

**Agenda Item No:** 6

**Report Title:** Annual Report on Use of Covert Surveillance

**Report To:** Audit and Standards Committee      **Date:** 22 January 2018

**Cabinet Member:** Cllr Andy Smith

**Ward(s) Affected:** All

**Report By:** Catherine Knight, Assistant Director of Legal and Democratic Services and RIPA Senior Responsible Officer

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**Purpose of Report:**

To report on the Council's use of powers under the Regulation of Investigatory Powers Act 2000 ('RIPA') to authorise the use of covert surveillance during 2017; and to brief the Committee on (1) an internal review of Council online surveillance and (2) an external inspection into the Council's governance arrangements for authorising the use of covert surveillance.

**Officers Recommendation(s):**

- 1 To note the incidence of Council authorisations under RIPA for covert surveillance operations during 2017.
  - 2 To note the findings and recommendations of an interim review by Internal Audit into the Council's use of online surveillance.
  - 3 To note the outcome of the recent inspection into the Council's use of RIPA powers to conduct covert surveillance, conducted by the Investigatory Powers Commissioner's Office.
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**1 Reasons for Recommendations**

- 1.1 It is part of this Committee's remit to review the Council's governance arrangements for conducting covert surveillance and to provide assurance to the Council that if/when carried out, surveillance of this type complies with the relevant policy and legislation. Also, the Investigatory Powers Commissioner

expects all local authorities to keep its members informed of these matters at least annually, to enable them to oversee the arrangements.

## **2 Information**

### **2.1 RIPA**

2.1.1 As a reminder, RIPA provides the legislative framework that prescribes how specified bodies, including local authorities, may conduct certain forms of surveillance lawfully; this includes “directed” surveillance (which is covert surveillance that is likely to result in the obtaining of private information and done for the purposes of a specific investigation or a specific operation); covert activity conducted in accordance with RIPA is deemed lawful and therefore a legitimate interference with the subject’s right to privacy.

2.1.2 For Council directed surveillance to be lawful under RIPA, it must–

- (i) be authorised by a designated officer on the grounds that it is:
  - (a) necessary for the purpose of preventing or detecting a crime that attracts a maximum custodial sentence of 6 months or more; or necessary for preventing disorder;
  - (b) proportionate to what is sought to be achieved by carrying it out;
- (ii) approved in advance by a magistrate.

### **2.2 Incidence of RIPA Authorisations during 2017**

2.2.1 No Council authorisations under RIPA were sought or given during 2017 in relation to directed surveillance. This follows the pattern of the previous nine years and reflects the Council’s policy of authorising directed surveillance only after all other reasonable options have been considered but deemed unsuitable or inadequate.

2.2.2 Nonetheless, the Investigatory Powers Commissioner expects local authorities to retain the knowledge and skills to enable them to authorise directed surveillance under RIPA, should the need arise. To this end, the Council provided RIPA refresher training to relevant officers in July 2017, as a result of which the Council now has a pool of four trained authorising officers. In addition, the Council has access to an online ‘toolkit’ with all the forms and procedures required for a RIPA authorisation.

### **2.3 Internal Review of Online Surveillance**

2.3.1 The annual audit programme for 2017/18 includes an audit of compliance with RIPA. Owing to specific concerns raised by the Chief Surveillance Commissioner about public authority surveillance of social networking sites, it was decided that the audit should focus on (1) the Council’s controls over the use of social media for investigative and

research purposes and (2) the adequacy of the RIPA Monitoring Officer's draft guidance on the circumstances when RIPA authorisation might be required for activity of this type.

