

11 January 2019

Dear Members of the Audit and Standards Committee

Audit and Standards Committee - 21 January 2019

I am now able to enclose, for consideration, the following report at the above meeting that was unavailable when the agenda was printed.

**Item Item
No**

- 4 (a) Internet and Social Media Research and Investigations Policy and Procedure (Pages 1 - 10)
Report of Assistant Director of Legal and Democratic Services

Yours sincerely

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Report to: Audit and Standards Committee

Date: 21 January 2019

Title: Internet and Social Media Research and Investigations Policy and Procedure

Report of: Assistant Director of Legal & Democratic Services

Ward(s): All

Purpose of report: To seek approval of the Council's draft policy on conducting internet and social media research and investigations; and to seek authority for creating and issuing an associated procedure

Officer recommendations: (1) That the Committee approve Lewes District Council's Internet and Social Media Research and Investigations Policy set out in draft at Appendix 1
(2) That the Committee grant delegated authority to the Director of Service Delivery to develop, implement and ensure compliance with an Internet and Social Media Research and Investigations Procedure for Lewes District Council

Reasons for recommendations: To ensure the Council has a policy and procedure for the conduct of internet and social media research and investigations that is lawful and ethical

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1 Introduction

- 1.1 Home Office guidance on local authority use of covert surveillance states "Elected members of a local authority should review the authority's use of ...the 2000 Act [*Regulation of Investigatory Powers Act 2000 – "RIPA"*] and set the policy at least once a year."
- 1.2 This recommendation is reflected in Lewes District Council's Policy Statement on the Use of Covert Surveillance, which provides that "the operation of this policy shall be overseen by Audit & Standards Committee by receiving reports every 12 months on the policy and its implementation."
- 1.3 The Council's existing Policy Statement on Covert Surveillance remains fit for purpose but needs supplementing with a stand alone policy dealing specifically with online covert activity.

2 Online Covert Activity

- 2.1 The growth of the internet, and the extent of the information that is now available online, presents new opportunities for the Council to view or gather information which may assist its officers in preventing or detecting crime or carrying out other statutory functions, as well as in understanding and engaging with the public it serves. It is important that the Council is able to make full and lawful use of this information for its statutory purposes. Much of it can be accessed without the need for RIPA authorisation; use of the internet prior to an investigation should not normally engage privacy considerations. But if the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded and may engage privacy considerations, RIPA authorisations may need to be considered.
- 2.2 The internet may be used for intelligence gathering and/or as a surveillance tool. Viewing a person's social media site may be required in order to gather information prior to and/or during an operation, an investigation, research or other forms of case review or assessment. For example, officers may seek to obtain such information when following up unpaid Council Tax or business rates debts, assessing applications for Housing Benefit or social housing, seeking to confirm the identity of a resident or claimant, or trying to establish the whereabouts of a tenant.

3 Policy and procedure on conducting internet and social media research and investigations

- 3.1 To avoid unlawful intrusion of privacy, it is important that the Council has, and enforces, a policy on conducting internet and social media research and investigations.
- 3.2 To this end, it is recommended that the Committee approve the draft policy set out in full at Appendix 1.
- 3.3 To support the policy, it is further recommended that the Committee grant delegated authority to the Director of Service Delivery to develop, implement, and ensure compliance with an officer-level operational procedure for carrying out internet and social media research and investigations.

4 Policy Review

- 4.1 The Committee has responsibility for keeping the policy under review by monitoring it annually (and more frequently if circumstances require). Accordingly, officers would bring a report to Committee at these intervals with information on how the policy has been rolled out and adhered to.

5 Financial appraisal

- 5.1 The Council will need to provide relevant officers with training on the policy and procedure covered by this report. To this end, an external training course has been scheduled for 25 January 2019, the cost of which (£950) is being met by and shared across the relevant Heads of Service.

6 Legal implications

- 6.1 The legal framework for online covert activity is referred to in the draft policy and consists principally of the Regulation of Investigatory Powers Act 2000, the Human Rights Act 1998 and data protection legislation. The policy recommended in this report will, if implemented and followed, reduce the Council's exposure to potential liability in respect of any of these legal obligations.

Lawyer consulted 02.01.19

Legal ref: 007697-JOINT-OD

7 Risk management implications

- 7.1 Carrying out internet and social media research and investigations without regard to relevant legislation and codes of practice would expose the Council to the risk of legal liability and reputational loss. To mitigate such risk, it is important for the Council to adopt and roll out the policy and procedure recommended in this report.

8 Appendices

- Appendix 1 – Draft Internet and Social Media Research and Investigations Policy

9 Background papers

The background papers used in compiling this report were as follows:

- Code of Practice on Covert Surveillance and Property Interference (*Home Office, August 2018*) – in particular the provisions dealing with Online Covert Activity at paragraphs 3.10 to 3.17
- Lewes District Council Policy Statement on Use of Covert Surveillance

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Lewes District Council



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Document name:	Internet & Social Media Research and Investigations Policy
Document type:	Policy

Authority(ies) covered:	Lewes District Council
Responsible (Executive Lead):	Cllr Andy Smith for LDC
Accountable (Operational Lead):	Oliver Dixon Senior Lawyer and RIPA Monitoring Officer
Version (e.g. first draft, final report):	First draft
Approved by:	LDC Audit & Standards Committee – <i>resolution pending</i>
Date of publication:	To be confirmed
Revision due:	To be confirmed

