

Report to Cabinet

Subject: Regulation of Investigatory Powers Act 2000 (RIPA) Annual Audit and Update

Date: 7th December 2017

Author: Director of Organisational Development and Democratic Services

Wards Affected

Not applicable

Purpose of the Report

To update Members in relation to the Council's use of powers under the Regulation of Investigatory Powers Act 2000 (RIPA) from April 2016 – March 2017, in accordance with the policy.

Key Decision

This is not a Key Decision.

Background

- 1.1 Under the Regulation of Investigatory Powers Act 2000 (RIPA) local authorities have the power to authorise directed surveillance (usually covert cameras or covert observations by officers) and the use of Covert Human Intelligence Sources (CHIS) (essentially undercover officers conducting surveillance) if the authorisation is necessary for the prevention and detection of crime or preventing disorder and if the surveillance is proportionate to the aims it seeks to achieve. In respect of directed surveillance, save for a small number of licensing offences, any crime or disorder being prevented or detected using RIPA must be a criminal offence which attracts a minimum of 6 months in custody, the so-called "serious crime" threshold. The authorisations under RIPA can only be given by Directors or the Chief Executive, and the entire process is overseen by the Director of Organisational Development and Democratic Services as the Senior Responsible Officer for RIPA (SRO) with

assistance from the RIPA Co-ordinating Officer, the Service Manager for Legal Services. Since 1st November 2012, any RIPA authorisations or renewals must also have judicial approval from a Justice of the Peace. This is done at the Nottingham Magistrates' Court.

- 1.2 The Council's RIPA process is subject to intense scrutiny and roughly every three years, the Council is inspected by the OSC to ensure that its RIPA processes, procedures, policies and practices are sound. The Council was inspected by an Inspector from the OSC on 18th April 2016. The Inspector concluded that Gedling Borough Council is a good performing Council. The recommendations made by the Inspector following the inspection were reported to Cabinet on 4th August 2016.
- 1.3 As part of the Council's RIPA policy, members are required to consider and review the Council's use of RIPA powers and its policy and guidance at least once a year. Cabinet last received a report in August 2016 in relation to RIPA usage and powers. There is also a requirement under the policy that internal reporting to members is done throughout the year to update on RIPA usage. The Council's RIPA Co-ordinating officer provides updates throughout the year to the Portfolio Holder for Public protection in relation to the Council's RIPA usage.

Internal Audit

- 1.6 In addition to the external inspection by the OSC, the RIPA Co-ordinating officer also carries out annual audits of RIPA usage. In 2016-17 there were no authorisations given for directed surveillance or the use of covert human intelligence sources.
- 1.7 Whilst the Council's use of RIPA powers has declined, there are offences which the Council investigate, for example fly-tipping offences which do cross the serious crime threshold and officers can still use the RIPA powers in certain circumstances for such investigations where it is necessary and proportionate to do so.
- 1.8 Even where the Council's current RIPA usage is low, it is still essential that the Council keep the RIPA processes and procedures under close scrutiny. The Council will continue to be subject to inspection in relation to its use of the powers by the OSC and as such the Council's policy, processes, training and review of RIPA usage must continue to ensure our processes remain fit for purpose.

Training

- 1.8 As part of the Council's RIPA policy, and to ensure authorising officers and investigating officers keep up to date and knowledgeable in respect of RIPA powers, officers receive annual training in relation to RIPA. In March 2017 authorising officers, investigating officers and the Portfolio Holder for Public Protection received RIPA training from an external trainer. The training was a useful update and provided some interesting discussion around the use of surveillance in investigations and the necessity for RIPA authorisations when surveillance is carried out through the use of social media, for example repeated surveillance of open source sites such as Facebook, where no privacy settings are applied. Whilst one look on an individual's Facebook page as part of an investigation would not be classed as surveillance, repeated checks of the site to establish information about an individual in relation to an investigation is likely to require authorisation under RIPA.

