

Committee Name and Date of Committee Meeting

Audit Committee - 18 August 2020

Report Title

Update Report on the Use of Surveillance and Acquisition of Community 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, Finance and Customer Services

Report Author(s)

Elizabeth Anderton, Service Manager – Adult Social Care and Litigation
01709 823736 – elizabeth.anderton@rotherham.gov.uk

Ward(s) Affected

Borough-Wide

Report Summary

This is a 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 that the Council has not made use of surveillance or acquisition of communication data powers under RIPA since it was last reported on the 26th September 2019.
2. Notes the outcome of the desktop inspection conducted by the Investigatory Powers Commissioners Office on the 2nd July 2020.
3. Accepts the minor changes and adopts the RIPA Policy 2020.

List of Appendices Included

Copy of the Annual Statistics Return 2019
Copy of the desktop inspection report – 7th July 2020
Copy of the RIPA policy 2020 showing amendments

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

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

1. Background

- 1.1 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. The Policy was updated on 29th January 2019.
- 1.2 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.
- 1.3 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. Due to the Council not having used the powers available, it was deemed appropriate at the last update to reduce the reporting to annually.

2. Key Issues

- 2.1 So far, since the last report, the Council has not used its powers under RIPA to use directed (i.e. covert) surveillance, covert human intelligence sources, e.g. undercover officers and informants or to acquire communications data. A statistical return was completed and sent to the Investigatory Powers Commissioners Office on the 1st April 2020.
- 2.2 On the 2nd July 2020 a desktop inspection by the Investigatory Powers Commissioners Office took place. This type of inspection now takes place where a local authority does not regularly use the powers available. The outcome of inspection was positive, as can be seen from the attached report. Within the report there is one item to address. The report states:

'Wider awareness for staff who do not necessarily encounter potential RIPA issues on a regular basis was identified as an area for which increased emphasis is desirable. Current efforts to remind and re-enforce RIPA issues is approached by issuing general reminders at Director meetings and cascading such messages. This is an area which the RIPA Co-ordinator agreed to focus on, as online activity and the use of social networking sites has increased this risk in several organisations. It is positive

that RMBC has recognised the need for increased communication in this area.'

- 2.3 Efforts will be focussed in this area with an explanation of the RIPA legislation being cascade to all the individual Directorates to reduce any potential risk arising from any unauthorised activity.
- 2.4 The revised Home Office Codes of Practice advise that the elected members of a local authority should:
 - 2.4.1 Review the authority's use of RIPA and set the policy at least once a year; and
 - 2.4.2 Consider internal reports on use of RIPA on a regular basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose.
- 2.5 The RIPA Policy was reviewed by this Committee at its meeting on 29th January 2019 and were re-adopted with minor amendments. The RIPA Policy has been reviewed and there are no major changes required. Minor amendments to contact details due to a change in personnel and to typos have been made and can be seen in the attached Policy.

3. Options considered and recommended proposal

The recommended proposal(s) is that the Audit Committee:

- 3.1 Notes that the Council has not made use of surveillance or acquisition of communication data powers under RIPA since it was last reported on the 26th September 2019.
- 3.2 Notes the outcome of the desktop inspection conducted by the Investigatory Powers Commissioners Office on the 2nd July 2020.
- 3.3 Accepts the minor changes and adopts the RIPA Policy 2020.

4. Consultation on Proposal

- 4.1 Not Applicable.

5. Timetable and Accountability for Implementing this Decision

- 5.1 None.

6. Financial and Procurement Advice and Implications

- 6.1 There are no Financial and Procurement implications.

7. Legal Advice and Implications

- 7.1 Legal implications are considered in the main body of this report.

8. Human Resources Advice and Implications

8.1 There are no Human Resources implications.

9. Implications for Children and Young People and Vulnerable Adults

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

10. Equalities and Human Rights Advice and Implications

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

11. Implications for Partners

11.1 There are no direct implications for partners or other directorates.

12. Risks and Mitigation

12.1 As above at paragraph 2.2 the statutory guidance requires oversight by elected members on 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.

13. Accountable Officer(s)

Elizabeth Anderton, Service Manager – Adult Social Care and Litigation
Bal Nahal, Head of Legal Services

Report Author: Elizabeth Anderton, Service Manager – Adult Social Care and Litigation
01709 823736 – elizabeth.anderton@rotherham.gov.uk

This report is published on the Council's [website](#).