

## **Report to Cabinet**

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

**Date:** 8 October 2020

**Author:** Director of Organisational Development and Democratic Services

### **Wards Affected**

All wards

### **Purpose**

To update Members as to the Council's use of powers under RIPA from 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020 in line with the Council's RIPA policy, and to seek approval for amendments to the Council's RIPA policy following advice from the Inspector from the Investigatory Powers Commissioner's Office.

### **Key Decision**

This is not a key decision.

### **Recommendation(s)**

#### **THAT Cabinet:**

- 1) Notes the contents of this report; and**
- 2) Approves amendments to the Council's Regulation of Investigatory Powers Act 2000 Policy document at Appendix 1.**

## **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 August 2019 in relation to RIPA usage and powers for 2018/19. At this time, no changes

were recommended to the Council's policy document.

- 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 1<sup>st</sup> 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 processes and procedures come under regular scrutiny. Each year, the RIPA co-ordinating officer undertakes an audit of RIPA usage. There has been no authorisations given for directed surveillance or the use of covert human intelligence sources in the year 2019/20.
- 1.4 In addition to monitoring RIPA usage, the SRO is required, in line with the Council's policy, to ensure refresher training on RIPA is available to officers on an annual basis. The last RIPA training was delivered in March 2019. Training for 2020 has been delayed due to Covid-19 restrictions, however, officers are currently investigating ways to deliver training via a digital platform for this year.
- 1.5 In addition to the internal annual audit, annual policy review and reports to Cabinet, the Council is also subject to external inspection by the Investigatory Powers Commissioner's Office (IPCO). These inspections are undertaken roughly every 3 years. The last inspection reported to Cabinet was conducted in 2016, when the Council were visited by an Inspector from the then Office of the Surveillance Commissioner. The inspection was very thorough and involved inspection of the Council's policy, training material, central record of authorisations and CCTV room. The Inspector also interviewed members of staff including the RIPA co-ordinator and authorising officers. The inspection was positive and the Council were commended for their compliance.

- 1.6 Given the drop in RIPA authorisations by local authorities generally since 2012, following the introduction of the serious crime threshold, the inspection regime now adopted by IPCO is more of a desk top exercise, with physical inspections only occurring where concerns about compliance with RIPA are found. The Council was subject to a remote inspection by IPCO during April 2020. No formal recommendations were made as a result of that inspection, and the Inspector was satisfied that all recommendations from the 2016 inspection had been discharged. The Inspector acknowledged that there had been no use of RIPA powers by the Council since 2015, but was reassured that the Council was still taking its responsibilities under RIPA seriously, and that the Council's policy document underwent thorough review in 2018 and 2019. The Inspector was complimentary about the level of knowledge in relation to RIPA around the organisation, particularly around the use of social media as an investigative tool and the RIPA risks associated with this. The Inspector was satisfied that training was being delivered to staff in respect of RIPA and appreciated the current difficulties in training delivery due to Covid-19. The Inspector's report was positive and concluded that the level of compliance demonstrated by the Council removed the requirement for a physical inspection.
- 1.7 Whilst no formal recommendations were made, the Inspector advised that the Council's policy should be updated to reflect an increase in the length of authorisations for juvenile covert human intelligence sources from one month to four. The Council does not generally authorise the use of covert human intelligence sources and has certainly never authorised the use of a juvenile as a covert human intelligence source, however, for accuracy, the change to the policy to reflect this is proposed as part of this report.
- 1.8 The Inspector also suggested that in respect of retention and destruction of data or material obtained as a result of a RIPA authorisation (the actual evidential material gathered), the Council needs to ensure that there is a clear audit trail, and advised that review and destruction dates should be added to the Council's central register of authorisations. This has now been referenced in the policy at Appendix 1 to reflect the Inspector's suggestion.
- 1.9 Finally, in terms of the inspection, the Inspector has urged the Council to register with the National Anti-Fraud network (NAFN) for the purposes of obtaining communications data. Communications data includes data from the DVLA, Equifax and a number of other financial/fraud check organisations. Historically, when the Council investigated benefit fraud, registration with NAFN was maintained, however, this ceased some time ago. Communications data has never previously been required by the Council as part of its regulatory and investigatory work, however further investigation into this suggestion by the Inspector will be undertaken by

officers.

- 1.10 The Council continues to chair meetings of the Nottinghamshire and Derbyshire District RIPA working group and this provides the opportunity to share best practice in relation to RIPA usage and share training opportunities and knowledge. The group aims to meet at least twice a year and is another mechanism by which the Council ensures that compliance with RIPA is maintained and knowledge is kept up to date.
- 1.11 It is important that information about RIPA and covert surveillance is disseminated to staff to maintain awareness between training sessions, and the RIPA co-ordinating officer will continue to update officers and members with any key developments in this area. Work will also be undertaken to ensure that RIPA is included on the Council's intranet page so officers can ensure knowledge is maintained.

## **2 Proposal**

- 2.1 It is proposed that Members note the detail in this report in relation to the Council's use of RIPA, and the positive comments from the Inspector following the recent IPCO inspection.
- 2.2 It is proposed that the amended RIPA policy at Appendix 1 be approved. This policy has been updated to reflect the suggestions of the Inspector and now includes reference to a 4 month authorisation period for juvenile covert human intelligence sources, as well as including a review and destruction date for RIPA material obtained through a RIPA authorisation on the Council's central register of authorisations.

## **3 Alternative Options**

- 3.1 Members could determine not to approve the amended policy document or propose alternative amendments, however, the policy document was deemed fit for purpose by the Inspector from IPCO, and any suggestions for amendment have come from that inspection so are considered to be necessary.

## **4 Financial Implications**

- 4.1 There are no financial implications arising from this report.

## **5 Legal Implications**

- 5.1 Where the Council wishes to carry out covert surveillance in relation to an investigation, compliance with RIPA ensures that any such surveillance is properly authorised and full consideration is given to its necessity and proportionality. Where covert surveillance is conducted under a RIPA authorisation, this provides a potential defence to any claim that the

surveillance amounted to a breach of the individual's right to privacy under the Human Rights Act 1998. Whilst RIPA authorisations are limited to specific circumstances for local authorities, local authorities must still maintain appropriate processes and procedures to demonstrate compliance with RIPA, this includes ensuring that an appropriate policy document is maintained.

## **6 Equalities Implications**

6.1 There are no equalities implications arising directly out of this report.

## **7 Carbon Reduction/Sustainability Implications**

7.1 There are no carbon reduction/sustainability implications arising out of this report.

## **8 Appendices**

8.1 Appendix 1 – Gedling Borough Council's Regulation of Investigatory Powers Act 2000 Policy

## **9 Background Papers**

9.1 None

## **10 Reasons for Recommendations**

10.1 To update Members in line with the Council's RIPA policy

10.2 To ensure that the Council's RIPA policy remains fit for purpose.

### **Statutory Officer approval**

**Approved by:**

**Date: 22/9/20**

**On behalf of the Chief Financial Officer**

**Approved by:**

**Date: 22/9/20**

**On behalf of the Monitoring Officer**