

Report to Cabinet

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

Date: 7 August 2014

Author: Council Solicitor and Monitoring Officer

Wards Affected

Not applicable

Purpose of the Report

To inform Members of the annual audit of RIPA authorisations from April 2013 – March 2014, in accordance with the current 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 by 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 Corporate Directors or the Chief Executive and the entire process is overseen by the Council Solicitor and Monitoring Officer as the Senior Responsible Officer for RIPA (SRO) with assistance from the RIPA Co-ordinating Officer. 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 every three years the Council is inspected by the Office of the Surveillance Commissioner. The Council was last inspected on 6th September 2012. The Inspector produced a very favourable report and commended the Council on its "sound RIPA structure, good policies and procedures and high standard of authorisation paperwork." The outcome of this inspection was reported to Cabinet in November 2012.

1.3 The current RIPA Policy and Procedure document was approved by Cabinet, on 8th November 2012. The Policy states;

Elected members of the Council will review the authority's use of the 2000 Act and the Authority's Policy and Guidance documents at least once a year. They will also consider internal reports on the use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy is fit for purpose. The members will not however be involved in making decisions on specific authorisations.

In line with this clause, annual reports on RIPA are produced to Cabinet and quarterly reports should also be made to the Portfolio Holder for Communications and Public Protection as the majority of RIPA usage historically fell under the remit of this Portfolio. In reality from April 2013-February 2014 the Council did not utilise its powers under RIPA at all, so quarterly reports on RIPA usage were not provided to the Portfolio Holder every quarter.

1.4 The RIPA process is audited internally every year by the SRO. A full internal audit of the Council's use of RIPA between April 2013 and March 2014 at the financial year end has been undertaken and the findings are summarised within the Proposal section of this report.

1.5 There have been no changes to RIPA or any secondary legislation introduced from 2013-2014 which would have any implications for this Authority's use of its powers under RIPA. As such, the current RIPA Policy and Procedure document approved by Cabinet on 8th November 2012 remains fit for purpose.

Proposal

It is proposed that Members consider the findings outlined below following the internal audit of the RIPA process for the year 2013-2014:

2.1 There have been 5 authorisations granted for Directed Surveillance under RIPA between April 2013 and March 2014. All five of these authorisations

were given in the last quarter of the financial year. As of 31st March 2014 there was one authorisation still on going, this was cancelled on 24th April 2014. All applications related to Directed Surveillance, there were no authorisations of Covert Human Intelligence Sources (CHIS). All authorisations for directed surveillance under RIPA last for a period of 3 months from the date of approval by the Magistrates. Authorisations should be reviewed on at least monthly basis and should be cancelled as soon as it is apparent that surveillance is no longer necessary or proportionate.

- 2.2 All of the applications for authorisation were from Revenues Services and involved officers carrying out covert observations for investigations into Benefit Fraud Offences, namely allegations of individuals failing to declare a partner at the claim address. The authorisations were all authorised by Mark Kimberley and subsequently approved by a Justice of the Peace at the Nottingham Magistrates' Court on 13th February 2014. Offences in respect of Benefit Fraud prosecuted under s.111A of the Social Security Administration Act 1992 can attract a custodial sentence in excess of 6 months and thereby pass the serious crime threshold for directed surveillance to be carried out under RIPA.
- 2.3 Four of the authorisations were reviewed after one month and surveillance was authorised to continue by Mark Kimberley. The other authorisation was cancelled by Mark Kimberley, before review, after one month, as surveillance was no longer necessary or proportionate. The outstanding four authorisations were all subsequently cancelled well within the 3 month authorisation period. Three were cancelled by Mark Kimberley and one by Dave Wakelin.
- 2.4 There have been no authorisations coming forward from Public Protection in respect of anti-social behaviour since the legislative changes on 1st November 2012. The "serious crime threshold" has restricted the Council's ability to utilise RIPA in cases involving anti-social behaviour and historically this type of application has formed the bulk of the authorisations given.
- 2.5 In terms of the authorisation paperwork, the standard remains high. The detail in the authorisations in respect of necessity and proportionality and covert techniques is commendable. Similarly at review, the justification for continued surveillance was detailed and evidentially sound.
- 2.6 There were some minor errors on the authorisation forms in relation to expiry dates. This is largely due to the fact that historically the authorising officer would give the expiry date, but now, the authorisation does not start until approved by the Justice of the Peace, so the authorising officer will not necessarily know at the point of signing the authorisation when the

authorisation will start and expire.

- 2.7 The cancellations of the authorisations were detailed but more detail could have been included in relation to what product was actually obtained from the surveillance and how the product would be kept secure and utilised.
- 2.8 All officers involved in the RIPA process received training in March 2013. Training will be delivered again in this financial year to officers, to ensure that practices and procedures remain of a high standard. Any minor issues in respect of paperwork for RIPA authorisations will be addressed through this training.

Alternative Options

3. The alternative option is that Members do not receive and consider feedback in respect of the RIPA Policies and Procedures. This would go against the Council's current RIPA Policy which requires annual review of the Council's Policy and procedure by Members. This process of annual review by Members came into being as a result of recommendations in the Home Office Codes of Practice for RIPA which suggested greater input from Members in terms of the RIPA process and procedures (not the authorisation of surveillance) and more of a consultative approach with Members.

Financial Implications

4. None arising from this report. Applications to the Magistrates' Court for RIPA authorisation do not attract a fee, the only cost considerations are officer time but this is minimal as there are not a significant number of authorisations.

Appendices

5. None.

Background Papers

6. None identified.

Recommendation

THAT Cabinet notes the contents of the report.

Reasons for Recommendations

7. To ensure the Executive is updated in respect of the Council's use of RIPA and any changes to Policy and Procedure in line with the Council's current RIPA Policy document.

