
Summary Sheet

Council Report

Audit Committee – 23rd November, 2016

Title

Update on the Use and Operation of Surveillance and Acquisition of Communications Data Powers

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Judith Badger, Strategic Director of Resources and Customer Services

Report Author(s)

Neil Concannon, Service Manager (Litigation & Social Care), Legal Services.

Ward(s) Affected

All

Executive Summary

The Council currently has a policy governing the use of covert surveillance and covert human intelligence sources (CHIS) carried out by Council officers under the Regulation of Investigatory Powers Act 2000 (RIPA). The Council has a separate policy also under RIPA governing the acquisition and disclosure of communications data by Council officers. Those policies make provision for the Audit Committee to have oversight of the policies and the Council's use of RIPA powers, to ensure that the powers are being used consistently with the Authority's policies and that the policies remain fit for purpose. This report provides the next planned update and recommends that the committee set the policies in appendix A and B to this report.

Recommendations

That the Audit Committee:

1. Sets the Council's RIPA Policy and Acquisition & Disclosure of Communications Data Policy as shown in appendix A and B respectively to this report.
2. Notes the update on the figures for the use of RIPA and Communications Data authorisations.
3. Notes that the Office of Surveillance Commissioners (OSC) are due to carry out an inspection of the Council's use of powers for directed surveillance/CHIS and the policies and procedures it has in place for that purpose, in January 2017.

4. Notes that further annual corporate training will take place with regard to the use of RIPA and Communications Data powers on the 4th January 2017.
5. Agrees to accept a further update report in 6 months' time.

List of Appendices Included

Appendix A – Recommended RIPA Policy

Appendix B – Recommended Acquisition & Disclosure of Communications Data Policy

Background Papers

1. Current RIPA and Acquisition and Disclosure of Communication Data Policies
2. The Regulation of Investigatory Powers Act 2000 and associated Orders and Codes of Practice made thereunder.
3. The Office of Surveillance Commissioners Procedures and Guidance (July 2016)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Title (Main Report)

Update on the Use and Operation of Surveillance and Acquisition of Communications Data Powers

1. Recommendations

That the Audit Committee:

1. Sets the Council's RIPA Policy and Acquisition & Disclosure of Communications Data Policy as shown in appendix A and B respectively to this report.
2. Notes the update on the figures for the use of RIPA and Communications Data authorisations.
3. Notes that the Office of Surveillance Commissioners (OSC) are due to carry out an inspection of the Council's use of powers for directed surveillance/CHIS and the policies and procedures it has in place for that purpose, in January 2017.
4. Notes that further annual corporate training will take place with regard to the use of RIPA and Communications Data powers on the 4th January 2017.
5. Agrees to accept a further update report in 6 months' time.

2. Background

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a mechanism to make it lawful for public bodies such as local authorities, to use directed (i.e. covert) surveillance and covert human intelligence sources e.g. undercover officers and public informants (CHIS) for the purposes of the detection and prevention of crime. Any use of those powers has to be proportionate and necessary both in use and scope. In addition, any surveillance/CHIS undertaken by a local authority must relate to a serious crime (one punishable by six months' imprisonment or certain offences involving the underage sale of alcohol and tobacco) and receive prior approval from the Magistrates' Court.
- 2.2 RIPA also provides a mechanism for public bodies such as local authorities to acquire communications data where it is proportionate and necessary to do so for the purposes of the detection and prevention of crime. The Council has a separate Acquisition and Disclosure of Communication Data Policy to cover this activity. Typically this activity might include acquiring mobile phone subscriber details and details of itemised calls. As with other RIPA powers, the serious crime test must be passed and prior approval from the Magistrates' Court must be sought, before the data is acquired. All Councils must also make a request for any communication data through a single point of contact at the National Anti-Fraud Network (NAFN), who will independently scrutinise applications and advise the Council's authorising officers.

- 2.3 In September 2015, Commissioner Manzie approved the adoption of new corporate RIPA and Acquisition of Communications Data Policies, which reflected the requirements of the codes of practice issued by the Home Office and a Procedure and Guidance Document on the use of covert surveillance by public authorities, issued by the Office of Surveillance Commissioners. The codes of practice require elected members to consider internal reports on the use of RIPA powers on a regular basis to ensure that they are being used consistently with the Council's policy and that the policies remain fit for purpose. The corporate policies make provision for the Audit Committee to perform those functions by receiving reports on a 6 monthly basis. The codes of practice also require elected members to set the policies every year.

