

CABINET

28 SEPTEMBER 2021

UPDATE TO COVERT SURVEILLANCE POLICY

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from: Bhupinder Gill, Assistant Director Legal and Governance

Author: Vicky Nutley, Assistant Head of Legal Services (Place)

Summary

This report presents an update to the Covert Surveillance Policy. The report amends the policy to reflect changes in Job titles following restructures within Regeneration, Culture and Environment (RCE) and to include provisions regarding the use of social media following recommendations made after the last inspection by the Investigatory Powers Commissioner's Office.

1. Budget and policy framework

1.1. Approval of the Covert Surveillance Policy and Guidance is a matter for Cabinet whilst it is within the ambit of the Audit Committee to take on a reviewing role of the use of covert surveillance by the Council.

2. Background

2.1. The Council has a number of options available to it when investigating and prosecuting offences, the vast majority of investigation techniques are overt. There may be times however when it is necessary to undertake covert investigations. The use of such techniques is governed by the Regulation of Investigatory Powers Act (RIPA) 2000, as amended by the Protection of Freedoms Act 2012.

2.2. The policy was initially adopted by Cabinet on the 10 July 2012 and was subsequently updated on the 15 January 2013.

2.3. The Council is inspected periodically by the Investigatory Powers Commissioner's Office ('IPCO') with the last inspection taking place in late 2018. The Inspectors report received in 2019 contained three recommendations of which one has been outstanding in relation to updating the policy to deal with the increased use of the internet and social media and its effect on surveillance.

2.4. The Policy has been amended with the insertion of a new Section 6 which deals with how social media can be used as a surveillance tool and what considerations should be taken into account when doing so. There have also been amendments made to the table at Appendix one of the policy to accurately reflect the current authorising officers.

3. Options

3.1. Cabinet is being asked to approve the updated policy to address the recommendation made by the IPCO, Members could chose not to update the policy but doing so creates risks in that evidence obtained using covert surveillance could be inadmissible in court and the Council could be the subject of complaints made to the Investigatory Powers Tribunal.

3.2. Option 1 - Cabinet agree to update the policy. **This is the recommended option.**

3.3. Option 2 - Do nothing.

4. Advice and analysis

4.1. Option 1 is recommended. This helps ensure that investigations can be successfully prosecuted and mitigates the risk of complaints being made regarding the Council's use of surveillance to the tribunal.

4.2. Option 2 is not recommended by officers as it is likely that this would lead to significant criticism in the next IPCO inspection as the update reflects recommendations contained within the Inspector's report from 2018.

5. Risk management

5.1.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Failure to update the policy	Leaving the policy as is means that it hasn't addressed the concerns raised in the last inspection – it is likely to impact the Council's investigations and may lead to prosecutions being unsuccessful.	Update the policy	C3

6. Financial implications

- 6.1. The implementation of this revised policy will have no cost implications.
- 6.2. If the policy is not updated there is a risk that the Council will be liable for compensation following a successful complaint to the tribunal.

7. Legal implications

- 7.1. In order to carry out surveillance activities the Council must comply with the Regulation of Investigatory Powers Act 2000 ('RIPA'), as amended by the Protection of Freedoms Act 2012. Having an up to date policy ensures compliance with these statutory regimes and empowers the Council to actively investigate matters such as illegal tobacco sales.
- 7.2. The compliance with those statutes is monitored by the IPCO as regulator via an inspection regime and the updates to the policy follow recommendations arising from the last inspection.

8. Recommendation

- 8.1. The Cabinet is recommended to approve the updated policy as set out at Appendix 1 to the report.

9. Suggested reasons for decision

- 9.1. The updates to the policy address the ever increasing popularity of the use of social media and reflect updates to job titles for authorising officers.

Lead officer contact

Vicky Nutley, Assistant Head of Legal Services (Place), Legal Services
T: 01634 332298 E: vicky.nutley@medway.gov.uk

Appendices

Appendix 1 – Updated Policy

Background papers

None