

AUDIT & GOVERNANCE COMMITTEE

Thursday, 11 January 2018

COVERT SURVEILLANCE POLICY - REFRESHED (REP1663)

EXECUTIVE SUMMARY

1. This report is being presented to the Audit & Governance Committee in accordance with the Committee's terms of reference which stipulate, (amongst other functions), that the Committee shall 'Monitor the counter-fraud strategy, activity and resources'.
2. On the 1 September 2017, The Office of Surveillance Commissioners, The Intelligence Services Commissioner's Office and The Interception of Communications Commissioner's Office were abolished by the Investigatory Powers Act 2016. The Investigatory Powers Commissioner's Office (IPCO) is now responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.
3. This refresh of the existing Covert Surveillance Policy has only changed in respect of Officer contact details and the change in the judicial oversight in the United Kingdom.

Is the report Open or Exempt?	Open
Wards Affected:	All Wards within the District
Cabinet Member:	Councillor Bruce Provan Cabinet Member for Resources
Supporting Officer:	Siobhan Martin Head of Internal Audit Tel: 01394 444254 E-mail: siobhan.martin@eastsoffolk.gov.uk

1. INTRODUCTION

- 1.1 The Council has a Covert Surveillance Policy in operation albeit covert surveillance tools are rarely used. The Covert Surveillance Policy is a high level document capturing the key elements of the legislation Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016 (IPA).
- 1.3 On the 1 September 2017, The Office of Surveillance Commissioners, The Intelligence Services Commissioner's Office and The Interception of Communications Commissioner's Office were abolished by the Investigatory Powers Act 2016. The Investigatory Powers Commissioner's Office (IPCO) is now responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom
- 1.4 The Councils Covert Surveillance Policy was last updated in May 2017.

2. PERFORMANCE MONITORING

- 2.1 Councils using these powers are inspected every 2-3 years. The last Office of Surveillance Commissioners inspection occurred in October 2016, with a compliant outcome.
- 2.2 The Council has nominated the Head of Internal Audit, as the Senior Responsible Officer whose role is to ensure the proper administration and adoption of relevant procedures.
- 2.3 Adequate and effective monitoring of any covert surveillance work must be agreed with the Senior Responsible Officer who is the key contact for all Intelligence Services Commissioners communications and inspections.
- 2.4 Training for all relevant operational and authorising officers occurred in September 2017 and more is planned for 2018.
- 2.5 Promotion of the updated Policy will commence in January 2018 via the Intranet.
- 2.6 This report constitutes the Council's programmed regular review of the Covert Surveillance Policy.
- 2.7 The next Investigatory Powers Commissioners Inspection is anticipated in 2019.

3. HOW DOES THIS RELATE TO EAST SUFFOLK BUSINESS PLAN?

- 3.1 The Covert Surveillance Policy links to legislative compliance which is mandatory and the Audit & Governance Committee is directly responsible for supporting good governance arrangements and practices at the Council, which underpin the Council's entire strategic and operational workings including the East Suffolk Business Plan.

4. FINANCIAL AND GOVERNANCE IMPLICATIONS

- 4.1 It is a mandatory requirement that the Council adheres to the RIPA 2000 and IPA 2016. Failure to comply would lead to reputational damage and removal of these tools by the IPCO who oversees the application of this law across the Country. Prosecution cases may well fail if the law has not been applied correctly and Human Rights may be breached. Mitigations to all these risks involve having experienced and qualified staff in this field with regular returns and inspections to the governing body i.e. IPCO, and appropriate training for all relevant Officers. Non adherence to this Policy may facilitate serious financial and corporate governance weaknesses.

5. OTHER KEY ISSUES

5.1 This report does not require us to have considered the results of an Equality Impact Assessment, a Sustainability Impact Assessment or a Partnership Impact assessment.

6. CONSULTATION

6.1 The Council has procured a toolkit for covert surveillance from ACT Now Ltd, a legal firm who specialises in adherence to RIPA, and whose toolkit has been praised by the Office of the Surveillance Commissioners.

7. OTHER OPTIONS CONSIDERED

7.1 No further options have been considered.

8. REASON FOR RECOMMENDATION

8.1 To support the Council’s overall governance arrangements and to ensure the Audit & Governance Committee fulfils its terms of reference to ‘Monitor the counter-fraud strategy, activity and resources’.

RECOMMENDATION
That the Audit & Governance Committee comment upon the refreshed Covert Surveillance Policy.

APPENDICES	
Appendix A	Covert Surveillance Policy – January 2018

BACKGROUND PAPERS - Please note that copies of background papers have not been published on the Council’s website but copies of the background papers listed below are available for public inspection free of charge by contacting the relevant Council Department.

Date	Type	Available From
May 2017	SCDC & WDC Covert Surveillance Policy	Head of Internal Audit



SUFFOLK COASTAL AND WAVENEY DISTRICT COUNCILS

COVERT SURVEILLANCE POLICY

1.0 Introduction

- 1.1 Suffolk Coastal and Waveney District Councils are committed to building a fair and safe community for all by ensuring the effectiveness of laws designed to protect individuals, businesses, the environment and public resource.
- 1.2 The Councils recognise that most organisations and individuals appreciate the importance of these laws and abide by them. The Councils will use its best endeavours to help them meet their legal obligations without unnecessary expense and bureaucracy.
- 1.3 At the same time, the Councils have a legal responsibility to ensure that those who seek to flout the law are the subject of firm but fair enforcement action. Before taking such action, the Councils may need to undertake covert surveillance of individuals and / or premises to gather evidence of illegal activity.

