



Decision maker:	Governance & Audit & Standards Committee
Subject:	Regulation of Investigatory Powers Act 2000 (RIPA)
Date of decision:	27 th September 2012
Report from:	Michael Lawther City Solicitor and Strategic Director
Report by:	Lyn Graham, Chief Internal Auditor
Wards affected	All
Key decision (over £250k)	N/A

1. Summary

- 1.1 The Protection of Freedoms Bill requires all RIPA authorisations to receive judicial approval by a Magistrate from 1st November 2012.

2. Purpose of report

- 2.1 To advise members of a change in legislation regarding RIPA authorisation and usage and to seek approval to update the RIPA Policy to reflect the legislative changes.

3. Background

- 3.1 PCC has a policy and procedures to ensure that officers comply with the Regulation of Investigatory Powers Act requirements to mitigate any legal challenge risks.
- 3.2 The Protection of Freedoms Bill limits the use of RIPA authorisations by local authorities to activities that carry a minimum 6 months imprisonment and the protection of minors e.g. sale of tobacco, alcohol and knives. The Bill also requires the approval of a RIPA by a Magistrate (S.32b).
- 3.3 In recent years the Council has only used RIPAs for these types of activities.
- 3.4 The Bill received Royal Assent on the 1st May 2012 and approval by a Magistrate is required from the 1st November 2012.

4. Recommendations

It is recommended that Members of the Governance and Audit and Standards Committee:

- 4.1 Note the current legal situation with regard to the Protection of Freedoms Bill and its impact on RIPA authorisations
- 4.2 Approve the update to the Policy

5. Process

- 5.1 RIPA applications must still go through the current authorisation process and be authorised by one of the specified authorising officers. The authorising officer will present the authorised RIPA application to the Magistrate for judicial approval.
- 5.2 All other respects remain the same; the Senior Responsible Officer will still review the quality of the authorisation process and Members of this Committee will still have oversight of the Policy and compliance.
- 5.3 The Policy has been updated to reflect that following authorisation, magisterial approval must be sought and that RIPAs can only be submitted for activities mentioned in paragraph 3.2. Application forms attached to the Policy will still need to be updated. The Policy has been put into the corporate template and will be made available through Policy Hub on Intralink. The changes to the Policy (Policy paragraph number listed below) are:
- 1.3 The Protection of Freedoms Act 2012 requires that RIPA is only used for criminal offences that could attract a custodial sentence of 6 months or more, or relate to knife, tobacco or alcohol sales to children. Applications once authorised have to be approved by a Magistrate.
- 3.1 The objective of this Policy and Procedures is to ensure that all work involving directed surveillance by Portsmouth City Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Regulation of Investigatory Powers Act (2000), RIPA (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, The Protection of Freedoms Act 2012 and the Code of Practice on Covert Surveillance and the Code of Practice on the Use of Covert Human Intelligence Sources.
- 5.13 Once authorised the authorising officer will go through what has been authorised with the applicant in accordance with the ruling of R v Sutherland 2000 so there is no doubt about what has been specifically authorised. The investigating officer can only carry out the actions that have been authorised in the RIPA application for that RIPA once approved by a Magistrate. It will be the Authorising Officer's responsibility to submit the application to the Magistrate.
- 5.23 The use of surveillance shall not be excessive, i.e. it shall be in proportion to the significance of the matter being investigated and balance the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. Proportionate must also include whether it is a potential criminal offence that could attract a custodial sentence of six months or more, or involves the sales of knives, tobacco or alcohol to minors.
- 5.27 If at any time before an authorisation would expire, (including oral authorisations), the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, it may be renewed in writing for a further period of 3 months beginning with the day on which the previous authorisation ceases to have effect. Applications for renewal should only be made shortly before the

authorisation is due to expire and must be submitted to a Magistrate by the authorising officer for judicial approval before they can be effective.

5.28 Any person entitled to authorise may renew authorisations. They may be renewed more than once, provided they continue to meet the criteria for authorisation and must be approved by a Magistrate to become effective.

5.4 There is still no guidance from the Office of Surveillance Commissioners regarding how magisterial approval is to be sought but the Senior Responsible Officer (Michael Lawther) is in communication with the Magistrates to determine the best way of submitting an authorised application and any fee that maybe incurred.

5.5 Once the process becomes clear the current RIPA application forms attached to the Policy will be updated.

6. Equality impact assessment (EIA)

This is an information report only and therefore does not require an equalities impact assessment; however the Policy itself will be subject to an EIA.

7. Head of Legal Services' comments

The Legal implications are incorporated within the body of this report. There are no other immediate legal implications arising from this report

8. s151 Officer and Head of Finance's comments

N/A

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Signed by: Michael Lawther, City Solicitor and Strategic Director

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
1 Covert Surveillance Code of Practice Issued by the Home Office and Covert Human Intelligence sources Code of Practice issued by the Home Office	http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/Regulation_of_Investigatory_Powers_Act-codes-of-practice/
2 Regulation of Investigatory Powers Act 2000	http://www.legislation.gov.uk/ukpga/2000/23/contents
3 Portsmouth City Council Regulation of Investigatory Powers Act Policy	http://intranlink/Media/Revised_RIPA_Policy.pdf

4	Home Office guidance	Internal Audit
5	Protection of Freedoms Bill	http://www.homeoffice.gov.uk/publications/about-us/legislation/protection-freedoms-bill/

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by the Governance & Audit & Standards Committee on 27th September 2012.