
Audit & Procurement Committee

18th November 2013

Cabinet Member (Community Safety & Equalities)

18th December 2013

Name of Cabinet Member:

Cabinet Member (Community Safety & Equalities) – Councillor Townshend

Director Approving Submission of the report:

Executive Director, Resources

Ward(s) affected:

None

Title:

Covert Surveillance of Employees Policy and Procedure

Is this a key decision?

No

Executive Summary:

To provide an overview of the proposed procedure for submitting and authorising applications for the covert surveillance of employees.

Recommendations:

The Audit and Procurement Committee is recommended to:

- (1) Note and endorse the content of the report and recommend approval of the Covert Surveillance of Employees Policy and Procedure.

The Cabinet Member is recommended to:

- (1) Consider the draft policy and recommendation from the Audit and Procurement Committee
- (2) Approve the Policy and Procedure for the Covert Surveillance of Employees.

List of Appendices included:

Appendix 1: Covert Surveillance Employees Policy and Procedure

Appendix 2: Covert Monitoring of Employees Form: Authorisation for Covert Monitoring of Employees

Other useful background papers:

Nil

Other useful background information:

Nil

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

Yes

Audit & Procurement Committee on 18th November 2013

Will this report go to Council?

No

Report title: Covert Surveillance of Employees Policy and Procedure

1. Context (or background)

- 1.1 The Information Commissioner's "Employment Practices Code" (the Code) provides guidance to employers on the use of covert surveillance of employees. Compliance with the Code promotes good practice and ensures that the Council complies with the Data Protection Act 1998 and the Human Rights Act 1998. The information obtained as a result of surveillance can later be relied upon in disciplinary proceedings and court proceedings provided that the Code is complied with.
- 1.2 The Code states that the surveillance should be normally authorised by Senior Management. The role of Senior Management is to:
- (1) Ensure that there are grounds for suspecting criminal activity/serious malpractice;
 - (2) Make certain that the correct procedures have been followed and all relevant factors taken into account;
 - (3) Consider whether the surveillance is necessary and proportionate.

2. Options considered and recommended proposal

- 2.1 The Council has the option not to have a policy relating to covert surveillance of employees. However this is not considered to be the best option because any surveillance carried outside of such a policy may not comply with the requirements of the Code and potentially constitute a breach of the Human Rights Act 1998 and or the Data Protection Act 1998.
- 2.2 Therefore the preferred option is to adopt the policy and procedure for the covert surveillance of employees attached to this report. The draft document is based upon the requirements set out in the Code.
- 2.3 The Monitoring Officer will review applications, authorisations, refusals, extensions and cancellations in conjunction with Internal Audit (as appropriate) on a regular basis and at least every 2 years.
- 2.4 The proposed policy will be reviewed on a regular basis and amended to reflect any changes in the organisation, good practice and or relevant legislation

3. Results of consultation undertaken

- 3.1 The development of this internal procedure has been based on guidance from the Information Commissioners Office and does not require public consultation. However, since the procedure relates to employees, it was presented to the Unions at the Trade Union Core Group Meeting on the 17th September 2013. The Unite and GMB unions subsequently proposed a number of amendments which are largely reflected in the attached draft. For instance, the Monitoring Officer must approve all applications before any surveillance is carried out,

applications must demonstrate that all reasonable alternatives to covert surveillance have been considered (including speaking to the individual(s) concerned) and the policy documentation and the register of applications will be reviewed on an annual basis.

- 3.2 The Unions suggested that the wording of the Policy mirror that of the Code so that Covert Surveillance is used only where there are reasons to suspect “criminal activity or equivalent malpractice”. However, the meaning of “equivalent malpractice” is considered to be unclear and arguably amounts to criminal activity. Therefore, the draft policy proposes the use of covert surveillance where there is “suspected criminal activity or serious malpractice”.
- 3.3 Paragraph 6.2 of the draft policy and procedure requires that employees are notified of any disciplinary action arising as a result of the covert surveillance as soon as is reasonably practicable, The Unions requested that this reference be made earlier in the document. However, the procedure deals with each stage of the process in turn, therefore the reference remains unchanged.

4. Timetable for implementing this decision

- 4.1 Upon approval of the procedure a communication will be sent out via the Beacon Daily Roundup and Core Brief processes to inform staff of the revised procedure, which will be published to the Council's Information Governance Intranet pages.
- 4.2 Upon approval of the procedure, the Council will collate statistical information relating to the authority's use of covert surveillance, which will be published on the Council's Internet page in order to support its commitment to the openness and transparency agenda.

5. Comments from Executive, Resources

- 5.1 **Financial implications** – There are no direct financial implications arising from these changes.
- 5.2 **Legal implications** – When undertaking covert surveillance the Council must ensure that it complies with the requirements of the Data Protection Act 1998. Covert surveillance is likely to involve the processing of personal information about living individuals (e.g. recording movements of employees or taking photographs).

Surveillance must also be undertaken in compliance with the Human Rights Act 1998. Under Article 8 of the Act everyone has the right to respect for his private and family life, his home and his correspondence. To satisfy Article 8, the covert surveillance must be both necessary and proportionate.

Conducting covert surveillance of employees in accordance with the proposed procedure will ensure that the Council complies with its obligations under the Data Protection Act 1998 and the Human Rights Act 1998. Failure to carry out surveillance in accordance with the Policy and Procedure may render any evidence gathered inadmissible in any subsequent disciplinary/criminal proceedings.

6. Other implications

The procedure is intended to protect employees and the Council in circumstances where the Regulation of Investigatory Powers Act 2000(RIPA) does not apply. In his annual report 2011/12, the Chief Surveillance Commissioner emphasised that in circumstances where RIPA did not apply, organisations should adopt proper authorisation procedures, where surveillance outside of RIPA is proposed.

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

Such surveillance will help support the Council to assisting preventing and detecting a crime or serious malpractice in respect of employees.

6.2 How is risk being managed?

The requirement for the Council to seek Senior Management approval for any proposed use of surveillance reduces the risk of the Council undertaking such surveillance inappropriately and unlawfully. This will help ensure that the rights of employees are protected and any evidence obtained from such use will be admissible in a disciplinary and or a court of law.

6.3 What is the impact on the organisation?

There is no additional impact on the Council.

6.4 Equalities / EIA

When developing or amending policies and procedures to support the use of directed surveillance, consideration is given to any impact on equalities.

6.5 Implications for (or impact on) the environment?

There are no implications on the environment.

6.6 Implications for partner organisations?

There are no implications on partner organisations.

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www.coventry.gov.uk/councilmeetings**Appendices:**

1.Covert Surveillance Employees Policy and Procedure

2.Covert Monitoring of Employees Form: Authorisation for Covert Monitoring of Employees