

Report to Cabinet

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

Date: 1 August 2019

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Wards Affected

Borough-wide.

Purpose

The purpose of this report is to:

- Update Members as to the Council's use of powers under RIPA from 1st April 2018 to 31st March 2019 in line with the Council's RIPA Policy.

Key Decision

This is not a key decision.

Recommendation

THAT:

- 1) Cabinet notes the contents of this report.**

1 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 October 2018 in relation to RIPA usage and powers for 2017/18. 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 when necessary throughout the year to the Portfolio Holder for Public Protection in relation to the Council's RIPA usage.

- 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”), now the Investigatory Powers Commissioner (“IPC”), 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 Council are therefore due an inspection by the IPC sometime later this year. Following the last inspection, 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. It is expected the next inspection will involve a paper based exercise, where details of the Council’s policy, training and register of authorisations will be sent to the IPC for consideration, rather than an Inspector physically visiting the Council, as has historically been the case.
- 1.4 A full review of the Council’s policy document was undertaken in September 2018 following the publication of the Home Office Codes of Practice for directed surveillance and CHIS in August 2018. In October 2018, Cabinet approved some amendments to the Council’s RIPA policy to reflect changes brought in by the Codes. The policy remains fit for purpose and does not require further updating at this time.
- 1.5 In addition to the external audit by the IPC, the RIPA co-ordinating officer undertakes an annual audit of RIPA usage throughout the Council. There has been no authorisations given for directed surveillance or the use of covert human intelligence sources in the year

2018/19.

- 1.6 Despite the lack of authorisations in 18/19, in order to ensure officers remain knowledgeable around RIPA and to ensure that officers are not falling foul of RIPA provisions, RIPA training was delivered to authorising officers and investigating officer in March 2019. CCTV operatives working in the CCTV control room also attended the training. Officers were updated on the new codes of practice and given specific examples of when RIPA would and wouldn't apply.
- 1.7 In April 2019, the Nottinghamshire and Derbyshire District RIPA Working Group met at Gedling to discuss common issues and share best practice. Some useful practices have been developed by other authorities to deal with directed surveillance in non-criminal situations, for example monitoring anti-social behaviour, which doesn't necessarily pass the criminal threshold. From this discussion, the co-ordinating officer will be putting information on the staff intranet to raise awareness of RIPA and the tests to apply when surveillance is being considered as an investigatory tool but does not meet the "serious crime" threshold.
- 1.8 It is still essential, whatever the level of RIPA usage, that the Council keeps 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.

2 Proposal

- 2.1 It is proposed that members note the contents of this report. Any results of an inspection in 2019 will be reported to Cabinet in the 19/20 annual report and to the Portfolio Holder through quarterly reporting.

3 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 Home Office Codes of Practice.

4 Financial Implications

4.1 There are no financial implications arising from this report.

5 Appendices

5.1 None

6 Background Papers

6.1 None

7 Reasons for Recommendations

7.1 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.