

REPORT OF: HEAD OF LEGAL SERVICES

REPORT TO: Policy and Corporate Resources Overview and Scrutiny Committee

ON: 17 July 2023

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

1. Purpose of the Report

To update elected members on:

- Recommendations by made by the Investigatory Powers Commissioner's Office ['IPCO'] at the last inspection on 3 November 2022
- RIPA activity/applications.

2. Recommendations

To note that:

2.1 The Inspector who inspected the Council's processes in November 2022 was pleased with the Council's progress and noted that the recommendations made in 2019 had been adopted mainly around training and updating the Council's RIPA Procedure and Guidance.

2.2 He did however recommend some amendments to the new 2022 Procedure and Guidance which was adopted by the Council formally in July 2022. The amendments he recommended related to data security and documents retention. He also recommended additional oversight and risk assessment by the Council's RIPA Co-ordinator of departments that undertake social media research or monitoring for the purposes of intelligence gathering and low level investigations. He recommended this in order to prevent unintentional straying into covert surveillance of individuals and to ensure that in border-line cases a manager's oversight is required.

2.3 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. Reports are also made of social media activity 6 monthly but in future such reports will be made to the RIPA Co-ordinator quarterly.

2.4The 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 amendments required of the new RIPA procedure and guidance as required by the IPCO for approval.

3. Background

3.1 In November 2022 the Council was inspected by the IPCO – the Investigatory Powers Commissioner’s Office and on 17 November 2022 the IPCO informed the Council of the outcome of the inspection.

3.2 The inspection was facilitated through the Council’s Strategic Director of Resources and Senior Responsible Officer (SRO), Paul Fleming, and Shelagh Lyth, Principal Solicitor and RIPA Co-ordinating Officer (RCO), who were interviewed using video conferencing facilities and provided the supporting documentation requested by the Inspector. Also present at the interview were Asad Laher, Deputy Director, Legal and Governance, and Gary Johnston, Service Lead, Public Protection and Environmental Health, one of the Council’s Authorising Officers.

3.3 In his letter of 17 November 2022 the Inspector praised the Council’s Procedure and Guidance He suggested a number of minor amendments which have now been made.

3.4 The Inspector noted that whilst the Council had not exercised its RIPA powers for a significant period of time, he said it was ‘pleasing’ to hear that the authorising officer cadre, together with those officers most likely to engage the powers, received “desk top” training last year. This took place on 15 December 2021 and 27 January 2022 run by the Council’s Service Lead Public Protection and Principal Solicitor – Litigation and Authorising Officer Gary Johnston. The Inspector was also informed that a web-based training video will be launched on the Council’s intranet to help raise RIPA awareness.

3.5 The Inspector inspected the very last authorisation and stated that it had been completed to a high standard by Mr Johnston the authorising officer.

3.6 The Council agreed to take the following steps to comply with the IPCO recommendations:

- to introduce a system whereby all social media and internet research is properly overseen by the RIPA Officer’s Group every three months.
- to ensure material acquired under RIPA and the Investigatory Powers Act is properly retained, reviewed, and ultimately destroyed by all participants in the RIPA process including investigating officers, manager and authorising officers and
- to add appropriate wording to the RIPA Procedure and Guidance so that it provides practical guidance on the retention, review and destruction of RIPA authorisations.

3.7 It is to be noted that the Council normally prefers to employ the use of overt investigatory techniques but 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. The desk top training referred to above was designed to address this.

3.8 The Council's RIPA Co-ordinator is still working closely with an experienced member of the Council's HR Learning and Development to produce some web based training suitable for raising awareness. It is quite a complex undertaking and is expected to take some time but the aim is for it to be ready in around three months.

3.9 The RIPA Procedure and Guidance with its amendments is at Appendix A.

4. Key issues

The Council needs to ensure its internet research and social media access activity, albeit limited, is monitored by the RIPA Group quarterly. It also needs to adopt the amendments to the RIPA Procedure and Guidance to ensure it is compliant with current guidance and to enable it to produce up to date documentation to the IPCO at the next inspection which is likely to be in 2025.

4.1 RIPA Activity

The Council needs to continue to hold the RIPA Group meetings, but should now hold them quarterly rather than 6 monthly, 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.

CONTACT OFFICER: Asad Laher , Head of Legal Services/Council Solicitor
Tel: 01254 585 252

DATE: June 2023