

Report to Cabinet

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

Date: 4th August 2016

Author: Director of Organisational Development and Democratic Services

Wards Affected

Not applicable

Purpose of the Report

To inform Members of the outcome of the Council's inspection by the Office of Surveillance Commissioners (OSC) conducted on 18th April 2016.

To obtain approval for amendments to the Council's RIPA Policy to reflect recommendations made by the Office of Surveillance Commissioners following their inspection of the Council on 18th April 2016.

To inform Members of the findings of the annual internal audit of RIPA authorisations from April 2015 – March 2016, 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 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.

The OSC Inspection

- 1.2 The Council's RIPA process is subject to intense scrutiny and roughly every three years, the Council is inspected by the OSC to ensure that its RIPA processes, procedures, policies and practices are sound. The Council was inspected by an Inspector from the OSC on 18th April 2016. The Inspector's concluded that Gedling Borough Council is a good performing Council. The Inspector acknowledged that there had been a reduction in RIPA authorisations granted since the last inspection in 2012 but that the Council continued to take its responsibilities under RIPA seriously and has in place good RIPA management, a good training programme and well constructed RIPA guidance.
- 1.3 The Inspector made three recommendations following the inspection as follows:
 1. Raise RIPA awareness throughout the Council
 2. Amend the RIPA guidance to reflect the following:
 - Regular update reports to members on RIPA usage throughout the year
 - Advice in relation to the use of social media to gather information and how this relates to RIPA
 - Clarification that the RIPA authorisation runs from the date of Court Approval
 - That the Authorising Officer should attend court to obtain Magistrates' Court approval.
 3. Ensure that Councillors receive regular RIPA reports.
- 1.4 In relation to the first recommendation, the RIPA Co-ordinator, intends to raise awareness of RIPA through updates, when appropriate in the E-Gen, a weekly staff email bulletin, to ensure all staff are kept up to date in relation to RIPA and are clear when a RIPA authorisation would be required. An article is also to be published in the Legal gen which is circulated at least twice a year to all staff. Service Managers will be updated in relation to RIPA when required and the information will be filtered to staff through team briefings.

1.5 In relation to recommendations 2 and 3, the RIPA Co-Ordinating Officer has reviewed the Council's RIPA Policy which was last approved by Cabinet in July 2015 and made amendments. The amended policy is attached at Appendix 1. The key amendments to the Policy are as follows:

- The current policy requires annual review by Councillors of RIPA usage and policy. This annual review is done by way of an officer report to Cabinet. In addition, the policy currently requires quarterly reports to members on RIPA usage, if there has been any such usage. The Inspector has recommended regular reporting to Councillors throughout the year on RIPA activity or inactivity. As such, it is proposed that the Policy is amended requiring regular reporting to Members on RIPA activity or inactivity. This will be done through regular reporting, on at least a quarterly basis to the Portfolio Holder for Public Protection.
- There is already advice in the current RIPA policy in relation to the use of social media sites for surveillance activities. The Inspector provided some useful guidance in relation to this, which it is proposed is included in the policy document to clarify when, using social media sites such as facebook to gather information about an individual, officers should seek authorisation under RIPA.
- It is proposed that the policy be amended, following the Inspector's suggestion, to stress the fact that RIPA authorisations run for 3 months from the date of Magistrates' Court approval. This is already in the policy once, but the Inspector has suggested it should be repeated throughout the policy.
- Currently the policy provides that Investigating Officers attend the Magistrates' Court to obtain approval for RIPA authorisations. The Inspector and the OSC are firmly of the view that it is the Authorising Officers who should attend court to obtain approval. The Authorising Officers are Directors and the Chief Executive. Whilst historically, the number of RIPA authorisations made it difficult in practical terms to ensure Authorising Officers were available to attend court, the number of RIPA authorisations has dropped significantly over recent years and are likely to drop further as the Benefit Fraud team who requested all RIPA authorisations in 2015-16 have now transferred to the Department of Work and Pensions. It is now rare that Authorising Officers would be required to attend court. As such, the policy has been amended to reflect the fact that Authorising Officers will now be required to attend court for

Magistrates' approval following internal authorisation under RIPA.

