

REPORT OF: HEAD OF LEGAL SERVICES

REPORT TO: Policy and Corporate Resources Overview and Scrutiny Committee

ON: [xx] June 2020

RE: Update on RIPA Activity, Procedural Guide and RIPA Inspection

1. Purpose of the Report

To update elected members on:

- The introduction of the new RIPA procedural guide,
- Adoption of recommendations made by the Investigatory Powers Commissioner's Office ['IPCO'],
- RIPA training delivered to officers,
- RIPA activity/applications.

2. Recommendations

To note that:

2.1 Monitoring of RIPA activity – departments have reported to 6 monthly meetings with the RIPA officers' Group with representatives from all departments and no covert surveillance has been undertaken and there have been no uses of covert human intelligence sources since the last IPCO inspection requiring RIPA authorisation.

2.2 The training of officers is ongoing as detailed in the body of this report including the desk-top exercises recommended by the IPCO.

To recommend:

2.3 That a report be submitted to Executive Board to adopt the new RIPA procedure and guidance for approval.

3. Background

3.1 At the end of 2019 the Council was inspected by the IPCO – the Investigatory Powers Commissioner's Office and on 15th October 2019 the IPCO informed the Council of the outcome of the inspection.

3.2 The Council was largely compliant, with just three main recommendations:

- To arrange a 'table top' training exercise,
- To amend its Procedure and Guidance to ensure the current RIPA Codes are referred to.
- To ensure that any reference to provisions allowing urgent applications should now be removed as those powers are no longer available.

3.3 The IPCO was concerned that local authorities generally have chosen not to use these powers and that their use had declined steadily over the past few years. However, the IPCO recognised that it was entirely a matter for each local authority as to whether it should use these powers or not. It is to be noted that the Council normally prefers to employ the use of overt investigatory techniques.

3.4 With local authorities in general the IPCO was mainly concerned that in not using these available powers Council employees would become unskilled in recognising when they may be inadvertently using covert human intelligence sources without the correct processes. In particular the IPCO wanted assurance that Council employees knew when they would need to obtain an authorisation. Hence the suggestion that the Council carries out the table-top exercises.

3.5 The table-top exercises took place on 15 December 2021 and 27 January 2022 run by the Council's Service Lead Public Protection and Principal Solicitor - Litigation. They were interactive sessions, despite taking place on Teams. Their content consisted of a brief recap of the law, and discussions using a number scenarios across different types of Council investigations including fraudulent claims, trademarks, fly-tipping and puppy farming with discussions around whether to employ directed surveillance and use of CHIS.

3.6 Training run by outside training providers has also taken place in previous years most recently being on 9th of October 2019 – full day and 29 November 2019 ½ day and both were focused on CHIS.

3.7 To address all the issues with the Procedure and Guidance and to ensure it followed and referred to the statutory Codes of Practice it was decided to present a complete re-draft and to do so with the assistance of an expert trainer who provided a template. The template needed extensive adaptation and additions to ensure it was acceptable to all departments so it has taken some time to put together. The new Draft is Appendix A with a shorter summary in Appendix B.

4. Key issues

The Council needs to adopt the new RIPA Procedure and Guidance to ensure it is compliant with current guidance and to enable it to produce this to the IPCO at the next inspection which is likely to be this year.

4.1 RIPA Activity

The Council needs to continue to hold the RIPA Group meetings to monitor any covert investigative techniques and activity even though it has not in recent years had to use them. That is to enable the Council to demonstrate that the activity to be formally monitored and reported to Members from time to time.

4.2 Training Update

Training, see in 3 above, also needs to take place and be recorded to ensure that the Council can demonstrate that it is continuing. Formal training to introduce the new RIPA Procedure and Guidance will be arranged following its formal adoption.

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