

POLICY AND RESOURCES

CABINET BOARD

11TH NOVEMBER 2010

**REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES
MR. D.MICHAEL**

INDEX OF REPORT ITEM

Part 1 - Doc. Code: PRB-111110-REP-FS-DM

SECTION A - MATTER FOR DECISION			
Report Item		Page Nos.	Wards affected
1.	Designation of Authorising Officer and a Designated Person for the purposes of the Regulation of Investigatory Powers Act 2000 ["RIPA"].	2-6	All

SECTION A
ITEM 1

DESIGNATION OF AUTHORISING OFFICER AND A DESIGNATED PERSON FOR THE PURPOSES OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000 [“RIPA”].

1. PURPOSE OF REPORT

- 1.1 To appoint the Head of Business Strategy and Public Protection as an Authorising Officer and a Designated Person for the purposes of the Regulation of Investigatory Powers Act 2000 [“RIPA”].
- 1.2 To designate the Head of Business Strategy and Public Protection as the Senior Responsible Officer for the purposes of overseeing the Acquisition and Disclosure of Communications Data by the Authority under the Regulation of Investigatory Powers Act 2000 [“RIPA”].

2. BACKGROUND

- 2.1 The Regulation of Investigatory Powers Act 2000 controls amongst other things covert surveillance activities carried out by public bodies, including Local Authorities. In the context of Local Authorities, RIPA regulates such things as test purchasing in retail premises and benefit fraud Investigations for the purposes of detecting criminal offences.

Put simply, the Council must observe an internal consent procedure considering certain human rights issues before engaging in surveillance. It is a tool to provide the correct balance between an individual’s rights to privacy and the proper use of data and surveillance in evidence gathering.

The main advantages of following RIPA is that surveillance authorised under it by a duly designated Authorising Officer of the Authority shall be lawful if:-

- a) An authorisation confers an entitlement to engage in that conduct on the person whose conduct it is and,
- b) His/her conduct is in accordance with the authorisation.

This will assist in any challenges to cases brought by or against the Council in court.

In effect it provides a lawful authority and regulatory framework for interference by a public body with an individual's human rights and privacy.

The Council has for a number of years carried out surveillance utilising the RIPA regime, whereby authorisations have been granted to appropriately trained officers by Authorising Officers who have been duly authorised to act as such by the Authority.

In the case of investigations carried out by the Authority's Trading Standards Department it has been the practise that any RIPA authorisations sought were issued by the Head of Service with managerial responsibility for Trading Standards. Until recently the Authorising Officer for that department was the Head of Housing and Public Protection; however due to a change in managerial responsibilities within the Authority the Trading Standards functions are now the responsibility of Mrs. Angela Thomas the Head of Business Strategy and Public Protection. At the present time, whilst the Head of Business Strategy and Public Protection has received satisfactory training in the RIPA legislation to enable her to carry out the functions of an Authorising Officer, she has not been authorised to act in that capacity by the Authority. Consequently she is unable to grant authorisations to her Trading Standards Officers, who are having to obtain their authorisations from other Authorising Officers in the Authority. The Authority's Head of Legal & Democratic Services, who has oversight responsibilities for RIPA within the Authority, therefore considers that it would be appropriate for Mrs. Thomas to be designated to act as a RIPA Authorising Officer within the Authority, thereby becoming responsible for deciding whether or not authorisations sought by her officers should be granted.

- 2.2 In addition to regulating surveillance by local authorities the Regulation of Investigatory Powers Act also controls, amongst other things, the Acquisition and Disclosure of Communications Data (such as information about the use of postal or telephone services by individuals). Due to the potential risk of infringement of individuals' human rights, the Act requires such activities to be controlled by persons of appropriate rank within the organisation (known as "Designated Persons").

In Neath Port Talbot those officers within the Authority who are appointed as Authorising Officers for RIPA surveillance also act as Designated Persons for the purposes of acquiring Communications Data. It is therefore considered appropriate that Mrs. Angela Thomas, Head of Business Strategy and Public Protection, should therefore be designated by the Authority to act as a Designated Person for the purposes of acquiring Communications Data.

- 2.3 The processes for the Acquisition of Communications Data have been in place in the Authority for a number of years and are audited periodically by the Interception of Communications Commissioners (IOCCO) to ensure compliance with the provisions of RIPA and the associated Statutory Code of Practice on the acquisition and disclosure of Communications Data.

The Authority was audited by IOCCO in October, as a result of which some action points were put forward to the Authority in relation to best practise which included the appointment of a “Senior Responsible Officer” to oversee the acquisition and disclosure of Communications Data by the Authority.

The Code of Practice on the Acquisition and Disclosure of Communications Data requires the Council as best practice to appoint a Senior Responsible Officer (SRO). This person is responsible for:

- The integrity of the processes in place within the authority to acquire Communications Data.
- Compliance with Chapter II of Part I of the Act and with the Code of Practice.
- Oversight of the reporting errors to IOCCO and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors.
- Engagement with the IOCCO inspectors when they conduct their inspections, and
- Where necessary, overseeing the implementation of post-inspection action plans approved by the Commissioner.

Legislative controls require the Senior Responsible Officer to hold the office, rank or position of “Designated Person”.

The IOCCO inspector felt that in view of the fact that most applications for the Acquisition of Communications Data emanate from the Trading Standards Department it was appropriate that the role of the Senior Responsible Officer should be undertaken by the Head of Service for that Department provided that she had been authorised to act as a “Designated Person” by the Authority.

3. **RECOMMENDATIONS**

3.1 Cabinet Committee authorises Mrs. Angela Thomas, Head of Business Strategy and Public Protection to act as an “Authorising Officer” under RIPA for covert surveillance purposes (i.e. directed surveillance and the use of Covert Human Intelligence Sources).

3.2 Cabinet Committee authorises Mrs. Angela Thomas, Head of Business Strategy and Public Protection to act as a “Designated Person” for the purposes of the Acquisition and Disclosure of Communications Data under RIPA.

3.3 Cabinet Committee appoints Mrs. Angela Thomas, Head of Business Strategy and Public Protection to act as the “Senior Responsible Officer” for the purpose of the Acquisition and Disclosure of Communications Data under RIPA.

4. **REASON FOR PROPOSED DECISIONS**

To make appropriate arrangements for the discharge of responsibilities under RIPA.

5. **LIST OF BACKGROUND PAPERS**

None

6. **WARDS AFFECTED**

All

7. **OFFICER CONTACT**

Mr. David Michael – Principal Solicitor and Monitoring Officer.
E-mail: d.michael@npt.gov.uk. Tel: 01639 763368

Mr. Paul Watkins – Solicitor
E-mail: p.watkins1@npt.gov.uk Tel: 01639 763761

COMPLIANCE STATEMENT

DESIGNATION OF AUTHORISING OFFICER AND A DESIGNATED PERSON FOR THE PURPOSES OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000 [“RIPA”].

(a) **Implementation of Decision**

The decision is proposed for implementation after the 3 day call-in period.

(b) **Sustainability Appraisal**

Community Plan Impacts:

Economic Prosperity	No impact
Education and Lifelong Learning	No impact
Better Health and Well Being	No impact
Environment and Transport	No impact
Crime and Disorder	Positive

Other Impacts:

Welsh Language	No impact
Sustainable Development	No impact
Equalities	No impact
Social Inclusion	No impact

(c) **Consultation**

There has been no requirement under the Constitution for external consultation on this item.