

COUNCIL

16 January 2020

Report of the Head of Corporate Services

REGULATION OF INVESTIGATORY POWERS ACT 2000

PURPOSE OF THE REPORT

To provide an update following the inspection of the Investigatory Powers Commissioner’s Office on the Council’s policies and procedures relating to the use of the Regulation of Investigatory Powers Act 2000 (“RIPA”) and to approve the updated policy on the Regulation of Investigatory Powers.

RECOMMENDATION

1. That the report from the Investigatory Powers Commissioner’s Office attached at Appendix 1 is noted.
2. That the amended Regulation of Investigatory Powers Act 2000 policy attached at Appendix 2 is approved.
3. That the Head of Corporate Services be instructed to draft a Member’s Social Media Policy to be presented to Council for Approval.

WARDS AFFECTED

All Wards

STRATEGIC LINK

The Regulation of Investigatory Powers Act 2000 (“RIPA”) enables local authorities to carry out certain types of surveillance activity provided that specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in court proceedings and enables effective enforcement across the District. The recommendation to adopt the revised policy therefore contributes to the Council’s Corporate Plan Priorities.

1. BACKGROUND

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) gave the Council significant powers in order to investigate serious matters and offences. It enables the Council to use covert surveillance, covert human intelligence sources (CHIS) and the acquisition of service use or subscriber information in relation to communications data in a manner which is compatible with Article 8 of the European Convention on Human Rights (which governs an individual’s right to respect for their private and family life). Before the Council may undertake covert surveillance, there are various criteria which must be met including approval of the application by a Magistrate.
- 1.2 The Council is periodically inspected by the Investigatory Powers Commissioner’s Office and the last inspection was undertaken in July 2019. This Report is to inform

members of the outcome of the inspection and approve an amended RIPA policy to incorporate the observations made by the inspector.

- 1.3 The outcome of the report is primarily positive. There were no issues that raised major concerns for the inspector, however 2 recommendations and 4 observations were made.

2. OUTCOMES

Recommendations

- 2.1 From the inspection it was noted that some employees were using their personal profiles to access information on social media sites. The inspector commented that this put the employee at an undue risk. As a result the Council's Social Media Policy has been updated to inform employees not to continue with this practice and update the policy on use of social media for investigatory purposes. This policy is currently subject to consultation and will be brought to committee once completed.
- 2.2 Although not mentioned in the report it is considered advisable to introduce a policy on member's use of social media. It is intended to bring this policy in the same report as with the amended Social Media Policy.
- 2.3 The inspector recommended that elected Members should review the Council's use of the RIPA legislation on an annual basis. It is therefore proposed that the annual report from the Council's Monitoring Officer includes a report of the use of RIPA for the preceding year.

Observations

- 2.4 In 2018 the Home Office updated its guidance and Codes of Practices relating to RIPA. The Inspector observed that the Codes of Practices were not referred to in the document and the obtaining of oral authorisations was included when that option was no longer available. The Policy has therefore been updated to address this observation.
- 2.5 The Inspector noted that training had been given to staff and Councillors since the last inspection, but also noted that there are 14 newly elected members. The inspector therefore recommended that member training on RIPA be provided.
- 2.6 The Inspector commented that authorising officers were knowledgeable on when and how authorisations should be sought, but noted that the last training was in 2017. The inspector commented that a refresher training would be of benefit. Training would also cover the new policy on the use of social media, the potential benefit of obtaining Communications Data for investigations and the risk to the Council of inadvertently obtaining information from a CHIS.
- 2.7 The Legal Services Manager is currently reviewing the training arrangements for Officers and Members to target training at the appropriate level.
- 2.8 The Inspector noted that the relevant forms in the Policy have not been updated to the latest version. The Forms therefore have been revised in line with current guidance.

- 2.9 Lastly the Inspector advised on the potential risk that members of the public could fall into the category of a CHIS. If a member of the public provides the Council with information on a regular basis or we ask a member of the public to monitor something they may have complained about, there is potential for that person to be a CHIS.
- 2.10 The Inspector commended the introduction of the Customer Relationship Management System that will identify if a person is reporting to various departments and address any issues so that the person does not become a CHIS.
- 2.11 The RIPA policy has been amended to incorporate the relevant recommendations from the inspection and training will be rolled out to staff and members in the forthcoming months.
- 2.12 The Inspector also mentioned during the inspection that some RIPA requests require authorisation from a specific officer. These are known as Enhanced Authorising Officers and are defined as the Head of Paid Service or the person acting in that role in their absence. This was not mentioned in the report, but has been addressed in the revised policy.
- 2.13 The recommendations made by the inspector highlighted the importance of providing advice to Councillors that would prevent them from potentially becoming a CHIS. The Head of Corporate Services therefore seeks authority to draft a Member's Social Media Policy to assist members with advice relating to RIPA and CHIS, Codes of Conduct and advice Data Protections and keeping personal details safe.

3. RISK ASSESSMENT

3.1 Legal

This report ensures that the Council has oversight of the use of RIPA powers and ensure that policies remain fit for purpose. A failure to adopt the updated Policy which reflects government guidance and the recommendations of the IPCO inspector would increase the risk of a misuse of RIPA powers and intervention by the Investigatory Powers Commissioner.

Evidence obtained unlawfully in breach of the policy may result in a breach of the provisions of the Human Rights Act 1998 and also result in evidence being inadmissible in subsequent court proceedings.

The terms of the Policy have been reviewed in accordance with the legislation and therefore the legal risk is considered low.

3.2 Financial

Adoption of the updated policy will help to mitigate any financial risks which may arise should the Council fail to comply with legislation, government guidance and recommendations. The financial risk of this report is assessed as low.

4. OTHER CONSIDERATIONS

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, human rights, personnel and property.

5. CONTACT INFORMATION

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6. BACKGROUND INFORMATION

- Home Office Codes of Practice on Covert Surveillance and property interference
- Home Office Codes of Practice on Covert Human Intelligence Sources

7. ATTACHMENTS

Appendix 1 – IPCO Report dated 23rd July 2019

Appendix 2 – Draft amended RIPA 2019 policy