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| <b>Decision maker:</b>           | Governance & Audit & Standards Committee              |
| <b>Subject:</b>                  | Regulation of Investigatory Powers Act 2000 (RIPA)    |
| <b>Date of decision:</b>         | 27 <sup>th</sup> June 2013                            |
| <b>Report from:</b>              | Michael Lawther City Solicitor and Strategic Director |
| <b>Report by:</b>                | Lyn Graham, Chief Internal Auditor                    |
| <b>Wards affected</b>            | All   |
| <b>Key decision (over £250k)</b> | N/A   |

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## 1. Summary

- 1.1 One Regulation of Investigatory Powers Act (RIPA) application regarding a blue badge fraud has been made since the last report to Governance and Audit Members in March. Following an inspection by the Office of Surveillance Commissioners (OSC) on the 4<sup>th</sup> April 2013, there have been further minor amendments required to the Policy. The changes have been provided to all relevant staff. The OSC Inspector has issued their report which found that all previous recommendations had been actioned, that PCC has raised their compliance to a high level and make one recommendation regarding recording of surveillance details and product at the cancellation stage.

## 2. Purpose of report

- 2.1 To update Members on the Authority's use of Regulatory Powers for the period from March 2013 and the changes required to the Policy following the visit by the OSC Inspector as well as the outcome of that visit.

## 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 and this is updated when there are changes in the codes of practice, legislation including case law. Amendments to the Policy and Procedures were approved by this Committee at their March meeting however following the OSC Inspectors visit further minor changes are required.
- 3.2 The Authority is subject to inspection on our RIPA activity and compliance with the Codes of Practice by the Office of Surveillance Commissioners (OSC) and an inspection was carried out on the 4<sup>th</sup> April 2013.

## 4. Recommendations

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

- 4.1 Note the RIPA application authorised since March 2013,
- 4.2 Approve the required changes to Policy as a result of the OSC Inspection regarding the inclusion of the 4 proportionality tests, recording of dates and times of surveillance, update of Code of Practice references and removal of urgency provisions,
- 4.3 Note the OSC inspectors report from the 4<sup>th</sup> April 2013 inspection.

## 5. Regulation of Investigatory Powers Act Authorisations

- 5.1 RIPA activity is normally reported to Members every six months and this was last done in March 2013. However, as a report had to be brought to this meeting regarding the Inspection and subsequent changes in Policy, it was considered appropriate to update Members on the latest RIPA authorisation.
- 5.2 One RIPA application for blue badge fraud has been authorised since the last meeting of this Committee in March 2013. The application was taken to Magistrates by the investigating officer and approval obtained. Following investigations prosecution is pending.

## 6. Changes to Policy

- 6.1 The proposed changes to the RIPA Policy are highlighted as follows:

- 1.8 **Statutory Instrument 2010/521** restricts authorising officers in local authorities to prescribed offices of no lower a level than assistant chief officer, assistant head of service, service manager or equivalent.

**3.12 Proportionality** means that the use of surveillance is not excessive, i.e. that it is in proportion to the significance and level of offence being investigated and collateral intrusion impacts. **The Home Office Revised Code of Practice (3.6) states that the following elements of proportionality should be considered:**

- **Balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;**
- **Explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;**
- **Considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;**
- **Evidencing as far as reasonably practicable, what other methods had been considered and why they were not implemented.**

**4.32 To include "The date of Magistrates approval or rejection" on the central register.**

- 6.1 The use of CCTV must be accompanied by clear signage in order for monitoring to be overt. **Signage in itself does not make the use of CCTV overt. Where CCTV is to be**

used to target individuals or as part of an operation then the use is covert. If it is intended to use CCTV for covert monitoring e.g. by using either hidden cameras, or without any signs, or overt camera used covertly then RIPA authorisation is likely to be required. In any case CCTV must be used in accordance with the Codes of Practice and Protection of Freedoms Act.

6.2 Changes mainly relate to expanding on the information relating to the tests of proportionality, code of practice references and to remove the urgency provisions. These provisions allow for immediate oral authorisation and are only to be used in matters of serious consequence such as life or death. We have never used them and are unlikely ever to do so especially now as Magistrates approval is required which builds in a time delay.

## 7. Inspection Report

7.1 The OSC inspectors report is attached as an exempt item Appendix A and the covering letter states that:

"I am pleased to see that the recommendations made following the last inspection 3 years ago have been completed. Your Council has raised its compliance standards to a high level with some very positive results from covert activity.

The single recommendation is that, at cancellation, applicants advise authorising officers of the dates and times of surveillance undertaken to enable suitable comment to be made on outcome, any collateral intrusion and product management."

**It is recommended that the attached Appendix A is considered as an exempt/confidential matter and the press and public are excluded under the provisions of Section 100A of the Local Government Act, 1972 as amended by the Local Government (Access to Information) Act 1985, for the following reasons:**

- **Exempt information is defined in section 100I and, by reference, Schedule 12A of the Local Government Act 1972. To be exempt, information must fall within one of the categories listed in paragraphs 1 to 7 of schedule 12A, must not fall within one of the excluded categories in paragraphs 8 and 9 and the public interest in maintaining the exemption must outweigh the public interest in disclosing the information.**
- **Although there is a public interest favouring public access to local authority meetings, given the legally and personal sensitive information contained in the Appendix, the public interest in maintaining the exemption outweighs the public interest in disclosing the (exempt) information.**
- **Appendix A has been deemed exempt under paragraph number 7(a) Information is subject to any obligation of confidentiality**

## 8. Equality impact assessment (EIA)

This is an information report only and therefore does not require an equalities impact assessment.

## 9. City Solicitor's comments

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

## 10. Head of Finance's comments

N/A

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Signed by: Michael Lawther, City Solicitor and Strategic Director

### Appendices: Appendix A OSC Inspection Letter and Report Exempt item not for publication

#### 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 | <a href="http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/Regulation%20of%20Investigatory%20Powers%20Act-codes-of-practice/">http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/Regulation of Investigatory Powers Act-codes-of-practice/</a> |
| 2 Regulation of Investigatory Powers Act 2000   | <a href="http://www.legislation.gov.uk/ukpga/2000/23/contents">http://www.legislation.gov.uk/ukpga/2000/23/contents</a>   |
| 3 Portsmouth City Council Regulation of Investigatory Powers Act Policy   | Revised Policy attached as Appendix to this report.   |
| 4 Home Office guidance  | <a href="http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/?view=Standard&amp;pubID=1079688">http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/?view=Standard&amp;pubID=1079688</a>               |
| 5 Protection of Freedoms Bill   | <a href="http://www.homeoffice.gov.uk/publications/about-us/legislation/protection-freedoms-bill/">http://www.homeoffice.gov.uk/publications/about-us/legislation/protection-freedoms-bill/</a>   |
| 6 OSC Inspection Report 18 <sup>th</sup> April 2013   | Internal Audit  |