

## **Report to Cabinet**

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

**Date:** 30 July 2015

**Author:** Council Solicitor and Monitoring Officer

### **Wards Affected**

Not applicable

### **Purpose of the Report**

To obtain approval for amendments to the Council's RIPA Policy following the introduction of new Home Office Codes of Practice in December 2014.

To inform Members of the findings of the annual internal audit of RIPA authorisations from April 2014 – March 2015, 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 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 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.

- 1.2 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 6<sup>th</sup> 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 8<sup>th</sup> 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 Public Protection. From April 2014 – March 2015 there was no RIPA activity in the first two quarters of the year so no report to the Portfolio Holder was necessary. A report was given to the Portfolio Holder in January 2015 with an update of RIPA usage in the third quarter of the year; the details of RIPA usage for the final quarter of the year are contained within this report.

- 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 2014 and March 2015 has been undertaken and the findings are summarised below.
- 1.5 In addition to the requirement that Members be updated annually as to RIPA usage the Policy also requires officers involved in the RIPA process to receive refresher training once a year in respect of RIPA. On 18<sup>th</sup> March 2015, Gedling Borough Council hosted a county wide RIPA training day for officers of the Council and other Local Authorities across Nottinghamshire and Derbyshire. The training was presented by Naomi Matthews, Criminal Specialist in Legal for Nottingham City Council who is also the RIPA Co-ordinating Officer for Nottingham City Council. The training was well attended by both investigating and authorising officers.

- 1.6 In December 2014, the Home Office issued new Codes of Practice in relation to RIPA. As a result of the new Codes, the RIPA Co-ordinating Officer carried out a review of the Council's RIPA Policy and Procedure document. In addition to appending the new Codes of Practice to the Policy, the Policy has been amended to reflect the increased use of social media sites as an investigatory tool. The Office of the Surveillance Commissioner has indicated to authorities that this is an area which has developed significantly since the introduction of RIPA in 2000. It is important that organisations using sites such as Facebook to conduct investigations understand the potential interference with an individual's human rights when accessing private information or forming covert relationships with suspects through Facebook. Whilst not every review of a Facebook account, where there are no privacy settings in place will require an authorisation under RIPA, repeated viewing of such accounts may still require an authorisation if it amounts to directed surveillance. If officers are forming covert relationships with individuals on Facebook by, for example, making "friend requests" under a false identity, this could be a CHIS situation and again, the appropriate authorisation under RIPA should be sought. In the amended Policy officers are advised to contact Legal Services when using social media sites as part of an investigation.
- 1.7 Additional changes have been made to the Policy document clarifying the roles of the Senior Responsible Officer and RIPA Co-ordinating Officer, and the explanation in relation to the use of CHIS has been expanded.
- 1.8 The Policy document was originally drafted in consultation with other local authorities through the RIPA District Working Group. However, over the years individual authorities have amended their Policy document following different recommendations from different Inspectors. During this review, the RIPA Co-ordinating Officer has liaised with other authorities in the working group to try and ensure some consistency remains through the Policy across authorities.

## **Proposal**

- 2.1 It is proposed that Members approve the updated RIPA Policy at Appendix A to ensure the Council's RIPA Policy remains up to date and fit for purpose.
- 2.2 It is also proposed that Members consider the findings outlined below following the internal audit of the RIPA process for the year 2014-2015:
- 2.3 There have been 4 authorisations granted for Directed Surveillance under RIPA between April 2014 and March 2015. All four of these authorisations were approved by a Justice of the Peace on 2<sup>nd</sup> October 2014. There were

no authorisations of Covert Human Intelligence Sources (CHIS) between April 2014 and March 2015. 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 a monthly basis and should be cancelled as soon as it is apparent that surveillance is no longer necessary or proportionate.

- 2.4 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 originally authorised by Mark Kimberley prior to the Justice of the Peace approval. 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.
- 2.5 Two of the authorisations were reviewed after one month and surveillance was authorised to continue by Dave Wakelin, they were subsequently cancelled within the three month authorisation period by Mark Kimberley. Two authorisations were cancelled by Dave Wakelin, before review, after one month, as surveillance was no longer necessary or proportionate.
- 2.6 There have been no authorisations coming forward from Public Protection in respect of anti-social behaviour since the legislative changes on 1<sup>st</sup> 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.
- 2.7 In terms of the authorisation paperwork, the standard remains high, there has been an improvement since last year in that authorising officers are always inserting review dates on authorisation forms and carrying out reviews regularly when required. 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.
- 2.8 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.

- 2.9 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. This point was covered in the training officers received in March 2015.
- 2.10 At the time of writing the report and since the end of March 2015 there have been three further authorisations for directed surveillance. Again the investigations were in respect of benefit fraud offences. All three have now been cancelled; the details of those authorisations will be covered in next year's audit.

### **Alternative Options**

- 3.1 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 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.
- 3.2 Members could choose not to approve the amendments to the RIPA Policy. The Policy would remain in its current format and would not reflect changes to the Home Office Codes of Practice or the increased use of social media in investigations. The Policy would be outdated and not necessarily fit for purpose given the changing nature of investigations since RIPA came into force in 2000.

### **Financial Implications**

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**

Appendix A – Regulation of Investigatory Powers Act 2000 (RIPA) Policy.

### **Background Papers**

None identified.

### **Recommendations**

**THAT:**

- (a) Members note the outcome of the 2014-2015 Annual RIPA internal audit; and
- (b) Members approve the amended RIPA Policy at Appendix A.

**Reasons for Recommendations**

- (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 that the Council's Policy in relation to RIPA remains up to date and fit for purpose.