

# FAREHAM

## BOROUGH COUNCIL

### Report to the Executive for Decision 02 February 2015

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| <b>Portfolio:</b>           | Policy and Resources  |
| <b>Subject:</b>             | <b>Annual Review of Corporate Regulation of Investigatory Powers Act 2000 (RIPA) Policy</b> |
| <b>Report of:</b>           | Director of Finance and Resources   |
| <b>Strategy/Policy:</b>     | Regulation of Investigatory Powers Act 2000 (RIPA) - Policy and Procedures                  |
| <b>Corporate Objective:</b> | A dynamic, prudent, progressive and best practice Council                                   |

#### **Purpose:**

To seek approval for the adoption of an revised corporate policy for the use of the powers available under the Regulation of Investigatory Powers Act 2000 (RIPA) in order to keep the policy up to date, and address a recommendation from the Office of Surveillance Commissioners (OSC).

#### **Executive summary:**

The proposed revised policy takes account of a) the impact of the Data Retention and Investigatory Powers Act 2014 which requires the National Anti-Fraud Network to be used for all communication data requests, b) the need to make the policy 'role' rather than 'post' specific, and d) the recommendations by the OSC to clarify when a member of public providing information may be considered to be a Covert Human Intelligence Source, and who should attend the magistrates court.

#### **Recommendations:**

That the Executive agrees that:

- (a) the revised Regulation of Investigatory Powers Act 2000 (RIPA) - Policy and Procedures attached at Appendix A is approved; and
- (b) the post-holder assigned to the role of Senior Responsible Officer inherits the delegated authority to maintain Appendix 1 of the policy which assigns named officers to the roles covered by the policy.

#### **Reason:**

To update the policy in accordance with the latest legislation, guidance and practice at the Council.

**Cost of proposals:**

There are no cost implications from the changes to the policy.

**Appendices:**

**A:** Revised RIPA Corporate Policy and Procedures

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### Executive Briefing Paper

**Date:** 02 February 2015

**Subject:** Annual Review of Corporate Regulation of Investigatory Powers Act 2000 (RIPA) Policy

**Briefing by:** Director of Finance and Resources

**Portfolio:** Policy and Resources

#### INTRODUCTION

1. The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework under which investigation activity, which might otherwise be considered to infringe article 8 of the Human Rights Act 1998, may be authorised. The activities available to a Council under RIPA are:
  - (a) Directed covert surveillance of a member of the public;
  - (b) The use of a covert human intelligence source (CHIS) to gather information from a member of the public; and
  - (c) The acquisition and disclosure of data relating to communications.
2. The Council makes use of these powers for the prevention or detection of crime or the prevention of disorder. Since the Protection of Freedoms Act 2012, activities a) and b) can only be carried out for the prevention or detection of a criminal offence which is punishable on summary conviction or on indictment, by a maximum term of at least six months imprisonment.
3. The Corporate RIPA Policy and Procedures document sets out how the Council can use powers in compliance with the RIPA Act, The Protection of Freedoms Act 2012 and any codes of practice issued.
4. The policy was last updated in November 2012 and is reviewed annually. The latest review has identified a few changes that are needed to reflect recent changes in legislation and corporate responsibilities. The Council was also visited by an inspector of the Office of Surveillance Commissioner in December 2014 who has made one recommendation, in relation to the policy content.
5. This report therefore brings a revised policy for member approval. Adherence to the policy will then be monitored by the Audit and Governance Committee.

## CHANGES PROPOSED

6. The revised policy is attached as Appendix A and the changes are highlighted in the document. The main changes are also summarised below.
7. **Data Retention and Investigatory Powers Act 2014 (DRIPA):** New legislation concerning the use of communications data came into force in December 2014. This requires all liaison with communication companies to obtain data to now be carried out via the National Anti-Fraud Network.
8. Previously 2 officers of the Council accredited by the Home Office (known as “Single Points of Contact” or “SPOCS” were able to obtain the data directly. This status has therefore now been removed and the policy updated to reflect the new requirements.
9. **Role Holders:** The RIPA codes of practice require the Council to appoint a Senior Officer to oversee our compliance with the legislation. Previously this role was assigned to the Director of Regulatory and Democratic Services. Since April 2014 the Director of Finance and Resources has taken on this role. The policy has now been updated to reflect this change. However, to allow the policy to continue to be current for any changes in the post-holder, the term “Senior Responsible Officer” has been used instead of specific post titles.
10. Appendix 1 to the policy is used to record which officers are appointed to the other roles mentioned in the policy. Delegated authority was given to the Director of Regulatory and Democratic Services to keep this list up to date outside of the annual reviews. However, it is now recommended that whoever is appointed to the role of Senior Responsible Officer inherits this authority rather than it being post title specific.
11. The list of employees appointed to the roles in the Appendix has also been updated, and the number of Authorising Officers slightly reduced. This includes not having the same officer assigned to the roles of Senior Responsible Officer and Authorising Officer, as advised by the inspector. For those senior authorising roles assigned to the Chief Executive Officer, the policy has also been clarified that in his absence these can be carried out by another statutory officer.
12. **Covert Human Intelligence Sources (CHIS):** The policy has been made clearer that a member of the public calling in to impart information about a potential crime which is then acted on, may need to be authorised as a CHIS if the information they have given has been obtained as a result of a relationship established or maintained for a covert purpose, even if not tasked to do so by the Council. The Council is then required to consider the safety and welfare of the informer.
13. **Attendance at Court:** Since the Protection of Freedoms Act 2012 applications are required to be approved by a magistrate in addition to being authorised by a senior employee of the Council. There is a conflict in the guidance as to which officers should attend the court. The Council currently follow the Home Office’s code of practice which states that it should be the applicant who attends court, whereas the Office of the Surveillance Commissioner advocate that the authorising officer should attend. The policy has therefore been revised to stress that the application form should be of sufficient detail to record the authorising officer’s considerations and they should consider attendance at court as well for unusual or complex cases.

## **CONCLUSION**

14. The proposed revised Policy will demonstrate that the Council continues to follow best practice in accordance with all legislation and the national Codes of Practice, in its use of powers afforded under the Regulation of Investigatory Powers Act 2000.

### **Reference Papers:**

Report to the Executive 5/11/12 on Update to Corporate RIPA Policy and Procedures in response to the Protection of Freedoms Act 2012