

**PAPER NO. 1**

**REPORT TO THE EXECUTIVE MEETING OF 8<sup>TH</sup> JULY 2013**

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**Meeting:** Executive  
**Date:** 8<sup>th</sup> July 2013  
**Subject:** Proposed Amendments to the RIPA Policy  
**Report of:** Verina Wenham, Head of Legal & Democratic Services and Monitoring Officer  
**Portfolio Holder:** Councillor J. Hallam  
**Status:** Decision – refer to Council  
**Relevant Ward(s):** All

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1 Purpose of the Report

- 1.1 To consider the proposed changes to the RIPA policy set out in Appendix A prior to submission to the Executive for consideration and approval before referral to Council

2 Recommendations:

- 2.1 **That the Council’s RIPA Policy is amended as set out in Appendix A and;**  
2.2 **The Policy is referred to Council for adoption.**

3 Summary of Reasons for the Recommendations

- 3.1 The amendments are required to ensure that the Council’s Policy is compliant with the legislative changes.

4 Background and Key Facts

The Council’s Regulation of Investigatory Powers Act 2000 policy (“RIPA Policy”) was last updated in February 2011. Since that date the Protection of Freedoms Act 2012 has come into force. Sections 37 and 38 of that Act, amends the Regulation of Investigatory Powers Act 2000 to require that, where an Authorising Officer has granted an authorisation for the use of directed surveillance, the use of covert human intelligence sources or acquisition of communications data, judicial approval will be required.

- 4.1 The Council is required to make an application, without giving notice, to the Magistrates’ Court. The Magistrates will give approval if and only if, at the date

of the grant of authorisation or renewal of an existing authorisation they are satisfied that:

- (a) there were reasonable grounds for believing that obtaining the covert surveillance or use of a human covert intelligence source and whether it was necessary and proportionate and that these grounds still remain.
- (b) the "relevant conditions" were satisfied in relation to the authorisation.

Relevant conditions include that:

- (i) the relevant person was designated as an Authorising Officer.
- (ii) it was reasonable to believe that using covert surveillance or a covert human intelligence source was necessary and proportionate and that the relevant conditions have been complied with.
- (iii) the grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA (restrictions on the rank of the person granting the authorisation).
- (iv) any other conditions provided for by an order made by the Secretary of State were satisfied.

If the Magistrates' Court refuses to approve the grant of the authorisation, then it may make an order to quash that authorisation.

- 4.2. To ensure compliance with this new requirement it is recommended that the policy is amended as set out in Appendix A to provide that any Authorising Officer who proposes to approve an application for the use of directed surveillance, use of a covert human intelligence source or acquisition of communications data, must immediately inform the Senior Responsible Officer who will then make arrangements for an application to be made to the Magistrates' Court. It is anticipated that the Senior Responsible Officer will authorise the Investigating Officer to attend the Magistrates' Court to make the necessary application.
- 4.3 Further restrictions have now been imposed on local authorities use of RIPA. It restricts Authorising Officers from authorising the carrying out of directed surveillance unless it is for the purpose of preventing or detecting a criminal offence unless the criminal offence to be prevented or detected is punishable by a maximum term of at least six months' imprisonment or constitutes an offence under sections 146, 147 or 147A of Licensing Act 2003 (sale of alcohol to children) or section 7 of the Children and Young Persons Act 1933 (sale of tobacco to children under 18 years old).
- 4.4 It is recommended that the RIPA policy is amended further to state this important restriction.
- 4.5 Following the recent restructure of the Council's Corporate Management Team, changes need to be made to the officers currently designated as

Authorised Officers. It is suggested that the Authorised Officers should be the Chief Executive and the Corporate Directors. In addition the flow chart contained within the Policy should be amended to reflect the changes to the Senior Management Team as part of the restructure.

5 Legal Issues

5.1 The Policy needs to be amended to reflect the recent legislative changes exacted by Sections 37 and 38 of the Protection of Freedoms Act 2012.

6 Resource Issues

6.1 Additional training has been required as a result of the legislative changes which has been found from within the existing training budget. The training was jointly procured in partnership with Melton Borough Council. There are no additional resource implications arising from this report.

7 Equality Impact Assessment Implications/Outcomes

7.1 None as far as this report is concerned.

8. Risk Management Implications

8.1 None as far as this report is concerned.

9 Consultation

9.1 The Portfolio Holder has been consulted on the proposals. The amendments were considered by the Resource and Performance Scrutiny Panel and their comments are attached at Appendix B.

10 Background Papers

10.1 Protection of Freedoms Act 2012.

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**Previous report(s): 14<sup>th</sup> February 2011.**

**Information Issued Under Sensitive Issue Procedure: Y/N**

**Ward Members Notified: Y/N**

**Appendices:** *list any appendices here including title and filename in brackets (e.g. Performance Data 2010 (perfdata.doc)).*

- A. Amended RIPA Policy.**
- B. Draft Minutes – Scrutiny Panel – Resource and Performance.**
- C.**
- D.**