Social Media and RIPA

- 1.9 The use of social media as part of investigations is something that the OSC have highlighted as an area of concern. In March 2017, the OSC wrote to all local authorities suggesting that they carry out an internal audit of the use of social media and the internet for investigations and official business. Whilst using the internet as a one off, as part of information gathering on an individual will not necessarily amount to surveillance, as explained above, repeated use of the internet and social media sites to gather information about an individual in relation to a particular issue, may amount to surveillance. In addition, if the individual is unaware that the information is being accessed repeatedly as part of an investigation or otherwise, the surveillance is likely to be covert.
- 1.10 If covert surveillance is taking place of an individual, and the investigation relates to a crime which passes the serious crime threshold then a RIPA authorisation should be obtained. If the covert surveillance is in relation to an issue which does not pass the serious crime threshold, for example debt recovery, the protection of a RIPA authorisation cannot be obtained. In those circumstances, consideration needs to be given as to whether it is necessary and proportionate to essentially interfere with an individual's right to privacy for the purposes of debt recovery. Article 8 of the Human Rights Act 1998 – a person's right to respect for their private and family life, home and correspondence, is a qualified right which a local authority can "interfere" with if it is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The threshold for such interference is high, essentially an authorisation under RIPA demonstrates that the interference with an individual's human rights satisfies the terms of the qualification, so it is necessary, and in relation to

local authorities, the only ground on which an authorisation can be given is that it is necessary for the prevention and detection of crime. A RIPA authorisation therefore essentially deems the interference with the right lawful. Without such an authorisation, any activity which interferes with an individual's human rights may not be considered to be lawful. As such, local authorities need to be cautious about using the internet or social media sites in this way. The OSC have made it clear that even though the sites may be open source and the individuals may not have certain privacy settings in place, that does not mean they are consenting to surveillance being carried out on them.

- 1.11 In accordance with the OSC's proposals, an internal audit has been undertaken of all departments to establish their use of the internet and social media for investigation and Council business. Whilst many departments confirmed they do use the internet as part of their business, there is no use of the internet, according to the audit results, which would amount to surveillance. Those departments which have investigatory powers as part of their business, for example public protection may use social media and the internet as part of an investigation but this tends to be one off checks to gather information, a "drive by" rather than repeated use on each case. Officers in this section are trained in RIPA and have been advised to seek legal advice if they feel surveillance will be required as part of an investigation.
- 1.12 Another way in which social media may be used as an investigative tool is if for example, a Council officer, as part of an investigation created a Facebook page pretending to be an individual in order to establish a relationship with a perpetrator for the purposes of gathering information relating to an offence. Such activity is known as using a covert human intelligence source (CHIS). Authorisation for use of a CHIS can be given under RIPA. The results of the audit revealed that no such activity is being undertaken within the Council. Again, those departments who may wish to use such an investigative technique are fully aware of the RIPA powers and are also advised to seek legal advice before undertaking such activity.
- 1.13 It is important that RIPA awareness is maintained throughout the organisation even if authorisations are not being obtained. The Senior Responsible Officer and RIPA Co-ordinator will continue to monitor, review and report on RIPA usage in line with the legislation and the Council's policy.

Proposal

- 2.1 Following the audit, and consideration of the Council's policy, it is proposed that no changes are required to the policy document at this time

and that members therefore note the details of the work that has been undertaken in respect of RIPA outlined in this report.

Alternative Options

- 3.1 An alternative option is that Members do not receive and consider feedback in respect of the RIPA audits and activity. This would go against the Council's RIPA Policy which requires annual review of the Council's Policy and procedure by Members. This would also be contrary to recommendations from the OSC.
- 3.2 Members could choose to recommend amendments to the RIPA Policy or processes. However, having reviewed the policy and processes, it does remain fit for purpose in its current form.

Financial Implications

None arising from this report.

Appendices

None

Background Papers

None identified.

Recommendation

THAT:

- (a) Members note the contents of the report.

Reasons for Recommendation

- (a) To ensure the Executive is updated in respect of the Council's use of RIPA in line with the Council's current RIPA Policy document.
- (b) To ensure the Executive is updated in relation to scrutiny of the Council's RIPA processes and procedures.