

17 JULY 2013

REPORT OF MONITORING OFFICER

REGULATION OF INVESTIGATORY POWERS ACT

1 PURPOSE OF REPORT

- 1.1 Following review of the internal policy relating to the Regulation of Investigatory Powers Act 2000 (RIPA) in light of recent legislative changes by the Governance Committee on 24 June 2013, the Council is requested to approve the policy.
- 1.2 To grant delegated authority to the Governance Committee to deal with RIPA policy matters as well as afford the Solicitor to the Council the authority to designate such persons to make the application for judicial approval under s222 LGA 1972 and the Constitution be amended accordingly.
- 1.3 To inform Members of the Council's use of RIPA for the period 1 April 2012 to 31 March 2013.

2 RECOMMENDATIONS

- 2.1 The Committee note that Melton Borough Council has had no requirement to use RIPA procedures for the period 1 April 2012 and the 31 March 2013.**
- 2.2 Members approve the amended Policy (Appendix A).**
- 2.3 That delegated authority be given to Governance Committee to deal with policy issues with regard to RIPA and the Constitution be amended accordingly**
- 2.4 That there be an amendment to the Constitution to specifically afford the Solicitor to the Council the authority to designate such persons to make the application for judicial approval under s222 LGA 1972.**

3 KEY ISSUES

- 3.1 RIPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist the detection and prevention of crime in relation to an authorities core functions. Melton Borough Council has its own internal policy and guidance relating to RIPA. The authority's use of RIPA is inspected by the Office of Surveillance Commissioner (OSC) approximately every three years, the last inspection of which took place in July 2010, the results of which were very complimentary.
- 3.2 The Council is required by legislation to review the Melton Borough Council RIPA Policy and Guidance on an annual basis. In addition the use of RIPA will be reported to the Governance Committee on an on-going quarterly basis. Governance Committee considered and approved the amended policy in June 2013.
- 3.3 During the period 1 April 2012 – 31 March 2013 there was no requirement for the use of RIPA procedures by the authority. The use of RIPA is very much a 'last resort' and lengthy periods of non-use are not uncommon. The current Policy and guidance has been

reviewed in full by Legal Services. It is recommended that the current policy and guidance is amended, as outlined below, to ensure the Council fulfils its statutory obligation in light of recent legislative changes.

- 3.4 The Council's Regulation of Investigatory Powers Act 2000 policy ("RIPA Policy") was last updated in February 2011. Since that date the Protection of Freedoms Act 2012 has come into force. Section 38 of that Act, amends the Regulation of Investigatory Powers Act 2000 to require that, where an Authorising Officer has granted an authorisation for the use of directed surveillance, the use of covert human intelligence sources or for the acquisition of communication data, judicial approval will be required.
- 3.5 The Council is now required to make an application to the Magistrates' Court for judicial approval of the decision to authorise. The Magistrates will give approval if and only if, at the date of the grant of authorisation or renewal of an existing authorisation they are satisfied that:
- (a) there were reasonable grounds for believing that obtaining the covert surveillance or use of a human covert intelligence source was reasonable and proportionate and that these grounds still remain.
 - (b) the "relevant conditions" were satisfied in relation to the authorisation.

Relevant conditions include that:

- (i) the relevant person was designated as an Authorising Officer.
 - (ii) it was reasonable and proportionate to believe that using covert surveillance or a covert human intelligence source was necessary and that the relevant conditions have been complied with.
 - (iii) the grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA (restrictions on the rank of the person granting the authorisation).
 - (iv) any other conditions provided for by an order made by the Secretary of State were satisfied.
- 3.6 To ensure compliance with this new requirement it is recommended that the policy is amended, as set out in Appendix A, to provide that any Authorising Officer who approves an application must immediately inform the RIPA Monitoring Officer who will then make arrangements for an application to be made to the Magistrates' Court for judicial approval.
- 3.7 It is further recommended that the existing policy is amended to provide that the Solicitor to the Council designates the appropriate officer to make the application for judicial approval. The application process does not require the applicant to be legally qualified and it is likely that the investigating officer will have the most knowledge about the case to make and present the application and answer any questions the Magistrate may have.
- 3.8 Amendments to The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 has imposed further restrictions in relation to directed surveillance.
- 3.9 The effect of the amendment has introduced a 'crime threshold' which means that authorisation under RIPA for the use of directed surveillance can only be granted where the investigation concerns particular types of criminal offence. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.

It is therefore recommended that the current RIPA policy is amended further to state this important restriction

4.0 POLICY AND CORPORATE IMPLICATIONS

4.1 Effective RIPA Policy and Guidance will ensure robust covert surveillance and intelligence gathering.

5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

5.1 There are no Financial implications arising directly from this report.

6.0 LEGAL IMPLICATIONS/POWERS

6.1 Review of the policy and guidance will ensure compliance with RIPA legislation.

7.0 COMMUNITY SAFETY

7.1 There are no community safety issues directly arising from this report.

8.0 EQUALITIES

8.1 There are no equality issues directly arising from this report.

9.0 RISKS

To consider and give any Risks related to this report.

Probability



Very High A				
High B				
Significant C				
Low D		1		
Very Low E				
Almost Impossible F				
	IV Neg- ligible	III Marg- inal	II Critica l	I Catast- rophic

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Impact

Risk No.	Description
1	The lack of a robust policy will lead to ineffective and potentially unlawful use of RIPA

10.0 CLIMATE CHANGE

10.1 There are no climate change issues directly arising from this report.

11.0 CONSULTATION

11.1 There is no requirement for consultation on this matter.

12.0 WARDS AFFECTED

12.1 All Wards

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Date: July 2013

Appendices : Appendix A : Melton Borough Council RIPA Policy and Guidance

Background Papers: N/A

Reference : X: full council 17 July 2013