



Joint Governance Committee
30 July 2019
Agenda Item 11

ADUR & WORTHING COUNCILS

Ward(s) Affected: All

The Councils' Surveillance Powers, Policy and Procedures

Report by the Monitoring Officer

Executive Summary

1. Purpose

- 1.1. The purpose of this report is to advise Members of the Monitoring Officer's review of the Councils' Surveillance Policy and Procedure and update Members on the Councils' use of its powers under surveillance legislation.

2. Recommendations

The Joint Governance Committee is asked to:

- 2.1. Note that neither Council has used its surveillance powers under the Regulation of Investigatory Powers Act 2000 in the year 2018/19.
- 2.2. Note that the Councils' Joint Surveillance Policy and Procedure of September 2017 has been reviewed but no revisions are recommended.

3. Background

- 3.1. The Regulation of Investigatory Powers Act 2000, as amended, provides a scheme whereby surveillance can be carried out by the Councils, in accordance with an authorisation granted under the Act, and the appropriate judicial approval, and that such surveillance shall be lawful for all purposes. Failure with compliance with the statutory framework could lead to evidence obtained by way of surveillance being inadmissible in Court and/or the Councils facing civil or criminal action for breach of statutory or common law rules relating to the privacy of individuals.
- 3.2. The surveillance must be necessary for the purpose of preventing or detecting conduct which constitutes a criminal offence which is punishable by a maximum sentence of a prison term of at least 6 months, or relates to the investigation into alleged underage sales of alcohol and/or tobacco.
- 3.3. An authorisation may be given for directed surveillance which is:
 - For the purposes of a specific investigation,
 - Covert rather than overt, and
 - Is likely to result in the obtaining of private information about a person
- 3.4. An authorisation is not generally required for general observations, drive by's or attendance at trouble hot spots, nor for overt surveillance such as CCTV systems where notice is given to the public, nor for cases where an immediate response is necessary to an occurrence.
- 3.5. Authorisations will, in some circumstances, be required when social media is used in investigations and either the Council breaches privacy controls, there is repeated or targeted monitoring of an individual's social media profile, or a covert human intelligence source (CHIS) is used to interact and communicate with an individual through social media.
- 3.6. An authorisation may also be given for the use of a covert human intelligence source, whereby a person covertly uses an existing or newly established relationship with an individual in order to provide information to the Council.

- 3.7. Since the introduction of the Protection of Freedoms Act 2012 an authorisation for directed surveillance or the use of a covert human intelligence source will not take effect until such time as the relevant judicial authority, a Justice of the Peace, has made an order approving the grant of the authorisation.
- 3.8. Each Council adopted a surveillance policy in 2002 to ensure compliance with the Regulation of Investigatory Powers Act 2000. In 2012 the Councils agreed to adopt a revised single surveillance policy. In September 2017 the Joint Governance Committee considered a substantial review and rewrite of the Policy and at their meeting on 26th September 2017, agreed, on behalf of each Council to formally adopt the revised Policy.
- 3.9. The Councils' policies, practices and procedures are subject to review by the Office of the Surveillance Commissioner and the last inspection was carried out in July 2017. The Commissioner suggested some amendments to the Councils' policy relating in particular to its use of Social Media in investigations, and these were addressed in the 2017 revision to the Policy.
- 3.10. Since September 2017 training has been provided to a significant number of Officers across the Council, as well as to the Authorising Officers, and the revised Policy was widely communicated and published on the Council's website.

4. Issues for consideration

- 4.1. The Home Office Covert Surveillance and Property Interference Code of Practice 2014 paragraph 3.35 states that "Elected Members of a Local Authority should review the Authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on the use of the 2000 Act on a regular basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose".
- 4.2. At the 2017 inspection the Surveillance Commissioner further highlighted the long standing role of Elected Members and the provision of information to them, which applies to non-use as well as actual use. In his report following the inspection, The Chief Surveillance Commissioner, referred to the Code of Practice and stressed the need

for Members to regularly consider the Council's use of their powers and set the Policy.

- 4.3. Neither Council has authorised any surveillance under this Policy or the 2000 Act during the financial year 18/19 nor since. Indeed the powers under the 2000 Act are rarely used by the Councils and when they have been used in the past they were generally in relation to Benefit Fraud investigations, which are now undertaken by the Department of Work and Pensions.
- 4.4. Nevertheless, it remains imperative that the Councils have a robust, fit for purpose policy in place, and that Officers involved in investigations and authorising surveillance keep up to date with knowledge and receive regular training. The Solicitor to the Council has reviewed the existing Policy adopted in September 2017 and is confident that it remains up to date, robust and fit for purpose and has no revisions to recommend to the Committee.

5. Engagement and Communication

- 5.1. Engagement has been undertaken with Mr Paul Brewer, Director for Digital and Resources, who is the Councils' Senior Responsible Officer for matters relating to the Regulation of Investigatory Powers Act.

6. Financial Implications

- 6.1. There are no financial implications arising from this report.

7. Legal Implications

- 7.1. The Regulation of Investigatory Powers Act 2000 provides a legal framework under which surveillance of individuals for evidence-gathering purposes can be authorised by the Councils.
- 7.2. The Investigatory Powers Act 2016 made some amendments to the earlier legislation but these primarily dealt with communications data interception powers relevant to the security and intelligence agencies.

Background Papers

- Regulation of Investigatory Powers Act 2000
- Adur and Worthing Councils Surveillance Policy and Procedure
- Report to Joint Governance Committee 26th September 2017

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Sustainability & Risk Assessment

1. Economic

Matter considered and no issues identified

2. Social

2.1 Social Value

Matter considered and no issues identified

2.2 Equality Issues

Matter considered and no issues identified

2.3 Community Safety Issues (Section 17)

Matter considered and no issues identified

2.4 Human Rights Issues

Matter considered and no issues identified

3. Environmental

Matter considered and no issues identified

4. Governance

Matter considered and no issues identified