3. Key Issues

- 3.1 The Council is required to notify the OSC of the number of directed surveillance/CHIS authorisations granted in each financial year. There have been no such authorisations this financial year thus far.
- 3.2 The Council is also required to notify the Interception of Communications Commissioner's Office (IOCCO) of the number of authorisations for the acquisition and disclosure of communications data granted each calendar year. There have been no such authorisations this calendar year thus far.
- 3.3 The Council is required by the relevant home office codes of practice to ensure that the Council's policies on the use of powers under RIPA are set each year by elected members. The policies were last set in September 2015. Since that time there has been no amendments to the home office codes of practice. In July 2016, the OSC issued an amended procedures and guidance document relating to covert surveillance/CHIS, but this does not require any amendments to be made to the Council's RIPA policy. Since the RIPA policy was last set in September 2015 there have been some senior personnel changes in the Council that require the RIPA Policy to be amended to reflect an accurate list of the current authorising officers. In addition, given it is always a possibility that there will be personnel changes throughout the year, a new paragraph has been added to the policy to clarify that the Council's RIPA Senior Responsible Officer (the Assistant Director of Legal Services) will maintain an up to date list of the current authorising officers, which can be amended from time to time should there be any relevant personnel changes throughout the year. These minor amendments are set out section 6 (page 35) of the recommended RIPA policy (appendix A).
- 3.4 The recommendation for setting the policies is timely, as the Council has very recently been notified that it will be inspected by the OSC in January 2017, to review the Council's policies and procedures it has to comply with RIPA and the use it makes of the directed surveillance/CHIS powers. Such inspections usually take place on a 3 yearly cycle, with the last inspection having taken place in February 2014. Details of the outcome of the RIPA inspection will be reported to the Audit Committee in the next planned update report.
- 3.5 As a matter of law, any authorising officers have to be at least at the level of Service Manager or above. In addition, the Council's policies require that all officers who could potentially be involved in the use and authorisation of RIPA powers, are appropriately trained. To that end, in December 2015, a successful corporate training course was arranged through a highly regarded trainer in the

field, for 24 officers from various services across the Council. The adequacy of training for staff involved in the use of RIPA powers is a key part of any inspection carried out by the OSC. A further corporate training course will take place on the 4th January 2017, to ensure relevant officers continue to have the necessary skills and knowledge.

4. Other considerations and recommended proposal

- 4.1 The recommendations are to set the Council's RIPA and Acquisition and Disclosure of Communications Data Policies, note the update on the use of RIPA powers since the previous update report in April 2016, note that the Council be inspected by the OSC in January 2017, note that further corporate training is to take place and to receive a further update report in six months' time.

5. Consultation

- 5.1 There are no consultation requirements for the purposes of this report.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Further update reports will be submitted to the Audit Committee on a six monthly basis in line with the Council's policies.

7. Financial and Procurement Implications

- 7.1 The training covered within this report is met from within existing budgets.

8. Legal Implications

- 8.1 Legal Implications are considered in the main body of this report.

9. Human Resources Implications

- 9.1 There are no human resources implications.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 There are no direct implications for children and young people and vulnerable adults.

11. Equalities and Human Rights Implications

- 11.1 Adherence to the Council's policies and the statutory guidance in relation to the use of RIPA and the Acquisition of Communication powers should ensure that the any actions taken are human rights compliant.

12. Implications for Partners and Other Directorates

- 12.1 There are no direct implications for partners or other directorates.

13. Risks and Mitigation

- 13.1 The statutory Codes of Practice issued by the Home Office requires elected members to have oversight of the RIPA powers to ensure that they are being used consistently with policies and that the policies are fit for purpose. A failure to have such member oversight would give rise to greater legal risk and adverse reports following inspections undertaken by the OSC or IOCCO.

14. Accountable Officer(s)

Dermot Pearson, Assistant Director of Legal Services.

Approvals Obtained from:

Chief Finance Manager:

Named Officer: Peter Hudson

Human Resources

Named Officer: John Crutchley

Assistant Director of Legal Services:

Named Officer: Dermot Pearson

Procurement

Named Officer: Helen Chambers.

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