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| Item No. | Classification: Open | Date: 13 June 2013 | Decision Taker: Cabinet Member for Finance, Resources and Community Safety |
| Report title: | | Review of Regulation of Investigatory Powers Act (RIPA) Policy | |
| Ward(s) or groups affected: | | All | |
| From: | | Director of Legal Services | |

RECOMMENDATION

That the cabinet member for finance, resources and community safety

1. Notes the current legal position with regard to the Protection of Freedoms Act 2012 and approve the revised Policy set out in Appendix 1.

BACKGROUND INFORMATION

2. The primary function of local government enforcement work is to protect the public, the environment and groups such as consumers and workers. Carrying out regulatory functions and enforcement in an equitable, practical and consistent manner helps to promote a thriving national and local economy, and can help prevent and detect crime and disorder.
3. Southwark Council will on occasion need to use covert surveillance as allowed for by the Regulation of Investigatory Powers Act (RIPA) in order to carry out its enforcement functions effectively. Examples of enforcement activities which may require the use of RIPA include trading standards enforcement activities against rogue traders and fraud investigations and child protection.
4. The Regulation of Investigatory Powers Act 2000 (RIPA) provides the framework under which authorised regulators are able to carry out surveillance activities which would otherwise not be legal because of the impact on human rights.
5. RIPA provides safeguards to ensure that where councils undertake directed surveillance, use covert human intelligence sources (CHIS) or access communications data, their usage is always recorded and fully transparent.
6. Furthermore, RIPA regulates councils in a manner that is compatible with the European Convention of Human Rights and Fundamental Freedoms, which is incorporated into domestic law by the Human Rights Act 1998.

KEY ISSUES FOR CONSIDERATION

7. Some local authorities have been criticised in the past for using surveillance powers in low level cases such as school catchment areas or bin collections. On 1 November 2012 legislative changes were introduced governing how local authorities use RIPA. Amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations under RIPA can only be given effect once an order approving the authorisation has been granted by a Justice of the Peace (JP).
8. In addition a local authority may only seek authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences that could attract a custodial sentence of 6 months or more, or relate to knife, tobacco or alcohol sales to children. In recent years Southwark has only used RIPA for these types of activities.
9. Local authorities will no longer be able to use directed surveillance in some cases where it was previously authorised. But this does not mean that it will not be possible to investigate these areas with a view to stopping offending behaviour. The statutory RIPA Code of Practice on covert surveillance makes it clear that routine patrols, observation at trouble 'hotspots', immediate response to events and overt use of CCTV are all techniques which do not require RIPA authorisation.
10. RIPA applications must still go through the current internal authorisation process and be authorised by one of the specified authorising officers. The authorised RIPA application must then be presented to the Justice of the Peace for judicial approval.
11. The Office of the Surveillance Commissioner (OSC) is advising that test purchases may be subject to RIPA and it is for each public authority to make that decision. Trading Standards have used RIPA authorisations to carry out test purchases but generally other services do not. Most operations are overt and may involve other agencies such as the Police or Immigration. They follow the advice of LACORS (see next paragraph) and if RIPA is not used they will record the decision as to why.
12. Advice from the Local Government Regulation (formerly LACORS- Local Authority Co-ordinators of Regulatory Services), in March 2010, suggests that *"The Regulation of Investigatory Powers Act Policy should make specific reference to test purchasing. Clearly in test purchasing operations where it is the view of the manager and authorising officer that it is not likely to result in the obtaining of private information and no relationship will be established then Regulation of Investigatory Powers Act authorisation is not required."* However it goes on to say that *"In circumstances where the exercise is considered to fall outside the scope of Regulation of Investigatory Powers Act, it is good practice in LACORS' view, to record the reasons for this decision."*
13. Advice from the Home Office to the Police in 2004, referring to test purchases of alcohol using persons under the age of 18, states that a RIPA need not be applied. Similarly it goes on to say that where a letter is sent to all local licensees in advance of test purchases advising them that test purchases would take place, this makes the conduct overt, not covert and therefore RIPA is not required.

14. The Council policy on RIPA has been updated to reflect these legislative changes and is included as Appendix 1.

Community impact statement

15. The content of this report in itself will not have any significant impact for citizens in Southwark. However use of surveillance activities by the council must be lawful and proportionate otherwise it will impact on human rights. Proportionate use of the powers however, particularly to tackle fraud, will benefit all citizens in Southwark as the council will be able to ensure that the public funds are protected and only paid to those who are properly entitled to receive the same.

Legal implications

16. RIPA provides a legal framework for a local authority to conduct covert surveillance techniques. The legislation ensures that any surveillance activity conducted by the council is legal, proportionate and necessary.
17. The recent legislative changes provide further protection to individuals to ensure that covert surveillance techniques are only used if they are judicially approved and are required to detect or prevent serious crime.
18. The proposed policy helps safeguard the council in its use of RIPA and when followed will ensure we comply with the law. Should the council fail to approve the policy or a similar revised legally compliant policy we would be at real risk of legal challenge in our subsequent use of RIPA.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Corporate Services (F&CS13/021)

19. There are no financial or value for money implications as a result to the change in policy due to legislative changes in the Protection of Freedoms Act 2012.

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|-------------------|---------|---------|
| None | | |

APPENDICES

| No. | Title |
|------------|--|
| Appendix 1 | Policy, Procedures & Forms on Directed Surveillance and Use Of Covert Human Intelligence Sources Under The Regulation Of Investigatory Powers Act 2000 |

AUDIT TRAIL

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|---|---------------------------------------|--------------------------|
| Lead Officer | Director of Legal Services | |
| Report Author | Norman Coombe, Head of Corporate Team | |
| Version | Final | |
| Dated | 12 June 2013 | |
| Key Decision? | Yes | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments Sought | Comments Included |
| Director of Legal Services | Yes | Yes |
| Strategic Director of Finance and Corporate Services | Yes | Yes |
| Cabinet Member | Yes | No |
| Date final report sent to Constitutional Team | 13 June 2013 | |