

<b>Body:</b>	Audit and Governance Committee
<b>Date:</b>	7 March 2018
<b>Subject:</b>	Covert Surveillance Update
<b>Report Of:</b>	Deputy Chief Executive
<b>Ward(s)</b>	All
<b>Purpose</b>	To update the Committee on covert surveillance policy and practice at EBC
<b>Recommendation(s):</b>	That Audit & Governance Committee note– <ul style="list-style-type: none"> <li>1. The incidence of authorised covert surveillance at EBC since September 2016.</li> <li>2. Planned amendments to Home Office code of practice on covert surveillance</li> <li>3. The outcome of an internal review of online surveillance activity across EBC and Lewes District Council</li> </ul>
<b>Contact:</b>	Oliver Dixon, Lawyer and RIPA Monitoring Officer. Telephone 01323 415881 or internally on extension 5881. E-mail address: <a href="mailto:oliver.dixon@lewes-eastbourne.gov.uk">oliver.dixon@lewes-eastbourne.gov.uk</a>

## 1.0 Introduction

1.1 Part 2 of the Regulation of Investigatory Powers Act 2000 (“RIPA”) provides the legislative framework that prescribes how specified bodies, including local authorities, may lawfully conduct certain forms of surveillance; this includes “directed” surveillance (which is covert surveillance likely to result in the obtaining of private information and carried out for the purposes of a specific investigation or operation).

Covert activity conducted in accordance with RIPA is deemed lawful and therefore a legitimate interference with the subject’s right to privacy.

1.2 For EBC 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.

1.3 In September 2016, Audit & Governance Committee considered an updated council policy on the use of covert surveillance and recommended it for approval. The policy was subsequently adopted by Cabinet in October 2016 and is included for reference at Appendix 1.

1.4 It is the role of Audit & Governance Committee to oversee the Council's compliance with the policy by receiving annual reports on its operation.

## **2.0 Incidence of RIPA Authorisations**

2.1 No RIPA authorisations for directed surveillance have been sought or given by the Council since the last report to this Committee (September 2016). This follows the pattern of recent 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 Nonetheless, the Investigatory Powers Commissioner, the national supervisory body for the exercise of RIPA powers, 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.

## **3.0 Code of Practice Update**

3.1 In November 2017 the Home Office consulted on three updated codes of practice relating to powers under RIPA. The particular update on covert surveillance provides expanded guidance on the use of surveillance in online investigations, especially those involving observation of social media sites.

No major alterations to the codes are expected following consultation.

3.2 Under the revised covert surveillance code of practice, the rule of thumb for the regulation of online covert activity is as follows:

Simple reconnaissance of social media sites (i.e. preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation. But where a public authority is systematically collecting and recording information about a particular person or group, a directed surveillance authorisation should be considered.

3.3 Home Office guidance will form the basis of training for EBC and LDC officers on the use of surveillance for online investigations – see also paragraph 4.5 below.

## **4.0 Internal Review of Online Surveillance**

- 4.1 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.
- 4.2 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 Eastbourne and Lewes councils.
- 4.3 The review set out to determine the 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.
- 4.4 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 directed 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 or 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.
- 4.5 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 content will include the latest Home Office guidance on the subject.

The RIPA MO has undertaken to update his guidance by the end of March 2018, and then arrange training to officers.

## **5.0 Resource Implications**

5.1 It may be necessary to procure external training on the use of surveillance with online investigations, due to its technical nature. This would be funded from the corporate training budget.

## **6.0 Legal Implications**

6.1 As stated in paragraph 1.1, 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 advisable.

## **7.0 Conclusion (this should include a summary of the reasons for the recommendations).**

7.1 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.

This report fulfils these requirements.

**Lead officer name: Oliver Dixon**  
**Job title: Lawyer and RIPA Monitoring Officer**

---

**Appendices:** Appendix 1 – EBC Covert Surveillance Policy

### **Background Papers:**

The Background Papers used in compiling this report were as follows:

- Regulation of Investigatory Powers Act 2000, Part II, and statutory instruments made thereunder
- Home Office Consultation (November 2017) on revised codes of practice under RIPA

To inspect or obtain copies of background papers please refer to the contact officer listed above.