

Bolsover District Council

Standards Committee

11 March 2019

Review of Joint RIPA Policy

Report of the Head of Corporate Governance and Monitoring Officer

This report is public

Purpose of the Report

- To update the Committee on the use of RIPA powers in the last year.
- To advise the Committee of a review of the joint policy and procedures covering the Council's 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 Council 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 Council to use the RIPA powers must be approved by a Magistrate, under the current legislation.
- 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 2018. The last time RIPA powers have been used by either Council was in 2012.
- 1.3 The Council has been periodically inspected by the Office of Surveillance Commissioners. The last inspection was in 2015/2016. The Office of Surveillance Commissioners has been superseded by the Investigatory Powers Commissioner's Office (IPCO). Inspections of local authorities are scheduled for every three years so an inspection is due to take place during 2018/19, however a new method for inspections has also been introduced, making it

likely that the next inspection will be a paper-based desktop review, rather than a visit by an inspector.

- 1.4 Since the last review, new Codes of Practice have been issued and some legislative changes have been made arising from the Investigatory Powers Act 2016 and the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018.
- 1.5 Major changes to the procedure for applying for authorisation of the acquisition and disclosure of communications data were made by the Investigatory Powers Act 2016 however these changes have not yet been brought into force. A legal challenge to the legislation has been launched nationally and it is not anticipated that any changes will be brought into effect until this court case is resolved, later in 2019 or 2020. If the provisions were brought into force as they stand, the applications in respect of communications data would have to be submitted to the Investigatory Powers Commissioner rather than the Magistrates Court.
- 1.6 The legislative changes that have come into force include:
 - A requirement to report errors to the Investigatory Powers Commissioner has been introduced. Relevant errors include where covert surveillance has taken place without due authorisation.
 - Amendment of the maximum duration of authorisation for the use of a covert human intelligence source who is under 18 years of old to increase the period from 1 month to 4 months
 - Introduction of a seriousness threshold for the applicable crime purpose for the acquisition and disclosure of communications data – the offence being investigated must be punishable by a maximum term of imprisonment of 12 months or more.
- 1.7 The Home Office has also issued amended guidance documents including the Code of Practice on Covert Surveillance and Property Interference and Code of Practice on Covert Human Intelligence Sources. Changes to the guidance, with more information and examples focuses on the following areas:
 - Social Media and internet research
 - General Observation duties on the internet
 - Use of drones
 - Error Reporting
 - Covert Surveillance of CHIS
 - Changes to guidance to the role of Senior Responsible Officer
 - GDPR and related topics
 - Privileged information and confidential information
 - Disclosure requirements
 - Complaints
 - Non-RIPA surveillance

- 1.8 Where necessary amendments have been proposed to the Councils' RIPA policy as a consequence of the changes listed in the previous two paragraphs. The Codes of Practice are also available for officers to refer to via the Extranet. The amended policy is attached at **Appendix 1**.

Training

- 1.9 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.
- 1.10 A training session has now been delivered for the Strategic Alliance Management Team, including those officers appointed as authorising officers and designated persons, and further training has been scheduled for 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 proposed amendments to the policy to reflect changes in legislation and revised Codes of Practice that have been issued by the Home Office.

3 Consultation and Equality Impact

- 3.1 An Equality Impact Assessment has been 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 The Council is recommended to review and update its 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 Council to adhere to the legal requirements of RIPA could lead to unlawful investigatory activity being undertaken, making the Council 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 Standards Committee:

- (1) note the update provided on the use of the policy.
- (2) recommend the revised Joint RIPA Policy and Procedure document for approval by Cabinet, following consideration by the Strategic Alliance Joint Committee.

7 Decision Information

Is the decision a Key Decision? 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>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	Yes
District Wards Affected	None Directly
Links to Corporate Plan priorities or Policy Framework	Demonstrating Good Governance

8 Document Information

Appendix No	Title
Appendix 1	Revised Joint RIPA policy and procedures document
Background Papers (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)	
None	
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