

## ***Report to the Cabinet***

***Report reference: C-004-2013/14***

***Date of meeting: 10 June 2013***



**Epping Forest  
District Council**

**Portfolio: Corporate Support Portfolio**

**Subject: Regulation of Investigatory Powers Act – Policy and Procedure**

**Responsible Officer: Colleen O'Boyle (01992 564475).**

**Democratic Services Officer: Gary Woodhall (01992 564470).**

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### **Recommendations/Decisions Required:**

- (1) To recommend to Council the adoption of the Policy and Procedure for dealing with the requirements of the Regulation of Investigatory Powers Act (as amended) (RIPA), as set out in the report;**
- (2) To recommend to Council the appointment of Director of Corporate Support Services as the Senior Responsible Officer and the Assistant to the Chief Executive as the Deputy Senior Responsible Officer for the purposes of RIPA;**
- (3) To recommend to Council the appointment of Director of Corporate Support Services and the Assistant to the Chief Executive as Authorising Officers for the purposes of RIPA;**
- (4) To agree that the method of reporting the use of RIPA authorisations be by annual report to the Corporate Governance Group followed by publication in the Council Bulletin;**
- (5) To note the number of RIPA authorisations for the period 1/4/2012 to 31/3/2013 as Nil; and**
- (6) To note the proposed training programme which will embed the new procedure.**

### **Executive Summary:**

On 31 January 2013, Mr Andrew Mackian on behalf of the Office of Surveillance Commissioners, inspected this authority for compliance with the requirements of RIPA. He found previous recommendations had been implemented, but clarified at length an authorisation could be granted for and has made two additional recommendations. Corporate Governance Group has considered and accepted the recommendations as good practice. This report is intended to put those recommendations into practice.

### **Reasons for Proposed Decision:**

To comply with the amendments to RIPA and to comply with the recommendations arising from the recent inspection.

## **Other Options for Action:**

The Council must have an up to date policy and procedure for dealing with RIPA applications, recording them and reporting to Members. However, Members could suggest other ways of achieving this aim.

## **Report:**

1. RIPA was introduced in 2000 as a means of legitimising covert surveillance which would otherwise have been unlawful and in contravention of the Human Rights legislation.
2. Since 2008 the Director of Corporate Support Services and the Assistant to the Chief Executive have been RIPA Officer and Deputy RIPA officer respectively.
3. This Council has made very limited use of the powers available. This is because it is essential to exhaust all other reasonable methods of seeking evidence before contemplating an application under RIPA.
4. The most recent inspection report of Mr Mackian acknowledges this approach. It also accepts that based on this approach it is appropriate to limit the number of officers with designated responsibilities under the Act to these two officers.
5. Mr Mackian has made three recommendations in his report.
  - (i) *RIPA guidance notes to be re-drafted within a formal procedural document for formal reporting to elected members of the authority;*
  - (ii) *A Central record of authorisations to be re-introduced; and*
  - (iii) *Authorisation periods to comply with statutory requirements.*
6. The attached Policy and Procedure Document addresses the first recommendation. The major changes to the process are highlighted below:
  - (a) RIPA authorisations can now only be sought for investigations into the more serious offences i.e. those carrying a custodial sentence of at least 6 months; and
  - (b) In addition to authorisation from one of the two designated officers, application must be made by the officer seeking authorisation to the magistrates' court.
7. The suggested procedure for reporting the use of RIPA authorisations to Members is through the Corporate Governance Group and the Council Bulletin.
8. The second recommendation is unfortunately worded as it suggests the discontinuance of the Central Register. In fact the spreadsheet used contained the necessary information – it is simply that the last two entries were handwritten. The spreadsheet has now been updated and is held and updated by the Executive Assistant to the Director of Corporate Support Services.
9. Recommendation 3 arises due to an error in the time period for which the last authorisation was granted. Ultimately the investigation authorised did not take place. However the Director of Corporate Support Services had limited the timing for authorisation to 3 hours either side of midnight on the evening of the operation. This is not permitted by the legislation. The correct procedure is to authorise for statutory three months and then cancel the authorisation when the operation is complete.

10. This point has been noted by both authorising officers and the timescales are set out clearly in the attached policy.

11. Subject to the adoption of the proposed Policy & Procedure and the authorisations suggested, the Director of Corporate Support Services intends to organise and deliver appropriate training courses for both senior and operational officers to raise awareness and ensure the policy is understood and implemented.

12. In addition both of the authorised officers will attend training as appropriate.

**Resource Implications:**

No additional resources required –subject to the numbers of applications remaining low.

**Legal and Governance Implications:**

Regulation of Investigatory Powers Act 2000 ( as amended) by the Protection of Freedoms Act 2012). The regime is intended to give lawful authority to certain types of covert surveillance in order to prevent and detect crime. However it also requires such activity to be proportionate to the matter being investigated.

**Safer, Cleaner and Greener Implications:**

The restricted offences to which RIPA applies may impact on some of the ‘low level’ offences and our ability to pursue them.

**Consultation Undertaken:**

The draft Policy & Procedure was taken to Management Board for comment. The report of the Inspector was submitted to the Corporate Governance Group.

**Background Papers:**

None.

**Impact Assessments:**

Risk Management

There is a risk of reputational damage if the Council does not respond positively to the report of the Office of Surveillance Commissioners and the recommendations within it.

There is a risk of either claims against the Council or evidence gathered being inadmissible, (or both) if the correct processes are not followed.

Equality and Diversity

*Did the initial assessment of the proposals contained in this report for relevance to the Council’s general equality duties, reveal any potentially adverse equality implications?* No

*Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?* No

*What equality implications were identified through the Equality Impact Assessment process?*

N/A.

*How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?*

N/A.