

Body:	Cabinet
Date:	19 October 2016
Subject:	Updated Covert Surveillance Policy
Report Of:	Deputy Chief Executive
Ward(s)	All
Purpose	To seek the Cabinet's approval to an updated Covert Surveillance Policy.
Decision type:	Key decision
Recommendation:	That the updated Covert Surveillance Policy at Appendix 1be approved.
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1.0 Introduction

- 1.1 In common with all district councils in England and Wales, Eastbourne Borough Council may only carry out certain types of covert surveillance if it has complied with the relevant provisions of Part II of the Regulation of Investigatory Powers Act 2000 ('RIPA'). This is to ensure that investigations involving covert surveillance are exercised in a manner compatible with the European Convention on Human Rights.
- 1.2 Under Part II of RIPA, the Council may carry out the following two types of 'covert surveillance' if certain strict conditions are met:
- (i) Directed surveillance – this is covert surveillance conducted for a specific purpose or operation and likely to result in the obtaining of information about a person's private or family life. 'Covert surveillance' means surveillance conducted in such a way as to ensure that the person(s) under surveillance are unaware that these activities are taking place.
 - (ii) Covert Human Intelligence Source surveillance. A covert human intelligence source ('CHIS') is an informant. Any operation that involves inducing, asking or assisting a CHIS to establish or maintain a personal or other relationship with another person for the purpose of:
 - (a) covertly obtaining information about that person, and
 - (b) covertly disclosing that information to the Council

will fall within this category of surveillance activity.

- 1.3 Part II of RIPA and associated subordinate legislation set out the conditions which must be satisfied before covert surveillance may lawfully take place. Further, local authorities should comply with any statutory code of practice issued from time to time by the Office of Surveillance Commissioners. Under these provisions, the key requirements are that covert surveillance be necessary and proportionate and, following authorisation by a designated Council officer, approved by a magistrate.
- 1.4 A local authority may only grant an authorisation under RIPA for the use of directed surveillance where it is investigating particular types of criminal activity. These are offences which attract a maximum custodial sentence of six months or more, or offences relating to the under-age sale of alcohol or tobacco.

2.0 Updated policy

- 2.1 Every local authority should have a policy setting out the principles and procedures it intends to observe in complying with Part II of RIPA and related orders, regulations and codes of practice.
- 2.2 Eastbourne Borough Council's existing Covert Surveillance policy was formulated in March 2013 and is due an update.
- 2.3 The Council has procured the latest RIPA policy and procedures toolkit from Act Now Ltd, a recognised national expert in surveillance law. Act Now's template policy forms the basis of the Council's updated policy at Appendix 1.
- 2.4 There are no significant differences between the previous and updated policies, but the new version –
- (i) recognises that covert surveillance may be physical or on-line;
 - (ii) includes a specific provision (at paragraph 7(iii)) on the investigation of social networking sites;
 - (iii) requires reports to be submitted to this Committee every 12 months on any required changes to the policy; how the policy has been implemented; and any RIPA activity authorised during the preceding 12-month period.

The Chief Surveillance Commissioner's annual report (July 2016) highlights a widespread omission among local authorities to provide regular reports to their elected councillors of all relevant RIPA activity or, if it is the case, inactivity. Inclusion in the Council's policy of item (iii) above addresses this point.

- 2.5 The Council's policy of carrying out covert surveillance only as a last resort, where all other investigative options have been deemed insufficient is retained at paragraph 8. In August 2016 the Office of Surveillance Commissioners carried out an

- 2.6 inspection of the council's arrangements for securing compliance with the provisions governing the use of covert surveillance. Their inspection report noted both the council's intention to update its policy and the council's recognition that surveillance via social media requires authorisation under RIPA.
- 2.7 The report recommended (i) update training for Authorising Officers, and (ii) the raising of awareness levels among relevant officers and members of changes and developments affecting the council's use of covert surveillance. The Deputy Chief Executive will take the necessary steps to give effect to these recommendations, beginning with an update for members of Audit & Governance Committee – see further at paragraph 3.1 below.

3.0 Consultation

- 3.1 The views of the Council's Audit and Governance Committee were sought. At their meeting on 21 September 2016 the committee endorsed the updated policy and requested training for committee members on the legal framework for covert surveillance and the potential use of such measures in the context of the Council's operations. The lawyer present agreed to provide the training on a future date.

4.0 Resource Implications

- 4.1 If the policy is approved as drafted, some refresher training for investigating officers and authorising officers will be required during 2016/17, to ensure they maintain awareness of, and adherence to, current legislation and procedures.

5.0 Other Implications

- 5.1 The principal legal implications of this report are incorporated above. The formulation of RIPA policy is an executive function and may only be exercised by Cabinet. However, it is a proper function of Audit & Governance Committee to consider the draft policy and refer it, with comments and any recommended amendment, to Cabinet for approval.

6.0 Conclusion.

- 6.1 The Council must comply with part II of RIPA before it conducts any covert surveillance of the type covered by that legislation. The Council's updated policy on covert surveillance – at Appendix 1 – details the high level principles and procedures it will adopt to ensure it does so comply.

Lead officer name: Oliver Dixon
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Appendices: Appendix 1 – draft Covert Surveillance Policy (September 2016)

Background Papers:

The Background Papers used in compiling this report were as follows:

- Regulation of Investigatory Powers Act 2000, Part II, and statutory instruments made thereunder
- Covert Surveillance and property Interference – Code of Practice, issued by Home Office, December 2014:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384975/Covert_Surveillance_Property_Interference_web_2.pdf
- Annual Report of the Chief Surveillance Commissioner, July 2016:
<https://osc.independent.gov.uk/wp-content/uploads/2016/07/OSC-Annual-Report-2015-2016-2.pdf>

To inspect or obtain copies of background papers please refer to the contact officer listed above.