

Guildford Borough Council

Report to: Corporate Governance and Standards Committee

Date: 14 November 2024

Ward(s) affected: Not applicable.

Report of Director: Legal & Democratic Services

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Report Status: Open

Regulation of Investigatory Powers: Update and review of Covert Surveillance Policy

1. Executive Summary

This is an annual report on the Council's use of covert surveillance operations as regulated in law by the Regulation of Investigatory Powers Act (RIPA) (2000) in accordance with the Council's policy.

This report also seeks approval of minor amendments to the Council's Covert Surveillance and Investigative Powers Policy and Procedure (the Policy) which was last updated in September 2023.

2. Recommendation to Committee

That the Corporate Governance and Standards Committee (the Committee) notes this report and continues to receive regular updates in accordance with the policy.

To note that the Joint Strategic Director – Legal and Democratic Services will be amending the policy under the Scheme of Delegation as set out in this report.

3. Reason(s) for Recommendation:

- 3.1. To ensure that the Committee is kept up to date and can monitor the Council's use of covert surveillance and investigatory powers.
- 3.2. To ensure that the Council's Policy is up to date and reflects any organisational changes, changes to legislation or the relevant Codes of Practice and continues to be aligned with the policy for Waverley Borough Council.
- 3.3. To inform members of the intention to make future minor changes to the Policy under delegations. Any significant changes are still reserved to the Committee and full Council.

4. Exemption from publication

No

5. Purpose of Report

5.1 The Corporate Governance and Standards Committee has requested this report to ensure transparency in covert surveillance operations.

5.2 The policy currently provides for an annual review but it is considered that this could be clearer and in accordance with the new Scheme of Delegation minor amendments should be delegated to the Joint Strategic Director – Legal & Democratic Services.

6. Strategic Priorities

- 6.1. To promote openness and transparency in Council policy and decision-making in order to uphold public confidence within the Borough.
- 6.2. To underpin our Corporate Strategy of a resilient and well-managed Council and to ensure that the Council 'makes the right decisions in the right way'; The Corporate Strategy states that we will continuously review our policies and procedures.

7. Options

- 7.1. To note the contents of the report in relation to the Policy amendments.
- 7.2. To note and monitor the council's use of covert surveillance techniques.

8. Update on Progress

- 8.1. The current Covert Surveillance & Investigative Powers Policy was circulated to staff and published on the intranet on 12 September 2023 and is due for review in October 2024.
- 8.2. Training for Authorising Officers took place on 31 July 2023 and 19 September 2024. A more general refresher training for investigatory and enforcement officers took place on 19 September 2023 and further refresher training will be offered early in 2025.
- 8.3 In line with good practice and current guidance separate logs are now being kept for investigative work that falls outside of RIPA such as recording social media investigative work and for non-RIPA investigations. These were circulated to all service leads on the 13 October 2023 and are in use.

9. Applications - Report

9.1 One new application for covert surveillance activities, specifically Directed Surveillance has been received since the last report. This was authorised by an Authorising Officer on the 18 September 2024. At the time of writing this report, we are still awaiting a date for the matter to be heard in court and receive judicial approval.

9.2 In relation to the logs for investigative work which fall outside RIPA. There have been five entries on the 'Social Media Investigations Log', four from officers in Regulatory Services and one from Planning.

10. Review of Policy

10.1. It is proposed that members note the following minor amendments to the Policy:

1. Page 15 of the current policy states:

"This policy will be reviewed by the Corporate Governance and Standards Committee at Guildford and then go before the full council for approval.

The SRO will review the policy every year in consultation with the Committees above".

It is proposed that, to reflect the changes to the Scheme of Delegation approved by Council, this should be deleted and replaced with:

"This policy will be reviewed annually by the SRO and any minor amendments will be made under delegations.

Any significant change needed will be reviewed by the Corporate Governance and Standards Committee at Guildford and then go before the Full Council for approval."

1. Page 11 of the current policy states:

“Senior Responsible Officer (SRO)

The Executive Head of Legal & Democratic Services is the Senior Responsible Officer (SRO)”

As job titles have recently been amended, this should be updated to read:

“Senior Responsible Officer (SRO)

The Joint Strategic Director of Legal & Democratic Services is the Senior Responsible Officer (SRO)”

2. Appendix A – Authorising officers will need to be updated to reflect new job titles. The new proposed table of authorising officers is below:

| Designation | Title |
|----------------------------------|---|
| Senior Authorising Officer | Joint Chief Executive/Head of Paid Service (Must authorise any operations using juveniles and any operations where confidential information is likely to be obtained) |
| Senior Responsible Officer (SRO) | Joint Strategic Director of Legal & Democratic Services (Monitoring Officer) |
| Authorising Officer 1 | Joint Strategic Director of Finance & Resources and Section 151 Officer |
| Authorising Officer 2 | Joint Strategic Director, Place |
| Authorising Officer 3 | Joint Strategic Director, Housing, Communities & Environment |
| Authorising Officer 4 | Joint Assistant Director of Regulatory Services |
| Authorising Officer 5 | Joint Assistant Director of Housing Services |
| Authorising Officer 6 | Joint Assistant Director of Community Services |
| Authorising Officer 7 | Joint Assistant Director of Planning Development |
| RIPA Coordinating Officer | Legal Services – Litigation Lawyers |

11. Consultations

11.1 There are no proposed changes to the policy which would have implications requiring wider consultation.

12. Key Risks

12.1 Failure to observe the correct procedures (e.g. installing hidden cameras to monitor alleged fly-tipping without proper authorisation or prior assessment) runs the risk of reputational damage for the Council and would affect public confidence and transparency.

12.2 The Council are inspected and accountable to the Investigatory Powers Commissioner's Office and they can place sanctions on us, for non-compliance.

12.3 The use of investigatory powers can result in a significant breach of peoples' human rights and doing so without necessary authority leaves the Council at risk of legal action.

12.4 Evidence gathered without the correct authorisation could be deemed inadmissible in associated proceedings.

13. Financial Implications

13.1 There are potential financial implications in the form of monetary penalties in the event of the relevant legislation being breached. The level of financial penalty varies considerably depending on the breach. It is therefore essential that the Council continues to follow good practice and act in accordance with legislation.

14. Legal Implications

14.1 There are direct legal implications associated with the risk of reputational damage to the Council and adverse publicity in the event of covert surveillance rules and procedures not correctly observed.

14.2 As mentioned above, evidence or information obtained incorrectly could be inadmissible in any subsequent actions or proceedings.

15. Human Resource Implications

15.1 Not applicable.

16. Equality and Diversity Implications

16.1 Not applicable. An Equalities Impact Assessment was undertaken during the 2023 update to the Policy.

17. Climate Change/Sustainability Implications

16.1 Not applicable.

18. Conclusion

18.1. The Council will continue to produce regular annual reports to review the use of covert surveillance powers.

18.2. Any significant changes required to made to the Policy will be submitted for approval when required.

19. Background Papers

19.1. Covert Surveillance Policy (updated September 2023 – available on the intranet: [Covert Surveillance Policy - Guildford Borough Council Intranet](#))

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|--------------------|------------------|-----------------|
| Finance | Richard Bates | 17 October 2024 |
| Legal & Governance | Claire Beesly | 17 October 2024 |
| Human Resources | Francesa Chapman | 17 October 2024 |
| Equalities | Ali Holman | 17 October 2024 |
| Strategic Director | Susan Sale | 17 October 2024 |

Please ensure the following service areas have signed off your report.
Please complete this box and do not delete.