

## Summary Sheet

### Council Report

Audit Committee – 21st November, 2017

### 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

This is the latest report to update the Audit Committee in its oversight role on the Council's use of surveillance and acquisition of communication data powers under the Regulation of Investigatory Powers Act 2000 (RIPA).

### Recommendations

That the Audit Committee:

1. Notes there has been no requirement for the Council to make use of surveillance and acquisition of communication data powers under RIPA.
2. Notes that in line with the recommendations of the Office for Surveillance Commissioners latest inspection report, further corporate training focussing on the officers acting as controllers and handlers of covert human intelligence sources (CHIS) will take place in January 2018.
3. Agrees to accept a further update report in 6 months' time.

### List of Appendices Included

### 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. Notes there has been no requirement for the Council to make use of surveillance and acquisition of communication data powers under RIPA.
2. Notes that in line with the recommendations of the Office for Surveillance Commissioners latest inspection report, further corporate training focussing on the officers acting as controllers and handlers of covert human intelligence sources (CHIS) will take place in January 2018.
3. 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 The Council's corporate policies in this regard make provision for the Audit Committee to perform those functions by receiving reports on a 6 monthly basis. This is the latest update report.

### **3. Key Issues**

- 3.1 The Council is required to notify the Office for Surveillance Commissioners (OSC) of the number of directed surveillance/CHIS authorisations granted in each financial year. The annual return was made to the OSC in April for the financial year 2016/17, to confirm there were no such authorisations in that period. 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 were no authorisations during 2016 and there have been no such authorisations this calendar year thus far.
- 3.4 It should be noted that as a result of the Investigatory Powers Act 2016, with effect from September 2017, the new Investigatory Powers Commissioner's Office takes over the responsibility for oversight of investigatory powers from the OSC and IOCCO.
- 3.5 As previously reported to the Audit Committee, the OSC inspected the Council's use of surveillance powers in January of this year. In line with one of the recommendations from the OSC Inspection report, there will be further corporate training for relevant officers focussing on the use of CHIS in January 2018. The training will also cover the interface between RIPA and the use of social media which was a line of enquiry during the OSC inspection.

### **4. Other considerations and recommended proposal**

- 4.1 The recommendations in this report are to simply note that there has been no requirement by the Council to make use of RIPA powers since the last report, that further corporate training which is due 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 Investigatory Powers Commissioner's Office.

## **14. Accountable Officer(s)**

Dermot Pearson, Assistant Director of Legal Services.

Approvals Obtained from:

Accountancy Services Manager:

Named Officer: Michael Hirst

Human Resources

Named Officer: John Crutchley

Assistant Director of Legal Services:

Named Officer: Dermot Pearson

Procurement

Named Officer: Karen Middlebrook.

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