

Report to Cabinet

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

Date: 11th October 2018

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 2017 – March 2018, and seek approval for updates to the Council's RIPA policy and procedure in line with the new RIPA Codes of Practice for Covert Surveillance and Covert Human Intelligence Sources.

Key Decision

This is not a Key Decision.

Background

- 1.1 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 December 2017 in relation to RIPA usage and powers for 16/17. 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. This report provides members with an update on the Council's use of RIPA powers in 2017/18 and information on the new RIPA Codes of Practice issued by the Secretary of State in August 2018, as well as proposing changes to the

Council's RIPA policy in line with the new Codes to ensure the policy remains fit for purpose.

- 1.2 Under 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 and tobacco 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.
- 1.3 The Council's RIPA process is subject to intense scrutiny and roughly every three years, the Council has been inspected by the Office of the Surveillance Commissioner ("OSC") to ensure that its RIPA processes, procedures, policies and practices are sound. The Council was last 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.
- 1.4 Since September 2017 there have been a number of changes made to the OSC, the body who previously oversaw local authority compliance with RIPA. The Investigatory Powers Act 2016, established the role of the Investigatory Powers Commissioner (IPC) who has now taken over responsibility for the Council's external RIPA audits. Whilst audits will still occur every three years, with the next one expected in 2019, the process for audits has changed. Historically, the Council were visited by an Inspector and a hands on approach was taken, with the Inspector interviewing authorising officers and often touring the CCTV unit. Given that the Council has historically received positive reports following inspection, the process for next year's inspection is likely to be a paper based one. The IPC will review the Council's policy documents and training records through a desk top, lighter touch inspection. A report will then be issued with any recommendations in the usual way.

- 1.5 In addition to the external inspection by the OSC/IPC, the RIPA Co-ordinating officer also carries out annual audits of RIPA usage. In 2017-18 there were no authorisations given for directed surveillance or the use of covert human intelligence sources.
- 1.6 Whilst the Council's use of RIPA powers has declined since the introduction of the serious crime threshold, there are offences which the Council investigate, for example serious 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. The Council have never utilised CHISs historically, however the Council's policy still contains guidance on CHIS and officers still receive training on the use of CHIS as an investigative tool.
- 1.7 Even though the Council has not obtained any authorisations under RIPA in 17/18, 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 IPC and as such the Council's policy, processes, training and review of RIPA usage must continue, to ensure our processes remain fit for purpose. In addition, the new Codes of Practice for directed surveillance and CHIS make it clear that the Council must consider and review its policy and processes annually.

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. In March 2018, the RIPA Co-ordinator organised training for RIPA representatives throughout Nottinghamshire and Derbyshire on the new (at that point proposed) RIPA Codes of Practice. Gedling takes the lead for the Nottinghamshire and Derbyshire RIPA working group and the training, delivered by the RIPA specialist at Nottingham City Council was a useful update on changes to the Codes. Authorities are now looking at their policies to ensure they remain in line with the newly issued Codes. Training on the Codes of Practice which were issued in August 2018 will be provided to authorising and investigating officers in the Council later this year.

New Codes of Practice and Policy Review

- 1.9 The new Codes of Practice (“the Codes”) are issued pursuant to s.71 of RIPA. They replace previous Codes issued in December 2014 in respect of covert surveillance and the use of CHIS. The Codes reflect various changes introduced by the Investigatory Powers Act 2016, in particular reflecting the role of the new Investigatory Powers Commissioner. The Codes are admissible as evidence in criminal and civil proceedings and authorities may be required to justify, with regard to these codes, why authorisations for directed surveillance or CHIS have been given. For this reason, the Codes will form appendices to the Council’s policy document, if approved. The Codes can be accessed via a link in the policy document.
- 1.10 The Codes reflect a change in the surveillance landscape with an increased use of social media and the internet as part of the investigative process. The Codes seek to provide clarification as to when an authorisation for directed surveillance or CHIS might be necessary in the context of online investigations, this is something the OSC previously provided guidance on and the Council’s policy was updated following the last inspection in 2016 in respect of online surveillance and CHIS usage. The policy has been updated further to reflect the more specific guidance in the Codes in relation to the use of the internet and social media for investigations. The Codes provide clear examples of when an authorisation for directed surveillance would be required for online investigations. It also provides examples of when an online relationship would require a CHIS authorisation. Essentially, where a public authority is systematically collecting and recording information about an individual or particular group, a directed surveillance authorisation should be obtained. Where Council officers create an online profile under a pseudonym and use that profile to establish a relationship with an individual in order to gather material for an investigation, a CHIS authorisation is likely to be required.
- 1.11 In addition to the clarification around online investigations, the policy document has been updated to reflect the introduction of the IPC as a replacement to the OSC. In terms of complaints in relation to RIPA usage, or contraventions of RIPA, the Investigatory Powers Tribunal is still the responsible body, this has not changed from the previous Codes of Practice.
- 1.12 The Codes also provide more detail on collaborative working, so for example when the Police obtain a RIPA authorisation for directed surveillance using the Council’s CCTV cameras. The Council already has a process in place for dealing with such requests and this process has

been inspected previously by the OSC. The policy has been refreshed to specifically mention such instances of collaborative working.

- 1.13 The definitions in respect of activities under RIPA remain largely unchanged in the Codes. The Codes, and as a result the policy, have been amended however to include reference to the new data protection legislation in respect of the retention of records and personal data handling.
- 1.14 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. All the proposed amendments to the policy can be seen as tracked changes in Appendix 2 to this report.

Proposal

- 2.1 It is proposed that members note the contents of this report.
- 2.2 It is proposed that members approve the updated RIPA policy at appendix 1 to this report which has been updated to reflect the new RIPA Codes of Practice for Covert Surveillance and CHIS, to ensure that the Council's policy and procedure remain fit for purpose.

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 the new Codes of Practice.
- 3.2 Members could choose not to approve amendments to the RIPA Policy. However, having reviewed the policy in line with the new Codes of Practice, the amendments have been made to ensure the document remains up to date and fit for purpose.

Financial Implications

None arising from this report.

Appendices

Appendix 1 – Gedling Borough Council's Regulation of Investigatory Powers Act 2000 amended policy document

Appendix 2 – Gedling Borough Council’s Regulation of Investigatory Powers Act 2000 policy document showing tracked changes

Background Papers

None identified.

Recommendation

THAT Cabinet:

- (a) notes the contents of the report.
- (b) approves the updated RIPA policy document at appendix 1 to this 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 Council’s policy document remains up to date and fit for purpose.