- 2.3.2 The audit took place in October 2017 and comprised an interim review on the basis that, once the recommendations were implemented, a fuller audit could be rolled out to establish the level of compliance across Lewes and Eastbourne councils.
- 2.3.3 The review set out to determine the likely scope of social media use by officers for business purposes, and to comment on the guidance and training that officers might need in terms of controls and authorisations required.
- 2.3.4 The key findings of the review were as follows:
- The level of knowledge among officers (both managerial and frontline) concerning the practical and legal issues with accessing social media sites varies widely
  - Officers who access social media sites do so for a range of applications; only seldom would this amount to 'surveillance'. More routinely, officers resort to social media sites to seek information that may assist their enquiries about unpaid council tax or business rates, assessing applications for housing benefit of social housing, confirming the identity of a claimant, or trying to establish the whereabouts of tenant
  - Some officers do not know how to access social media sites, even if doing so would be useful for information gathering
  - There is a lack of understanding about the particular controls and authorisations required for accessing social media sites where privacy settings are in place
  - Officers have not received clear and consistent training on how to access social media sites and the circumstances in which RIPA authorisation would be necessary.
- 2.3.5 The review recommends that the RIPA Monitoring Officer's draft guidance be updated to address the key findings, and communicated via training sessions with relevant teams. The RIPA MO has undertaken to complete this by the end of March 2018.
- 2.3.6 The amended guidance will also take account of the draft update to the Home Office Code of Practice on the use of RIPA powers to conduct directed surveillance, which includes a new section on carrying out online covert activity. The draft amended Code of Practice was subject to consultation in Nov-Dec 2017; the definitive version is expected shortly.

## 2.4 IPCO Inspection

- 2.4.1 Every 3 years the Investigatory Powers Commissioner's Office ('IPCO') carry out an inspection of the Council's arrangements to secure compliance with legislation governing the use of covert surveillance and the management of covert human intelligence sources. The most recent inspection took place in October 2017.
- 2.4.2 The inspection examined all the Council's training and authorisation procedures. In addition, an Assistant Commissioner interviewed the RIPA Senior Responsible Officer (Catherine Knight), the RIPA Monitoring Officer (Oliver Dixon) and a Counter-Fraud Investigator about RIPA governance here.
- 2.4.3 The inspection report gives credit for the RIPA training provided to authorising officers and the draft guidance on surveillance of social media sites. However, it recommends raising RIPA awareness across a broader spectrum of officers, especially with those likely to be engaged in surveillance or research through social media sites. As noted in paragraph 2.3.5 above, the RIPA Monitoring Officer is committed to provide the necessary training by the end of March.
- 2.4.4 The inspection report also recommends providing training on when and how to authorise the use of a covert human intelligence source ('CHIS'). Historically, the Council has never authorised deployment of a CHIS but, with an increasing proportion of research and investigations being carried out online through social media sites, using a CHIS may be justifiable when the Council has legitimate grounds for overcoming security settings. The training referred to in paragraph 2.3.5 will include the management of CHIS.
- 2.4.5 The inspection report reminds the Council of the requirement (under the Home Office Code of Practice) to keep Members abreast of RIPA activity or inactivity. This report to Audit & Standards Committee provides Members with their regular annual update. Additionally, the Council has already committed to brief the Committee following the conclusion of any specific instance of covert surveillance or deployment of CHIS.

## **3 Financial Appraisal**

There are no significant financial implications associated with the officers' recommendations at the head of this report.

## **4 Legal Implications**

The legislative context of this report is Part 2 of RIPA which provides the basis on which local authorities may lawfully carry out directed surveillance and deploy a covert human intelligence source. RIPA is supported by a number of Home Office codes of practice, as well as procedural guidance issued by the Office of Surveillance Commissioners (now the IPCO).

Directed surveillance conducted in accordance with RIPA is lawful. Directed surveillance conducted outside the aegis of RIPA is not necessarily unlawful but risks amounting to a breach of the subject's right to a private life. Accordingly, if the Council is ever contemplating surveillance of this sort, adhering to the authorisation procedures and processes laid down in RIPA is always preferable.

## **5 Risk Management Implications**

The lawful use of directed surveillance and CHIS is tightly regulated by legislation, codes of practice and regulatory inspections in order to minimise the risk of interference with a person's right to a private life.

That risk can be mitigated by complying not only with the legislative framework but also the Council's own policies and procedures on RIPA, maintaining the training of authorising officers and investigating officers, and in carrying forward the recommendations of internal audit and external inspection.

## **6 Equality Screening**

There are no equality issues arising from this report

## **7 Background Papers**

LDC Policy Statement on Use of Covert Surveillance

Home Office Code of Practice on Covert Surveillance and Property Interference (including draft revisions subject to consultation in Nov-Dec 2017)