

Regulation of Investigatory Powers Act 2000

Cabinet

Date: 16th March 2016

Author: Leader of the Council,
Director of Law and Democratic Services, and
Public Protection Manager

Wards: All

Locality Affected: All

Parishes Affected: All

1. Purpose and Reasons

- 1.1 To brief members as to the current situation with regard to the Council's use of the Regulation of Investigatory Powers Act 2000 and to note the current policy.
- 1.2 Councillors should have oversight of how the Council uses its powers to undertake surveillance activities and to be assured that it uses its powers responsibly and in accordance with the Regulation of Investigatory Powers Act and associated codes of practice.
- 1.3 The report has the following links to One Swindon, Plans and Policies namely 1) Together, find new ways to reduce vulnerability and improve health for all and 2) Work with people and families to help them fulfill their potential.

2. Recommendations

Cabinet is recommended to note the report and endorse the current 'Policy and Protocol on Regulation of Investigatory Powers Act 2000'.

3. Detail

Surveillance activities that can be undertaken by the Council

- 3.1 Swindon Borough Council has a number of powers of covert surveillance which are supervised by the Regulation of Investigatory Powers Act (RIPA) which allows the Council to authorise the use of three covert techniques:
 - 3.1.1 One: covert surveillance on individuals in public places, that is, **directed surveillance** using cameras and other methods such as photography or covert following of individuals;
 - 3.1.2 **Two: communications data** (such as telephone billing information – but not traffic data, which is the most intrusive form of communications data, which can be used to identify the location of devices); and
 - 3.1.3 **Three: covert human intelligence sources** (CHISs), where individuals interact with suspected offenders in order to investigate crime; almost exclusively these are Council's enforcement officers.
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Further information on the subject of this report can be obtained from Stephen Taylor, Direct Dial Telephone Number (01793) 463012, staylor@swindon.gov.uk.

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Surveillance activities undertaken by the Council during 2014 and 2015

- 3.2 During the calendar year 2015, the Council undertook no authorised CHIS surveillance and two requests for communication data. During 2014, there were 2 authorised CHIS surveillance and no requests for communications data.
- 3.3 To put the Council use of surveillance powers into context, in 2011 the Office of the Surveillance Commissioners, reported that generally speaking local authorities use surveillance powers sparingly with over 50% of Authorities granting five or fewer directed surveillance authorisations and 16% none at all.
- 3.4 Further, the 2014/15 Chief Surveillance Commissioner's Annual Report states that there has been a significant drop since then in the number of such authorisations, which he attributed in part to the impact of The Protection of Freedoms Act 2012 which introduced significant restrictions on the use of RIPA and also required the approval of a magistrate to authorise the use of such powers.

Inspections conducted by Government Bodies

- 3.5 The Council is generally inspected by the Office of Surveillance Commissioners (OCS) every third year. The OCS inspects the Council's procedures relating to Direct Surveillance and the use of CHIS's. The Council was last inspected on the 17th September 2013. The next programmed inspection is on 24th May 2016.
 - 3.6 So far as the last inspection is concerned, the inspector observed that Swindon Borough Council is not a significant user of RIPA but it was evident from the inspection that it is keen to discharge its legal responsibilities appropriately and this is supported by a comprehensive and up to date policy. He also commented that the Council had taken heed of advice of previous inspection reports, had staff that were trained appropriately and was well placed to utilise the legislation should they require.
 - 3.7 The inspector recommended:
 - 3.7.1 The Council complies with the provisions of paragraph 3.30 of the revised Code of Practice for Covert Surveillance and Property Interference. Paragraph 3.30 requires that the elected members review the authority's use of the 2000 Act and set the policy at least once a year. In addition, the Council should consider internal reports on the use of Act on at least a quarterly basis.
 - 3.7.2 That future training highlights the legal requirement to comply with OSC Guidance Note 109 ensuring that all intelligence or information has correct provenance to allow the authorising officer to reach a proper judgement.
 - 3.8 The recommendations were reported to Cabinet on 19th March 2014 who resolved:
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3.8.1 That the Report of the Office of Surveillance Commissioners' Inspection of Swindon Borough Council 2013 be welcomed and its recommendations be accepted, noting that

- (a) the Policy & Protocol On Regulation Of Investigatory Powers Act 2000 will continue to be reviewed on at least an annual basis, and
- (b) a quarterly report will be produced for the Lead Member who will take any significant or emerging issues to Cabinet as appropriate.

Current Policy and Protocol

3.9 Since then, the Policy and Protocol has been regularly reviewed by the Public Protection Manager and updated by the Director of Law and Democratic Services under his delegated powers (Cabinet Minute 15/2006 refers). The current Policy and Protocol is attached at Appendix 1 and has been recently reviewed as part of the regular review programme.

3.10 So far as regular reporting to the Lead Member is concerned, there has not been sufficient RIPA activity since 2014 to justify a written report so the Lead Member has been kept informed verbally on an ad hoc basis. No significant or emerging issues have been identified such as to justify a report to Cabinet.

4. Alternative Options

4.1 The Council could decide not to accept the recommendations.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

5.1 There are no direct financial implications from this report.

Legal and Human Rights Implications

5.2 Legal and human rights implications have been taken into account in the preparation of this report. It is believed that the recommendations within this report are compatible with Convention rights.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

5.3 No other implications have been identified within the contents of this report.

Diversity Impact Assessment

5.4 A DIA has not been carried out as part of this report, if a DIA becomes necessary it will be completed at the appropriate time.

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Risk Management

- 5.5 No risk management issues have been identified within the contents of this report.

6. Consultees

- 6.1 The Board Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 Appendix 1 – Policy and Protocol on Regulation of Investigatory powers Act 2000 – Issue 17 March 2016

9. Key Decision/Decision in Cabinet Work Programme and Forward Plan

- 9.1 This is not a Key Decision and is included in the Cabinet Work Programme and Forward Plan for March 2016.