

Summary Sheet

Council Report

Audit Committee - 29 January, 2019

Title

Proposed Revisions to the Council's Regulation of Investigatory Powers Act Policy

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)

Dermot Pearson, Assistant Director Legal Services

Ward(s) Affected

All

Executive Summary

At its meeting on 27 November 2018 the Audit Committee agreed to receive a report on the implications of the Home Office's Revised Codes of Practice on covert surveillance and interference with property and on covert human intelligence sources.

This report advises the Audit Committee on the revisions required to the Council's RIPA Policy to ensure compliance with the Home Office Revised Codes of Practice on covert surveillance and interference with property and on covert human intelligence sources made under the Regulation of Investigatory Powers Act 2000 (RIPA).

Recommendations

That the Audit Committee:

1. Notes the revisions required to the Council's RIPA Policy to ensure compliance with the Home Office's Revised Codes of Practice on covert surveillance and interference with property and on covert human intelligence sources, as set out at section 3 of the report.
2. Adopts the revised Regulation of Investigatory Powers Act Policy at Appendix 1.
3. Notes that training on the use of RIPA powers is to be arranged for authorising officers and investigating officers.

List of Appendices

Proposed Amended RMBC RIPA Policy

Background Papers

Revised Code of Practice - Covert Surveillance and Property Interference [Home Office, 2018]

Revised Code of Practice - Covert Human Intelligence Sources [Home Office, 2018]

<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Title

Proposed Revisions to the Council's Regulation of Investigatory Powers Act Policy

1. Recommendations

1.1 That the Audit Committee:

1.1.1 Notes the revisions required to the Council's RIPA Policy to ensure compliance with the Home Office's Revised Codes of Practice on covert surveillance and interference with property and on covert human intelligence sources, as set out at section 3 of the report.

1.1.2 Adopts the revised Regulation of Investigatory Powers Act Policy at Appendix 1.

1.1.3 Notes that training on the use of RIPA powers is to be arranged for authorising officers and investigating officers.

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, 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. The Council has a RIPA Policy that governs the use of those powers.

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 but not the content of calls.

2.3 The Council's corporate policies in this regard make provision for the Audit Committee to oversee the operation of these policies by receiving reports on a 6 monthly basis to ensure that RIPA powers are being used in a manner consistent with the policy. The Committee received a report on the use of RIPA powers at its meeting on 27 November 2018.

2.4 This report considers the implications of the Home Office Revised Codes of Practice on covert surveillance and interference with property and on covert human intelligence sources and proposes amendments to the RIPA Policy to ensure compliance with the Revised Codes.

3. Key Issues

3.1 The proposed revisions to the RIPA policy, the proposed revised version of which is at the Appendix to this report, relate to the following issues:

3.1.1 There are various amendments to the RIPA Policy required to ensure that it refers to current legislation and Codes of Practice and that officer contact details and the list of authorising officers are up to date. Where the RIPA Policy referred to specific paragraph numbers in the previous versions of the Codes of Practice these have been amended to match the paragraph numbers in the Revised Codes of Practice.

3.1.2 At Section 6 of the Policy the responsibilities of the Senior Responsible Officer, who is the Assistant Director for Legal Services, have been amended to correspond with the Revised Codes of Practice. This now includes reference to the duties to report errors to the Investigatory Powers Commissioner, which are set out in the Investigatory Powers Act 2016.

3.1.3 The guidance on the definition of Private Information for the purposes of RIPA at Section 2 of the Policy has been amended to include the current wording of the guidance in the Revised Code of Practice on Covert Surveillance and Property Interference. This provides clarification on expectations of privacy when in a public place and makes it clear that covert surveillance of a person's activities in public may still result in the obtaining of private information.

3.1.4 The main amendments relate to the new guidance on the use of social media for surveillance set out in the Revised Codes of Practice. The revised guidance from the Revised Code of Practice on Covert Surveillance and Property Interference is incorporated in Section 2(i) and the revised guidance from the Revised Code of Practice on Covert Human Intelligence Sources is incorporated in Section 2(iii). The guidance includes specific advice on when a directed surveillance authorisation may be required for online activity:

In order to determine whether a directed surveillance authorisation should be sought for accessing information on a website as part of a covert investigation or operation, it is necessary to look at the intended purpose and scope of the online activity it is proposed to undertake. Factors that should be considered in establishing whether a directed surveillance authorisation is required include:

- *Whether the investigation or research is directed towards an individual or organisation;*
- *Whether it is likely to result in obtaining private information about a person or group of people (taking account of the guidance at paragraph 3.6 above);*
- *Whether it is likely to involve visiting internet sites to build up an intelligence picture or profile;*

- *Whether the information obtained will be recorded and retained;*
- *Whether the information is likely to provide an observer with a pattern of lifestyle;*
- *Whether the information is being combined with other sources of information or intelligence, which amounts to information relating to a person's private life;*
- *Whether the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s);*
- *Whether it is likely to involve identifying and recording information about third parties, such as friends and family members of the subject of interest, or information posted by third parties, that may include private information and therefore constitute collateral intrusion into the privacy of these third parties.*

There is also useful guidance on when on line surveillance activity may require an authorisation for a Covert Human Intelligence Source including the following:

Where someone, such as an employee or member of the public, is tasked by a public authority to use an internet profile to establish or maintain a relationship with a subject of interest for a covert purpose, or otherwise undertakes such activity on behalf of the public authority, in order to obtain or provide access to information, a CHIS authorisation is likely to be required. For example:

- *An investigator using the internet to engage with a subject of interest at the start of an operation, in order to ascertain information or facilitate a meeting in person.*
- *Directing a member of the public (such as a CHIS) to use their own or another internet profile to establish or maintain a relationship with a subject of interest for a covert purpose.*
- *Joining chat rooms with a view to interacting with a criminal group in order to obtain information about their criminal activities.*

- 3.2 It is proposed to arrange training for authorising officers and investigating officers on the revised RIPA Policy to ensure that those officers are properly equipped to comply with the Revised Codes of Practice and legislation.

4. Other considerations and recommended proposal

- 4.1 The recommendation is to adopt the revised RIPA Policy at the Appendix to this report. This will ensure that the Policy is in compliance with the Home Office Revised Codes of Practice and current legislation.

5. Consultation

- 5.1 The Home Office carried out a 6 week consultation on the Revised Codes of Practice.

6. Timetable and Accountability for Implementing this Decision

6.1 If the recommendations are adopted the Assistant Director for Legal Services will circulate the Revised RIPA policy to relevant officers.

7. Financial and Procurement Implications

7.1 There are no financial and procurement implications arising from the proposed revisions to the RIPA Policy and the costs of further training for investigating and authorising officers would be met from 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 ers should ensure that the any actions taken are in accordance with human rights.

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 This report is part of the process of ensuring that elected members have oversight of the use of RIPA powers and to ensure policies remain fit for purpose. A failure to follow this guidance would increase the risk of misuse of RIPA powers and intervention by the Investigatory Powers Commissioner.

14. Accountable Officer(s)

Dermot Pearson, Assistant Director of Legal Services.

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