

Body: **AUDIT AND GOVERNANCE COMMITTEE**

Date: **18 September 2013**

Subject: **The Regulation of Investigatory Powers Act and related legislation: update on the authority's usage of its powers and on the outcome of a recent inspection of its arrangements by the Office of Surveillance Commissioners**

Report Of: **LAWYER TO THE COUNCIL AND MONITORING OFFICER**

Ward(s) **All**

Purpose **To 1) provide the Audit and Governance Committee with information relevant to the monitoring of covert surveillance conducted pursuant to the Regulation of Investigatory Powers Act, and 2) to brief the Committee in detail on the outcome of the Office of the Surveillance Commissioners most recent inspection**

Recommendations: That the Committee note the following:

- No applications were made by officers of this authority pursuant to the Regulation of Investigatory Powers Act to conduct covert surveillance during the quarter leading up to 1 September 2013.
- That a detailed review in June 2013 of this authority's RIPA-related arrangements generated a favourable report.

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1.0 Background

- 1.1 Members will recall that at the last meeting of this Committee it was agreed that the Audit and Governance Committee would receive quarterly reports on the subject of the monitoring of covert surveillance conducted pursuant to the Regulation of Investigatory Powers Act 2000.
- 1.2 While Cabinet receives annual reports on this subject, most recently in March 2013, best practice requires quarterly reporting. This is the case regardless of the fact that in recent years this authority's use of its powers to conduct covert surveillance under RIPA has been consistently low.
- 1.3 At the last meeting of this Committee, the Monitoring Officer was in addition invited to report in detail to the Committee regarding the outcome of the Office of the Surveillance Commissioner's inspection report, which was not received until 24 June 2013.

2.0 Usage of the powers available to Eastbourne Borough Council under the Regulation of Investigatory Powers Act

2.1 The quarterly returns compiled for the period 1/6/2013 to 1/9/2013 include the following data:

RIPA applications for the use or conduct of a CHIS:

Nil applications made by EBC

Nil applications by partner organisations with which the authority is working on relevant matters.

RIPA applications for authorised surveillance:

Nil applications made by EBC

Nil applications made by partner organisations with which the authority is working on relevant matters.

2.2 The Committee may wish to note that the returns for this quarter are consistent with those of the past few years, which show very infrequent recourse by this authority to the powers available to it under RIPA. The last applications made by the Council for authorised surveillance were during 2010 and concerned serious allegations of benefit fraud.

3.1 Inspection of the Office of the Surveillance Commissioner

3.2 The Surveillance Commissioner's inspectors are amongst other things responsible for reviewing the arrangements in place at local authorities and those other statutory bodies empowered to carry out cover surveillance using RIPA, and to report on legal compliance and make best practice recommendations, this at regular intervals.

3.3 In 2010 a requirement of annual inspections was lifted in favour of three yearly inspections.

3.4 The inspector visited this authority in early June 2013 and conducted a thorough review of all aspects of the authority's arrangements which included considering our policy, procedures and guidance materials as well as interviewing officers at all levels. A copy of her report is appended here as appendix 1.

3.5 Members will note that that in his covering letter, Sir Christopher Rose notes with approval the 'wholesale change in approach' which has characterised this authority's arrangements with regard this statutory regime in recent years.

3.6 In the report itself, the inspector's understanding of the approach espoused by the Council is self-evident. This Committee will be aware that this authority has chosen to take a robust approach to the use of the powers available to the Council, seeing those as a last resort. The Council's policies and procedures reflect that. The objective is to use investigative strategies which deploy overt rather than covert techniques where possible and are thus - as the inspector noted - in keeping with the new ethos of outward engagement.

- 3.7 The result of this is a lack of applications for authorised surveillance in the last three years. While this has meant that the inspector had no substantive applications to examine for compliance, she clearly comprehended and approved the Council's chosen approach. She noted what she termed good practices in place in preparation for future recourse to RIPA, specifically highlighting at clause 10.1 'the excellent availability of a plethora of clear and helpful guidance materials for officers; engaged officers, from the Chief Executive and SIRO down; good training provision and internal oversight mechanisms, good surveillance equipment management processes.' She noted that the arrangements boded well for future recourse to the powers available under RIPA.
- 3.8 Having interviewed officers at a number of levels, moreover, the inspector did not consider that the fall-off in applications for authorised surveillance at this authority was evidence of unauthorised activity. At clause 4.5 she noted that the systems which had been brought in to check and balance this aspect were 'very good', highlighting the arrangements made at this Council to ensure that covert surveillance not subject to RIPA was also subject to an authorisation process designed to ensure that human rights and proportionality issues are rigourously canvassed.
- 3.9 It is reassuring to note that the arrangements in place in relation to surveillance at this authority have met with the inspector's approval. Clearly there can be no scope for complacency and all investigative scenarios must be considered on their individual merits with consideration given at all levels to the appropriate safeguards. However the arrangements in place at the Council – including the 'last resort' approach – have been given a clean bill of health by the relevant inspectorate.

4.0 Consultation

- 4.1 There has been no consultation.

5.0 Resource Implications

- 5.1 None.

6.0 Financial

- 6.1 None.

7.0 Staffing

- 7.1 None.

8.0 Conclusion

- 8.1 This report updates the Committee on the authority's arrangements for and usage of its powers to conduct covert surveillance when or if circumstances merit. The report aims to equip this Committee to assist the authority in ensuring it applies a robust approach which balances its enforcement responsibilities with the requirement to act at all times in a proportionate and human rights-compliant way.

Victoria Simpson
LAWYER TO THE COUNCIL AND MONITORING OFFICER

Appendices

Appendix 1 – report of the Office of Surveillance Commissioners and covering letter dated 20 June 2013

Background Papers:

The Regulation of Investigatory Powers Act 2000 and associated legislation

Previous reports and minutes of this Committee and of Cabinet.