

Gloucester City Council

Meeting:	Cabinet	Date:	14 November 2012
	Audit and Governance Committee		26 November 2012
	Council		29 November 2012
Subject:	Regulation of Investigatory Powers Act 2000 (RIPA) – Review of Procedural Guide		
Report Of:	Corporate Director of Resources		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	No
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Appendices:	1. Draft Procedural Guidance		

1.0 Purpose of Report

- 1.1 To request that Members review and update the procedural guidance on RIPA in light of the Council's recent Office of Surveillance Commissioners' inspection report and legislative changes to the RIPA process.

2.0 Recommendations

- 2.1 Cabinet is asked to **RECOMMEND** that

- (1) the draft Procedural Guide at Appendix 1 is approved;
- (2) authority is delegated to the Group Manager - Legal and Democratic Services in consultation with the relevant Corporate Director to authorise non-Legal Services staff to appear in the Magistrates' Court in connection with applications for judicial approval of RIPA authorisations.

- 2.2 Audit and Governance Committee is asked to **RESOLVE**, subject to any comments the Committee wishes to make, that

- (1) the report and the proposed changes to the Council's RIPA Procedural Guide are noted.

- 2.3 Council is asked to **RESOLVE** that

- (1) the draft Procedural Guide at Appendix 1 is approved;
- (2) authority is delegated to the Group Manager - Legal and Democratic Services in consultation with the relevant Corporate Director to authorise non-Legal Services staff to appear in the Magistrates' Court in connection with applications for judicial approval of RIPA authorisations.

3.0 Background and Key Issues

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) came into force in 2000. Both the legislation and Home Office Codes of Practice strictly prescribe the situations in which and the conditions under which councils can use their RIPA powers. All authorities are required to have a RIPA policy and procedure to which they adhere in using their RIPA powers.
- 3.2 The Council reviews and updates its RIPA Procedural Guide at least annually. The Council last updated its RIPA Procedural Guide in November 2011.
- 3.3 The Council's use of its RIPA powers is subject to annual reporting and triennial inspection by the Office of Surveillance Commissioners (OSC). The Council received its most recent inspection by the OSC on 27 July 2012 and the OSC's report following the inspection has now been received. The report made a small number of suggestions for amendment and improvement of the Council's RIPA Procedural Guide and these have been incorporated into the draft Procedure Guide at Appendix 1.
- 3.4 As reported to Members in October/November 2011, the Home Office carried out a review of Counter-Terrorism and Security Powers in 2010 and the outcomes were included in the Protection of Freedoms Act 2012. The Act has changed the Council's RIPA powers as follows:
- (i) Magistrates' approval is now required for Directed surveillance and Covert Human Intelligence Source (CHIS) surveillance before any authorisation granted by Authorising Officers within the Council can take effect;
 - (ii) Urgent oral authorisations are no longer available, because of the judicial approval process; and
 - (ii) RIPA directed surveillance can only be authorised when the offence carries a maximum custodial sentence of 6 months or more or the offence relates to underage sales of tobacco and alcohol.
- 3.5 The effect of the changes is that an authorisation made by the Authorising Officers within the Council will not come into effect until it has been approved by a Magistrate. The Magistrate will be required to consider whether it was, and continues to be, reasonable for the local authority to believe that the use of the covert technique in question is necessary and proportionate. A magistrate is able to exercise his or her own discretion and judgement when deciding whether to approve the authorisation.
- 3.6 Under the new arrangements, a Magistrate may approve the application if satisfied that it:
- is necessary for the purposes set out in RIPA (for local authorities this is the prevention or detection of crime) and proportionate in human rights terms to what it seeks to achieve;
 - has been authorised by a person in the authority at the level designated in RIPA (that is, at Director level for Directed Surveillance and Chief Executive level for a CHIS);

- meets any other restriction imposed by order – such as the serious crime threshold that applies to directed surveillance;
- sets out, in the case of a CHIS, that the relevant procedures and supporting officers are in place to protect the welfare and safety of the CHIS.

3.7 Where a Magistrate refuses a local authority application he or she will have the power to quash the local authority authorisation and the proposed surveillance will not be possible. Judicial approval is also now required for renewal of authorizations, but not for reviews and cancellations.

3.8 Home Office guidance on the judicial approval process is expected to be issued on 1 November 2012 and the draft Procedural Guide also takes into account this guidance. It is anticipated that the judicial approval process will amount to a “legal proceeding” and the Council will need to authorise Officers to appear on its behalf before a Magistrate. The Group Manager Legal and Democratic Services has delegated authority under the Constitution to authorise solicitors and legal staff to represent the Council in legal proceedings, but not to authorise non-legal staff to do so. In order to ensure that applications for judicial approval can be made by an appropriate Officer, it is suggested that the delegation to the Group Manager- Legal and Democratic Services is extended to allow them to authorise non-legal staff to appear before a Magistrate.

3.9 In view of the substantial changes to the Council’s RIPA powers, refresher training was provided to Authorising and Investigating Officers on 26 September 2012 to ensure that Officers’ knowledge of RIPA is kept up-to-date and that Officers are aware of the factors they need to take into account in requesting or authorising use of the Council’s surveillance powers.

4.0 Alternative Options Considered

4.1 The Council still has and can make use of other investigatory powers, such as overt surveillance, when investigating potential criminal offences, but must comply with RIPA when it carries out Directed Surveillance or CHIS. There are therefore no real alternative options relevant to the Council’s use of its RIPA powers.

5.0 Reasons for Recommendations

5.1 The revisions set out in the draft Procedural Guide and the delegated powers requested are required either to implement the recommendations made by the OSC inspection report or to take into account legislative changes coming into effect on 1 November 2012.

6.0 Future Work and Conclusions

6.1 The revised procedures will help to ensure that the Council uses its RIPA powers responsibly and within the legislation and guidance. Further revisions to the Procedural Guide may be required, depending on any changes to the legislation or statutory Home Office Guidance.

7.0 Financial Implications

7.1 There are no direct financial implications arising out of this report. At present, there is no fee payable to the Magistrates' Court for the judicial approval process. The authorisation process now has additional steps - the application for judicial approval will have to be prepared and at least one officer will need to attend the Magistrates' Court to make the application – and these will be met from within existing resources. As the Council uses its RIPA powers sparingly (two authorisations in the last three years), it is not anticipated that the additional steps will be particularly burdensome.

8.0 Legal Implications

8.1 These are set out in the main body of the report.

9.0 Risk & Opportunity Management Implications

9.1 Having a procedural guide that complies with the legislation and guidance and ensuring that officers using RIPA powers are fully trained in the use of the powers will help to reduce the risk of the Council using its RIPA powers unlawfully.

10.0 People Impact Assessment (PIA):

10.1 The impact of the changes to the RIPA legislation will have been considered by the Government during the drafting of the legislation. The RIPA legislation requires the Council to give substantial consideration to the people impact of using its RIPA powers each and every time a RIPA application is authorised.

10.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

11.0 Other Corporate Implications

Community Safety

11.1 The use of RIPA powers by the Council can contribute to ensuring community safety.

Sustainability

11.2 There are no sustainability implications arising out of this report.

Staffing & Trade Union

11.3 There are no staffing or Trade Union implications arising out of this report.

Background Documents: The Regulation of Investigatory Powers Act 2000.
The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010/521) Home Office Guidance on the use of Directed Surveillance and Covert Human Intelligence Source surveillance The Criminal Procedure Rules 2012 (SI 2012/1726)