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1. Introduction

- 1.1 Online open source research is widely regarded as the collection, evaluation and analysis of material from online sources available to the public, whether by payment or otherwise, to use as intelligence and evidence.
- 1.2 The use of online open source internet and social media research is a method of obtaining information to assist Lewes District Council (“LDC”) with its regulatory and enforcement functions. It can also assist with service delivery issues. However, the use of the internet and social media is constantly evolving and with it the risks, particularly regarding breaches of privacy and other operational risks.
- 1.3 As a public authority, LDC is subject to the Human Rights Act 1998 (“HRA”) and, as such, must respect the right of individuals to their private and family life – their ‘Article 8’ right. This privacy obligation applies to everything the Council does, including research and investigations carried out using the internet. The HRA permits a public authority to interfere with a person’s right to privacy *only* in accordance with the law and where doing so is necessary on specified grounds, including the prevention of crime.
- 1.4 Researching, recording, storing, and using open source information regarding a person or group of people must be both necessary and proportionate and take account of the level of intrusion against any person. The activity may also require authorisation and approval by a magistrate under the Regulation of Investigatory Powers Act 2000 (“RIPA”). To ensure that any resultant interference with a person’s Article 8 right is lawful, the material must, in addition, be processed in accordance with the General Data Protection Regulation (“GDPR”) and Data Protection Act 2018 (“DPA”).

2. Scope of Policy

- 2.1 The objective of this policy and associated procedure is to ensure that all online research and investigations are conducted lawfully and ethically. It

provides guidance to officers about the implications and legislative framework associated with online internet and social media research. The policy also seeks to ensure that the activity undertaken, and any evidence obtained, will stand scrutiny in any subsequent criminal proceedings.

- 2.2 This policy takes account of the HRA, RIPA, the Criminal Procedure and Investigations Act 1996 (“CPIA”), GDPR, DPA and the National Police Chiefs’ Council Guidance on Open Source Investigation/Research
- 2.3 This policy and associated procedure will be followed at all times and should be read, where required, alongside the Home Office RIPA Codes of Practice and any other legislation and relevant LDC policies mentioned in this document. Further advice on the interpretation and implementation of this policy should be sought from LDC’s RIPA Monitoring Officer, Oliver Dixon.
- 2.4 Not adhering to this policy could result in the relevant officer(s) being dealt with through the Council’s disciplinary procedure.
- 2.5 This policy is an open document and fully disclosable under the Freedom of Information Act 2000.

3. Risk

- 3.1 Officers should be made aware that any activity carried out over the internet leaves a trace or footprint which can identify the device used, and, in some circumstances, the individual carrying out the activity. Unless the activity is conducted lawfully, LDC may face legal proceedings for breaching the Article 8 right of the person who is the subject of the research or investigation. There are also legal and reputational risks in failing to handle private information in accordance with GDPR and DPA – see further at paragraph 6.
- 3.2 Due to the potential risk of compromise to other investigations, the activity should be conducted in a manner that does not compromise any current or future investigation or tactics.

4. Necessity / Justification

- 4.1 To justify the research or investigation, there must be a clear lawful reason, and it must be necessary. Therefore, the reason for the research, such as, the criminal conduct that it is aimed to prevent or detect must be identified and clearly described. This should be documented with clear objectives. Should the research or investigation fall within the scope of RIPA (i.e. by amounting to ‘directed surveillance’¹), the activity must not proceed without prior

¹ RIPA defines ‘directed surveillance’ as surveillance that is covert and carried out–
(i) in connection with a specific investigation or operation;

authorisation in accordance with RIPA procedures, including the need to show necessity on specified statutory grounds.

5. Proportionality

- 5.1 Proportionality involves balancing the intrusiveness of the research on the subject and other innocent third parties who might be affected by it (collateral intrusion) against the need for the activity in operational terms. This requires an evaluation of the benefit to carrying out the activity relative to the seriousness of the suspected conduct under research or investigation, and of the expected benefit of the activity versus the privacy intrusion.
- 5.2 The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.
- 5.3 Where online activity amounts to directed surveillance, part of the application for prior authorisation requires the applicant to demonstrate proportionality to the standard required by RIPA and its relevant Code of Practice.

6. Private Information

- 6.1 RIPA provides that 'private information' includes any information relating to a person's private or family life. Private information should be taken generally to include any aspect of a person's private or personal relationship with others, including family and professional or business relationships.
- 6.2 Prior to, and during any research, staff must take into account the privacy issues regarding any person associated with the research.

7. Reviewing the Online Activity

- 7.1 During the course of conducting the internet open source research or investigation, the nature of the online activity may evolve. Officers involved should continually assess and review their activity to ensure it remains lawful and compliant. Where it starts as or evolves into RIPA activity, the RIPA procedure must be followed. If in doubt, officers should seek advice from the RIPA Monitoring Officer.

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- (ii) in a manner likely to obtain private information; and
(iii) as a planned response to events or circumstances
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8. Use of Material

- 8.1 The material obtained from open source internet and social media research or investigations may be used as intelligence or evidence.
- 8.2 Any material gathered from the internet during the course of a criminal investigation must be retained in compliance with the CPIA Code of Practice and processed in line with the GDPR.

9. Review of Policy

- 9.1 LDC's Audit and Standards Committee will review this policy annually but may, where justified, resolve to amend it at any time.

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