- 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 18th 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, who was at the time, Criminal Specialist in Legal for Nottingham City Council and the RIPA Co-ordinating Officer for Nottingham City Council. The training was well attended by both investigating and authorising officers and it is envisaged another similar session will be delivered to officers later in the year. The Inspector was content with the training offered and planned for officers in relation to RIPA.

Internal Audit

- 1.6 In addition to the external inspection by the OSC, the RIPA Co-ordinating officer also carries out annual audits of RIPA usage. The audit for 2015-2016 has now been completed. The authorisations remain of a high standard. In this period there were a total of 4 applications for Directed Surveillance authorised. All authorisations have now been cancelled. All applications related to Directed Surveillance, there were no authorisations of Covert Human Intelligence Sources (CHIS).
- 1.7 All of the applications for RIPA authorisation were from Revenues Services and involved the use of officers to carry out covert observations for investigations into Benefit Fraud Offences. The four authorisations within the last financial year were all authorised by Mark Kimberley, and were all subsequently approved at the Nottingham Magistrates Court, three of the authorisations were approved by a Magistrate, one by a District Judge. Three of the authorisations were cancelled by Mark Kimberley without a review becoming necessary. One authorisation resulted in a review by Mark Kimberley and was subsequently cancelled by Stephen Bray.
- 1.8 The Council maintains a high standard in relation to its RIPA processes, all of the authorisations were detailed and demonstrated sufficient evidence to satisfy the necessity and proportionality tests. All authorisations related to criminal offences which, if prosecuted would have passed the serious crime threshold in that they could have attracted custodial sentences in excess of 6 months.

- 1.9 The consistent error on all authorisation forms was the expiry date of the authorisation given by the Authorising Officer. The authorisation expires 3 months from the date of approval by the Magistrates, not three months from Authorising Officer approval. This will be reinforced to Authorising Officers as part of future training. It is important that authorisations are in court as soon as possible after authorisation is given internally, ideally court approval should be on the same day as Authorising Officer approval. The amendments proposed to the Policy requiring the Authorising Officer to attend court should remedy this problem.
- 1.10 Finally, the cancellation form used by the officers are not the forms recommend by the Co-ordinating officer. The forms used are the ones which appear on the Home Office website so are not incorrect, but they do not encourage a description of what product was obtained through surveillance and how that product will be utilised and kept securely. This is something officers will be reminded of again.
- 1.11 In conclusion, the Council retains a high standard in relation to its RIPA processes and procedures, this is endorsed through the internal audit and through the OSC Inspection. RIPA authorisations have now reduced considerably, and with the departure of the fraud team it is expected that RIPA authorisations will be very rare, however it is important and indeed stressed by the OSC that the Council maintains its RIPA processes and ensures officers remain aware of RIPA and that Members are kept up to date.

Proposal

- 2.1 It is proposed that Members approve the updated RIPA Policy at Appendix 1 which has been amended in line with the recommendations made by the OSC, to ensure the Council's RIPA Policy remains up to date and fit for purpose.
- 2.2 It is proposed that Members consider the findings outlined in this report following the internal audit of the RIPA process for the year 2015-2016.
- 2.3 It is proposed that Members note the outcomes of the OSC Inspection as outlined in this report following the Council's inspection on 18th April 2016.

Alternative Options

- 3.1 An alternative option is that Members do not receive and consider feedback in respect of the RIPA audits and inspection. 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 recommendations from the OSC.

- 3.2 Members could choose not to approve the amendments to the RIPA Policy or suggest alternative amendments. The Policy, if unamended, would remain in its current format and would not reflect recommendations from the OSC nor be up to date and fit for purpose. The amendments proposed align with recommendations from the OSC, any alternative recommendations may not be in line with OSC requirements.

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

Background Papers

None identified.

Recommendations

THAT:

- (a) Members approve the amended RIPA Policy at Appendix 1 to this report.
- (b) Members note the outcome of the 2015-2016 Annual RIPA internal audit; and
- (c) Members note the outcome of the OSC Inspection of the Council conducted on 18th April 2016.

Reasons for Recommendations

- (a) To ensure that the Council's Policy in relation to RIPA remains up to date and fit for purpose.
- (b) 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.
- (c) To ensure the Executive is updated in relation to external scrutiny of the Council's RIPA processes and procedures.