2.0 Procedure

- 2.1 All covert surveillance shall be undertaken in accordance with the procedures set out in this document. Refer to Appendix A.
- 2.2 The Councils shall ensure that covert surveillance is only undertaken where it complies fully with all applicable laws, in particular the:
 - Investigatory Powers Act 2016
 - Human Rights Act 1998
 - Regulation of Investigatory Powers Act 2000 (RIPA)
 - Protection of Freedoms Act 2012
 - Data Protection Act 1998
- 2.3 The Councils shall, in addition, have due regard to all official guidance and codes of practice particularly those issued by the Home Office, the Investigatory Powers Commissioner's Office (IPCO) , and the Information Commissioner.
- 2.4 In particular, the following guiding principles shall form the basis of all covert surveillance activity undertaken by the Councils:

- Covert surveillance shall only be undertaken where it is absolutely necessary to achieve the desired aims;
- Covert surveillance shall only be undertaken where it is proportionate to do so and in a manner that it is proportionate;
- Adequate regard shall be had to the rights and freedoms of those who are not the target of covert surveillance;
- All authorisations to carry out covert surveillance shall be granted by appropriately trained and designated authorising officers (see Appendix B);
- Covert surveillance regulated by IPCO shall only be undertaken after obtaining judicial approval.

3.0 Training and Review

- 3.1 All Council officers undertaking covert surveillance shall be appropriately trained to ensure that they understand their legal and moral obligations.
- 3.2 Regular audits shall be carried out to ensure that officers are complying with this policy.
- 3.3 This policy shall be reviewed at least once a year in light of the latest legal developments and changes to official guidance and codes of practice.
- 3.4 The operation of this policy shall be overseen by the Head of Internal Audit, Siobhan Martin.

4.0 Conclusion

- 4.1 All citizens will reap the benefit of this policy, through effective enforcement of criminal and regulatory legislation and the protection that it provides.
- 4.2 Adherence to this policy will minimise intrusion into citizens' lives and will avoid any legal challenge to the Councils' covert surveillance activities.
- 4.3 Any questions relating to this policy should be addressed to the Head of Internal Audit, Siobhan Martin on 01394 444254 or at siobhan.martin@eastsoffolk.gov.uk.

APPENDIX A – Supporting Documentation

All covert surveillance should be undertaken in accordance with the following procedures, which are available on the Corporate Fraud team page on the Intranet.

- Briefing Note – Changes to the Local Authority Surveillance Regime
- Briefing Note – The New RIPA Surveillance Codes: Key Changes
- Surveillance Guide – Guide to Surveillance Regulated by Part 2 of RIPA
- Guidance for Authorising Officers – Authorising Directed Surveillance: Rules and Criteria
- Guidance for Authorising Officers – Authorising a CHIS: Rules and Criteria
- Procedures for Completing the RIPA Forms and Common Mistakes:
 - Directed Surveillance Application Form
 - Directed Surveillance Review Form
 - Directed Surveillance Renewal Form
 - Directed Surveillance Cancellation Form
 - CHIS Application Form
 - CHIS Review Form
 - CHIS Renewal Form
 - CHIS Cancellation Form
- Guidance for Seeking Magistrates’ Approval for RIPA Surveillance:
 - Magistrates Application Form
- Guidance for Non-RIPA Surveillance
 - Non-RIPA Surveillance Application Form
 - Non-RIPA Surveillance Cancellation Form
- Employee Surveillance and the Data Protection Act
- Guidance on Use of Social Networking Sites for Investigations
- Useful links: <https://ipco.org.uk/>

Senior Responsible Officer and Authorising Officers

Senior Responsible Officer

The Councils have nominated the Head of Internal Audit, Siobhan Martin, as the Senior Responsible Officer whose role is to ensure the proper administration and adoption of relevant procedures and maintains the central register of activity.

Authorising Officers

The following are Authorising Officers, when appropriately trained:

Chief Executive (and Covert Human Intelligence Source)	Stephen Baker
Strategic Director	Nick Khan
Strategic Director	Andy Jarvis
Head of Legal and Democratic Services	Hilary Slater
Head of Planning and Coastal Management	Philip Ridley
Head of Environmental Services and Port Health	Phil Gore
Head of Housing Services	Justin Hunt
Head of Economic Development and Regeneration	Paul Wood

Version Control

Version	Date	Change	Owner
V1	August 2016	Covert Surveillance Policy replaces RIPA Policy (April 2014). Shorter main document with relevant Appendices	RIPA – Senior Responsible Officer
V1.1	10.05.17	Add Guidance on Use of Social Networking Sites for Investigations	RIPA – Senior Responsible Officer
V2	11.01.18	Update officers details and demise of OSC and replacement by the Investigatory Powers Commissioners Office	RIPA – Senior Responsible Officer

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