

**Wiltshire Council**

**Cabinet**

**17 January 2012**

---

**Subject: Regulation of Investigatory Powers Act 2000 – Revised Policy and Procedures Documents**

**Cabinet member: Councillor John Noeken - Resources**

**Key Decision: No**

---

**Executive Summary**

To consider and adopt the revised Corporate Policy and Procedures Documents in relation to the conduct of surveillance operations by Council Officers in accordance with the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA).

**Proposal(s)**

To note the report and its contents.

To adopt the revised Policy and Procedures with immediate effect.

**Reason for Proposal**

Wiltshire Council is statutorily required to have a RIPA policy in place. We have had a policy in place since at least 2004. The Office of Surveillance Commissioners (OSC) carry out inspections of Local Authority RIPA processes on a regular basis to ensure compliance with RIPA legislation.

This proposal will revise the Wiltshire Council RIPA Policy to bring it in line with recent amendments to that legislation and to adopt recommendations made by the OSC at the last inspection.

**Ian Gibbons**  
**Solicitor to the Council**

---

# Wiltshire Council

## Cabinet

17 January 2012

---

**Subject:** Regulation of Investigatory Powers Act 2000 – Revised Policy and Procedures Documents

**Cabinet member:** Councillor John Noeken - Resources

**Key Decision:** No

---

### Purpose of Report

1. To consider and approve the revised Policy and Procedure Documents in relation to the conduct of surveillance operations by Council Officers in accordance with the requirements of the Regulation of Investigatory Powers Act 2000.

### Background

2. The Regulation of Investigatory Powers Act 2000 (RIPA), which came into force on 25 September 2000, was enacted in order to regulate the use of a range of investigative powers by a variety of public authorities. It gives a statutory framework for the authorisation and conduct of certain types of covert surveillance operation. Its aim is to provide a balance between preserving people's right to privacy and enabling enforcement agencies to gather evidence for effective enforcement action.
3. It is consistent with the Human Rights Act 1998 and creates a system of safeguards, reflecting the requirements of Article 8 of the European Convention on Human Rights (right to respect for a person's private and family life, home and correspondence).
4. Compliance with RIPA means that any conduct authorised under it is "lawful for all purposes". This important protection derives from section 27(1) of RIPA, which gives the authorised person an entitlement to engage in the conduct which has been authorised. Compliance with RIPA will assist the Council in any challenges to the way in which evidence has been gathered and will enable the Council to demonstrate that it has acted lawfully.
5. Non-compliance may result in:
  - a. evidence being disallowed by the courts;
  - b. a complaint of maladministration to the Ombudsman; or
  - c. the Council being ordered to pay compensation.

6. It is essential, therefore, that the Council's policies and procedures are followed.
7. The Office of the Surveillance Commissioner is responsible for RIPA compliance and the Commissioner reports annually to parliament on the use of the powers by the police, security services and authorised public bodies, including local government. The Council is subject to audit inspections by an Assistant Surveillance Commissioner who then produces a report of his findings.
8. The Council's most recent audit inspection took place on 13<sup>th</sup> October 2009 and the report of Mr Neil Smart dated 16<sup>th</sup> October 2009 was received on 2<sup>nd</sup> November 2009.
9. The report contained various recommendations, the most significant of which was the separation of one overall policy into the three separate policies now proposed.
10. Subsequent to this inspection The Secretary of State introduced further regulations governing these functions - The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, the Regulation of Investigatory Powers (Communications Data) Order 2010 and The Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2010 (the Orders).
11. The Orders amend the RIPA requirements. The most significant change is that Authorising Officers must be above a certain grade and that there must be member oversight of the use of RIPA.
12. The recommendations from the inspection report and the amendments required by the Orders have been incorporated into the revised Wiltshire Council Corporate Policy and Procedures Documents on Accessing Communications Data (Appendix 1), Covert Human Intelligence Sources (Appendix 2) and Directed Surveillance (Appendix 3) ('the Policies')
13. Training was held for Authorising Officers named in the Policies on 3 November 2011 and for Members on 4 November 2011. Additional training will be arranged for Authorising Officers who were unable to attend the training session on 3 November 2011.

### **Main Considerations for the Council**

14. The Home Office Codes of Practice in relation to RIPA state that elected members of a local authority should review the authority's use of RIPA and set the policy at least once a year. They should also consider internal reports on the use of RIPA on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.

15. The existing policy has been inspected by the OSC and was found to be robust. The proposed amendments to this policy are to bring it into line with the recommendations of the last inspection and statutory amendments.

16. Subject to Cabinet agreeing the attached Policies it is proposed that oversight of their operation is delegated to the Cabinet Member for Resources in consultation with the Head of Legal, who is the Senior Responsible Officer for these purposes. In order to satisfy the requirement in paragraph 14 above a report on the use of RIPA will be provided to the Cabinet Member for Resources on a quarterly basis, with a summary being made available to all members through the Elected Wire. . Annually, the report will include a review of the effectiveness of the Policies with any recommendations for change being referred to Cabinet for approval.

### **Environmental and climate change considerations**

17. There are no environmental and climate change considerations involved in this proposal

### **Equalities Impact of the Proposal**

18. RIPA legislation ensures that any investigative powers exercised by the authority comply with Human Rights Act and Equality Act requirements.

### **Risk Assessment**

19. It is a statutory requirement that the Council has a RIPA policy and that there is oversight by members.

20. Failure to implement a policy would put at risk any evidence obtained by way of covert means in any court proceedings in which the Council was involved. It would also attract adverse criticism in any inspection by the OSC.

### **Financial Implications**

21. The only direct additional cost of adopting these revisions is the one off cost for external training for members and authorised officers which amounts to £1800. This will be met from existing resources.

### **Legal Implications**

22. These are as set out in this report.

### **Options Considered**

23. These revisions are necessary to meet statutory requirements.

## **Conclusions**

24. Wiltshire Council already has a robust procedure in place for use of RIPA powers. This proposal brings the existing policy in line with the statutory requirements. Responsibility for oversight of the Policies is proposed to be delegated to the Cabinet Member for Resources with any significant changes being referred to Cabinet for approval as necessary.

**Ian Gibbons**  
**Solicitor to the Council**

---

Report Author: Frank Cain

Head of Legal Services and Deputy Monitoring Officer  
Telephone 01225 713032  
Email frank.cain@wiltshire.gov.uk

9 December 2011

---

## **Background Papers**

The following unpublished documents have been relied on in the preparation of this report:

Report of Mr Neil Smart dated 16<sup>th</sup> October 2009

## **Appendices**

- Appendix 1 Wiltshire Council Corporate Policy and Procedures Documents on Accessing Communications Data
  - Appendix 2 Wiltshire Council Corporate Policy and Procedures Documents on Covert Human Intelligence Sources
  - Appendix 3 Wiltshire Council Corporate Policy and Procedures Documents on Directed Surveillance
-