otherwise might not have. What RIPA and its associated guidance does do, is to establish a framework of principles against which the lawfulness of such surveillance activity might be able to be judged.
5. The policy and procedures document that is attached to this report is therefore essentially intended to strike an appropriate balance between respecting individual rights to privacy on the one hand and the need for effective law enforcement on the other, based on concepts of necessity, proportionality and transparency.
6. It may therefore be noted that the councils' service teams have in fact been quite sparing in their engagement of covert surveillance in their work over recent years, and that it has in fact been several years since a full RIPA authorisation for covert surveillance was applied for (and granted) as part of an investigation into suspected breaches of the criminal law. The need for an up to date and well understood policy and procedures document remains strong however (a) to ensure that the councils' teams are well placed to engage in surveillance activity as and when the need might arise and (b) to ensure that officers do not stray into unauthorised covert surveillance through unfamiliarity with the law and processes that regulate such activity. It is for these reasons also, that the provisions in the attached policy and procedures document regarding training of officers are particularly important.
7. The policy and procedures document attached to this report, which the committee is being asked to endorse, represents the most recent iteration of a document that has evolved with the benefit of input and recommendations provided from time by the Investigatory Powers Commissioner's Office (IPCO), and previously the Office of Surveillance Commissioners, in the course of their oversight of this aspect of the councils' work. The presentation of the document to the committee as one to be endorsed is therefore supported by a good measure of independent verification. Consideration of this report and the attached document by the committee also ties

in with the view that the IPCO has expressed, that councillors should have general awareness of RIPA issues, and a role in settling RIPA policy and procedures.

Financial Implications

8. The training that will be required for officers who have or may have an involvement in RIPA issues and investigations should be able to be accommodated from budgetary provision which exists for training.

Legal Implications

9. The legal implications and issues relevant to this report are dealt with in detail in the body of the report and the attached RIPA policy and procedures document.

Risks

10. Not having a policy and procedures in respect of RIPA endorsed by councillors, or not having a robust policy and procedures in place at all, would be likely to draw criticism from the IPCO. It would also be likely to increase the risk of the councils acting unlawfully, inadvertently or otherwise. This could have the effect of reducing the effectiveness of our enforcement work, both generally and on individual cases. Adherence to a robust RIPA policy and procedures will help avoid legal challenges to the lawfulness of the councils' actions which would be likely to be costly and could potentially cause reputational harm.

Other Implications

11. The councils operate a system of closed circuit television (CCTV) across six market towns in the districts. There are 86 cameras in total, monitored from a control room within Abingdon Police Station, by staff employed by the councils. The management, operation and use of this system is undertaken in accordance with a code of practice and an operational handbook separate from the policy and procedures document accompanying this report, it being noted that CCTV of public place activity generally falls to be considered as overt rather than covert activity. In similar vein, the presence of cameras which are deployed to detect and prevent the crime of fly tipping at 'hotspot locations' in the districts is normally accompanied by signage placed nearby, informing the public that surveillance takes place. This means that the process of surveillance is not strictly subject to the requirements of 'full RIPA', as the surveillance is overt. The carrying out of this kind of surveillance activity however is still subject to a process of assessment based on principles of necessity and proportionality, and consideration of rights of privacy.

Conclusion

12. The adoption of a policy and procedures document setting out the way in which the councils may seek to use covert surveillance as a tool in investigative work will facilitate effective enforcement work and will help ensure that the councils operate within the legal rules that regulate such activity. The committee is therefore asked to endorse the document attached to this report, Regulation of Investigatory Powers Act 2000 Policy and Procedures, for adoption and use within the councils and to authorise the Head of Legal and Democratic to keep the document up to date as appropriate.