

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Executive Member for Policy and Resources
<b>Date of Decision:</b>	24 September 2013
<b>Decision Title:</b>	Regulation of Investigatory Powers Act 2000 – Annual review and confirmation of existing policy with regards to surveillance activity
<b>Decision Reference:</b>	5149
<b>Report From:</b>	Director of Culture, Communities and Business Services /Director of Policy and Governance

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#### 1. Executive Summary

1.1. The purpose of this paper is to seek the annual approval of the County Council's Policy on Surveillance as required under the Codes of Practice issued by the Home Office associated with the Regulation of Investigatory Powers Act (RIPA).

#### 2. Contextual information

2.1. RIPA is the act of parliament that regulates the County Council's use of covert surveillance. The County Council operates a strict control policy, which ensures that only authorised surveillance takes place; where it is lawful, necessary and proportionate to do so.

2.2. The current Policy was subject to Executive Decision approval on 5 October 2012, item reference 4237. The current statutory Codes of Practice made by the Secretary of State for the Home Office under the Regulation of Investigatory Powers Act 2000 require that each local authority must have their RIPA policy confirmed by the appropriate executive function on an annual basis, that is, the Executive Member for Policy and Resources.

2.3. A number of changes to the way that local authorities are permitted to operate the powers within RIPA were made as part of the Protection of Freedoms Act, with those changes coming into force on 1 November 2012. These restrict the use of such powers to the investigation of serious crime. This has not affected

the County Councils use of these powers as in practice; it had already restricted its use of surveillance to these areas.

- 2.4. The majority of the County Council's RIPA activity is conducted by officers of the Trading Standards Service, and as per the current County Council RIPA policy, all RIPA activity is authorised via that Service. In addition, all authorisations are subject to judicial approval, through a magistrate.
- 2.5. Regular reports on the County Council's use of surveillance powers are presented to the Audit Committee.
- 2.6. The County Council's use of surveillance powers is regularly subject to external inspection. In his last inspection report, the Chief Surveillance Commissioner commended the County Councils arrangements and control measures in respect of the management of covert surveillance. He particularly noted the County Councils demonstrated desire to use the powers sparingly, yet to good effect for residents.
- 2.7. In light of the Chief Surveillance Commissioner's comments, and the absence of any regulatory changes since the approval of the Policy last year, it is recommended that no material changes are made to the Policy.
- 2.8. The Policy statement, for which approval is sought, is attached to this report as Appendix 1.

### **3. Finance**

- 3.1. The decisions which are sought to be recommended by this report will have no effect upon the budgetary position of Hampshire County Council.

### **4. Impact on Performance**

- 4.1. The recommended decision sought ensures that the County Council continues to comply with the statutory Codes of Practice under RIPA.

### **5. Recommendation:**

- 5.1. That the County Council's Policy with regard to RIPA, attached as appendix 1 to this report, be approved.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	Yes
Corporate Business plan link number (if appropriate):	
<b>Maximising well-being:</b>	Yes
Corporate Business plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	No
Corporate Business plan link number (if appropriate):	

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u> Regulation of Investigatory Powers Act (RIPA)	<u>Reference</u> 2871	<u>Date</u> 9 June 2011
<b>Direct links to specific legislation or Government Directives</b>		
<u>Title</u> Regulation of Investigatory Powers Act 2000 as amended Protection of Freedoms Act 2012		<u>Date</u> 2000 2012

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

1.1. No adverse impact

### **2. Impact on Crime and Disorder:**

2.1. Efficient arrangements for seeking judicial approval of authorisations assists with efficient and effective enforcement of legislation.

### **3. Climate Change:**

How does what is being proposed impact on our carbon footprint / energy consumption?

No impact

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not relevant.

## **Policy Statement**

Hampshire County Council will not undertake any activity defined within the Regulation of Investigatory Powers Act 2000 without prior, or emergency, authorisation, from a trained, senior officer who is empowered to grant such consents; and subject to Sections 37 and 38 of the Protections of Freedoms Act 2012 and any pertaining regulations relating to the approval of such authorisations by a Magistrate.

The Director of Culture, Communities and Business Services has been appointed the Senior Responsible Officer and, as such, has been given authority to appoint Authorising Officers (for surveillance activities) and Designated Persons and Single Points of Contact (for the purposes of access to communications data) under the Act.

The Authorising Officer or Designated Person will not authorise the use of surveillance techniques, human intelligence sources or access to communications data unless the authorisation can be shown to be necessary for the purpose of preventing or detecting serious crime or of preventing disorder, in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012.

In addition, the Authorising Officer or Designated Person must believe that the surveillance or obtaining of communications data is necessary and proportionate to what it seeks to achieve. In making this judgment, the officer will consider whether the information can be obtained using other methods and whether efforts have been made to reduce the impact of the surveillance on other people, who are not the subject of the operation.

Applications for authorisation of surveillance, the use of a Covert Human Intelligence Sources or the obtaining of communications data will, except in emergency where legislation permits, be made in writing on the appropriate form.

Intrusive surveillance operations are defined as activities using covert surveillance techniques, on residential premises, or in any private vehicle, which involves the use of a surveillance device, or an individual, in such a vehicle or on such premises. Hampshire County Council officers are NOT legally entitled to authorise these types of operations.

However public bodies are permitted to record telephone conversations, where one party consents to the recording being made and appropriate surveillance authorisation has been granted. The party who consents to the recording of the telephone conversation could either be an officer of the County Council or a third party. On occasions, officers of the County Council do need to record telephone conversations, to secure evidence.

It is the policy of this authority to be open and transparent in the way that it works and delivers its services. To that end, a well-publicised Corporate Complaints procedure is in place and information on how to make a complaint to the Investigatory Powers Tribunal will be provided on request to the Senior Responsible Officer.

The County Councils use of its powers under the Regulation of Investigatory Powers Act 2000 will be subject to regular scrutiny by the County Councils Audit Committee.