

ENVIRONMENT CULTURE & COMMUNITIES OVERVIEW & SCRUTINY PANEL
8 SEPTEMBER 2009

RIPA AND THE USE OF SURVEILLANCE TECHNIQUES IN ENFORCEMENT
(Chief Officer: Environment & Public Protection)

1 INTRODUCTION

- 1.1 At the meeting of the Panel on 23 June 2009 questions were raised around the Regulation of Investigatory Powers Act 2000 (RIPA) and the use of CCTV for surveillance purposes.
- 1.2 This report sets out the background to the control and use of surveillance techniques including CCTV as part of the normal enforcement activity of in particular the Trading Standards and Environmental Health services.

2 SUPPORTING INFORMATION

- 2.1 The Council has a duty to enforce a wide range of statutory provisions. In doing so it employs a number of techniques and officers are authorised to enforce the law having regard to the appropriate statutory provisions. This includes ensuring compliance with the legislation in respect of the gathering of evidence.
- 2.1 The nature of some enforcement activity requires surveillance techniques be used. Some of that surveillance is overt, some has to be covert. The range of activity where some form of surveillance techniques might be used is extensive. The Council is required to enforce a large number of statutory provisions. Typical activities include monitoring for compliance in order to address environmental protection, public health, sales scams, under age sales and licensing concerns.
- 2.3 The techniques used for surveillance include officer observation, use of cameras, sound recording equipment and within the last two years CCTV. Most of our use of CCTV is overt in that it is clearly visible and warning signs are put up in the area of the use of cameras. Where surveillance is required to be covert in nature then the law provides for a specific authorisation of the operation under the Regulation of Investigatory Powers act 2000 (RIPA). RIPA provides a 'permissive regime' under which officers can carry out surveillance in a controlled manner. Where there is the need to establish a personal or other relationship covertly then the Covert Human Intelligence Sources (CHIS) provision applies. Whilst not a mandatory requirement upon local authorities to use RIPA, doing so is considered best practice in the interests of public confidence and the avoidance of potentially costly legal challenge under human rights legislation.
- 2.4 Neither RIPA nor CHIS provide any powers. They merely provide the legal framework to ensure the rights of individuals are protected by the proper use of existing powers. The law was introduced as part of the response to the anti-terror threat and as such is very focused on the needs of the Police. Its use for other activity such as the enforcement of laws by local authorities was not fully considered at the time in that much of the documentation we have to work with refers to the Police.

- 2.5 The authorisation of activities requiring sanction under RIPA or CHIS has to be in accordance with the terms as set out in the Council's policy on Directed Surveillance and use of Covert Human Intelligence Sources (31-8-04 as amended). At the time that this Policy was created training programmes were run and appropriate officers were given authority to use the powers. The law requires that authorisations can only be given where the authorising officer is satisfied that directed surveillance is:
- (a) necessary, ie it must be for the purposes of preventing or directing crime or preventing disorder and the information cannot be elicited by overt means; and
 - (b) the activity is proportionate to the need, balancing the intrusiveness of the activity with others that may be affected by it.
- 2.6 In the event of the Council not complying with RIPA or CHIS it is possible that evidence will not be accepted by the courts if it can be evidenced that a breach of human rights has occurred. It is also possible that non compliance with RIPA/CHIS could result in ombudsman complaints, referral to a RIPA/CHIS tribunal or censure of the Office of Surveillance Commissioners. The Council's registers are inspected by the Commissioners every two years and any recommendations taken into account in the review of the Council's RIPA/CHIS procedures. The Council has only a few senior officers authorised for the purposes of approving RIPA/CHIS applications. The process is overseen by the Borough Solicitor and was last reviewed by CMT in May 2009 following an inspection in January.
- 2.7 The use of CCTV by the Council is not new. It is widely used in the public areas of Bracknell Town, the multi storey car parks and in Sandhurst. In the last two years CCTV technology has been acquired by the Environment and Public Protection Division using funds from a government grant and the CDRP. We now have the capability to use camera technology covertly in respect of test purchases and in the last few years have done so to good effect. That experience has shown how valuable a tool it is in securing quality evidence. The cameras have also been used overtly at a number of recycling sites around the Borough again to good effect. As yet cameras have not been used covertly for any purposes other than test purchasing. There is a need however to do so on some sites that are prone to flytipping and where other techniques are simply impracticable if the objective is to address the associated crime.
- 2.8 Whilst not a major issue compared to other authorities, the cost of flytipping in the Borough is estimated at £100k a year. Flytipping and securing a 2% reduction in levels over last year is a target for the Crime and Disorder Reduction Partnership. The proper use of camera technology is an essential tool when it comes to effective enforcement. There are a number of sites in the Borough where commercial waste is being dumped and the use of such technology in a covert manner is now considered essential.
- 2.9 Those caught face a variety of actions depending on the nature of the offence. For littering a fixed penalty fine of £75 can be offered. Should the person decline to pay then the Courts can levy fines up to a maximum of £2,500. For flytipping offences this is a criminal matter and the penalties and consequences are more severe. Those guilty can be fined up to £50,000 and/or twelve months imprisonment. Should the matter go to a Crown Court fines are unlimited and offenders can be imprisoned for up to five years.
- 2.10 It is unfortunate that a few allegedly misconceived authorisations have been used by the national media in an attempt to discredit the use of something that seeks to protect the rights of individuals. Should the Council not be able to use RIPA then its

ability to enforce much of the law that it is responsible for becomes questionable. The Government are currently reviewing the RIPA provisions following a few highlighted instances in the media in recent months.

Background Papers

BFBC Policy on Directed Surveillance and use of Covert Human Intelligence Sources.

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