

**Bolsover District Council**

**Executive**

**10<sup>th</sup> September 2018**

**Review of Joint RIPA Policy**

**Report of the Portfolio Holder for Corporate Governance**

This report is public

**Purpose of the Report**

- To advise Members of a review of the joint policy and procedures covering the Councils' activities under the Regulation of Investigatory Powers Act 2000 (RIPA).
- To recommend a revised Joint RIPA Corporate Policy and Procedures be approved.

**1 Report Details**

- 1.1 The Regulation of Investigatory Powers Act (RIPA) enables the Councils to use covert surveillance, covert human intelligence sources (CHIS) and the acquisition of service use or subscriber information in relation to communications data in a manner that is compatible with Article 8 of the European Convention on Human Rights governing an individual's right to respect for their private and family life, home and correspondence. There are various criteria which must be met, including a 'seriousness threshold' for the use of directed surveillance, and any requests by the Councils to use the RIPA powers must be approved by a Magistrate.
- 1.2 Local authorities are sparing users of RIPA legislation and neither Bolsover nor North East Derbyshire District Councils have used them since the last update to Committee in July 2017. The last time RIPA powers have been used by either Council was in 2012. The Council does carry out investigations and uses enforcement powers, therefore it is important that Officers are both aware of the powers for gathering information covertly but that also there is a fit for purpose and legally compliant procedure in place for any situations when it is necessary to use them.
- 1.3 The Councils have been periodically inspected by the Office of Surveillance Commissioners. The last inspection was in 2015/2016. Inspections of local authorities are scheduled for every three years so an inspection is due to take place during 2018/19.
- 1.4 The Office of Surveillance Commissioners has been superseded by the Investigatory Powers Commissioner's Office (IPCO).
- 1.5 Since the last inspection, the policy has been reviewed annually to ensure that post-holders are up to date, and to improve wording and clarity of the information.

There have been no changes in the official guidance, and no changes in legislation have yet been brought into force regarding the use of the RIPA Powers.

- 1.6 The Investigatory Powers Act 2016, however, makes many changes to the power to acquire communications data. These changes are yet to be brought into force, but in anticipation of the changes, the policy has been adapted to separate out the sections relating to the different powers. There is now a section relating to covert directed surveillance and covert human intelligence sources (covered by Part 2 of RIPA) and a separate section on the acquisition of communications data (Part 1, Chapter 2 of RIPA).
- 1.7 The main change within the new legislation is that applications for the acquisition and disclosure of communications data would be submitted to the Investigatory Powers Commissioner for approval.
- 1.8 Further changes to these provisions are expected in order to bring the rules in line with European legislation. The government has been given a deadline of 1 November 2018 to make the changes. A further review will be undertaken at this stage to implement the changes to this part of the procedure.
- 1.9 One further change expected is the creation an Office for Communications Data Authorisations (OCDA) which would oversee requests to obtain data from public bodies such as the Councils, rather than the Investigatory Powers Commissioner, separating the functions of oversight and approval of applications. The requirement for Magistrates approval would be removed (for communications data only) as this would be unnecessary in light of the new independent arrangements and the role of the OCDA. Internal approval by a senior designated officer would still be required prior to an application being submitted to the OCDA for authorisation. Local authorities will still not be permitted to authorise urgent applications internally; independent authorisation will be required in all cases.
- 1.10 Much of the public concern regarding these powers in relation to communications, is in the interception of the content of communications, i.e. listening to phone-calls and reading emails. Local authorities are only permitted to access limited data regarding service use and subscriber information (e.g. the use of a forwarding or re-direction service.) Neither Bolsover District Council nor North East Derbyshire District Council has applied for or used the powers to acquire communications data under the current regulations.

### Training

- 1.11 Previous inspections have focused on the need for regular training and refreshers for officers involved in investigations as well as senior officers appointed as authorising officers and designated persons.
- 1.12 The last training at both Councils took place in November 2015. Training was deferred in the last 12 months due to the on-going SAMT restructure and the uncertainty regarding the amendments due to the Investigatory Powers Act.
- 1.13 Training sessions for the Strategic Alliance Management Team, including those officers appointed as authorising officers and designated persons, and officers in

planning enforcement, licensing, environmental health and the benefits team will be scheduled over the next few months.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The review of the Joint RIPA Policy has been undertaken to ensure it is up to date, fit for purpose and legally compliant. The revised version amends the structure of the policy in order to create a separate section for the powers to acquire communications data. When the amendments arising from the Investigatory Powers Act are brought into force, a further review will take place focused on this section of the policy only.

## **3 Consultation and Equality Impact**

- 3.1 An Equality Impact Assessment was completed in 2017, which concluded that there were no concerns raised and no actions to take. No amendments have been proposed that require a further assessment to be carried out.

## **4 Alternative Options and Reasons for Rejection**

- 4.1 It is recommended that the Councils review and update the RIPA policy regularly as failure to do so could result in the policy failing to comply with legislative changes and lead to unlawful investigatory actions taking place.

## **5 Implications**

### **5.1 Finance and Risk Implications**

- 5.1.1 Failure of the Councils to adhere to the legal requirements of RIPA could lead to unlawful investigatory activity being undertaken, making the Councils vulnerable to complaints, legal challenge and reputational damage and costs. It is important therefore that the policy is regularly reviewed and that officers receive sufficient training which will mitigate the likelihood of this risk occurring.

### **5.2 Legal Implications including Data Protection**

- 5.2.1 The legal implications are addressed within the policy.

### **5.3 Human Resources Implications**

- 5.3.1 None arising from this policy.

## **6 Recommendations**

- 6.1 That Executive:

- (1) approve the revised Joint RIPA Policy and Procedure document.
- (2) note that a further review will take place once the provisions of the Investigatory Powers Act 2016 relating to the acquisition and disclosure of communications data are brought into force

## 7 Decision Information

<p><b>Is the decision a Key Decision?</b>  A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  <i>BDC: Revenue - £75,000</i> <input type="checkbox"/>  <i>Capital - £150,000</i> <input type="checkbox"/>  <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/>  <i>Capital - £250,000</i> <input type="checkbox"/>  <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p><b>Is the decision subject to Call-In?</b>  (Only Key Decisions are subject to Call-In)</p>	No
<p><b>Has the relevant Portfolio Holder been informed</b></p>	Yes
<p><b>District Wards Affected</b></p>	None Directly
<p><b>Links to Corporate Plan priorities or Policy Framework</b></p>	Demonstrating Good Governance

## 8 Document Information

Appendix No	Title
Appendix 1	Revised Joint RIPA policy and procedures document
<p><b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
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