

## MUNICIPAL YEAR 2016/2017 REPORT NO. 92

**MEETING TITLE AND DATE:**

Audit Committee – 29  
September 2016

**REPORT OF:**

Monitoring Officer

**Agenda – Part: 1**

**Item: 8**

**Subject:**

**SCRUTINY OF RIPA STATISTICS**

**Wards: All**

**Cabinet Member consulted:**

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### 1. EXECUTIVE SUMMARY

- 1.1 This report reminds Members of the requirement to monitor the use by the Council of Covert Surveillance to ensure compliance with the law. Members to note that since the last report there has been one application for Directed Surveillance.

### 2. RECOMMENDATIONS

- 2.1 That members note the requirement for the Audit Committee to receive quarterly reports from the Monitoring Officer on the use of RIPA within the Council and to note the use of the legislation in the last quarter.

### **3. BACKGROUND**

#### **RIPA 2000**

- 3.1 The Regulation of Investigatory Powers Act 2000 ("RIPA"), SI 2003/3171, and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010/521) as amended by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, SI 2012/1500 (the 2012 order), regulate the way investigations are carried out for the prevention and detection of crime.
- 3.2 Controls on covert surveillance were introduced as a consequence of the Human Rights Act 1998, which enshrined the European Convention on Human Rights into UK law and came into effect on 2 October 2000. RIPA aims to ensure that public bodies respect the privacy of members of the public when carrying out their investigations and that there is an interference with privacy only where the law permits it and there is a clear public interest justification.
- 3.3 The main aim of RIPA is to ensure that covert investigations are conducted in such a way as to protect individuals' rights and act as a safeguard to protect council officers and the Council against any legal challenge.
- 3.4 Directed surveillance and Covert Human Intelligence Sources (the meaning of both of which are set out in RIPA and explained in the Council's Policy and Procedure document) shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Act) namely: for the purpose of preventing or detecting crime or the prevention of disorder. Examples of its use by the Council would be for the detection of crimes such as housing benefit fraud, fly-tipping and offences under the Trades' Description Act.
- 3.5 Further, the powers must be used in accordance with the Human Rights Act 1998 and, in particular Article 8 - (the right to respect for private and family life, home and correspondence). Authorisation under RIPA will only ensure that there is a justifiable interference with an individual's Article 8 right if it is necessary and proportionate for these activities to take place.
- 3.6 In complying with RIPA, officers must have full regard to the Code of Practice on the use of covert surveillance issued by the Home Office. Although the Codes of practice do not extend the council's legal obligations under RIPA 2000 the codes are nevertheless admissible as evidence in both criminal and civil proceedings. The Council's own policy and procedure is available on the Council's intranet.

- 3.7 RIPA and the Code of Practice also set out the requirements for using covert surveillance in relation to confidential information, juvenile sources, vulnerable individuals, home surveillance and collateral intrusion (interference with the privacy of persons other than the subject(s) of surveillance).
- 3.8 All applications for RIPA authorisations have to be considered and approved by specified trained authorising officers within the Council. Applications for directed surveillance will be authorised for the Council at Head of Service level or above. The Council has adopted a RIPA Policy and Procedure and produced a range of forms which are available to all officers on the intranet. Training has been undertaken by relevant officers who may either require a RIPA authorisation in connection with the carrying out of their roles or who have been designated as authorising officers.
- 3.9 In investigating criminal offences, the Council also has powers (by virtue of the RIPA (Communications Data) Order 2004 (“the Communications Order”) to gain access to communications data – that is information held by telecommunication or postal service providers about the use of their services by persons who are the subject of criminal investigations. The Council is now using the National Anti Fraud Network (NAFN) to make all its applications for access to communications data; this was one of the recommendations made by the IOCCO inspector following his visit in September 2010.
- 3.10 The Council’s use of its powers under RIPA and the Communications Order are subject to external scrutiny in the form of inspections by the Office of Surveillance Commissioner's Office (OSC) and the Interception of Communications Commissioner's Office (IOCCO) respectively.
- 3.11 The Council’s Monitoring Officer and the Head of Legal Services meet on a quarterly basis to review the Council’s use in that quarter of its powers under RIPA.
- 3.12 The Audit Committee will receive quarterly reports from the Monitoring Officer on the Council’s use of RIPA.
- 3.13 During the monitoring period covered by this report there has been one application for Directed Surveillance which was approved by the judiciary. The information collected was considered by Council Officers and although it did not result in prosecution, it led to internal disciplinary sanctions. In accordance with Council Procedures, the RIPA approval has now been cancelled.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 There are no other options which can be considered as the recommendations set out in this report are made in order to comply with legislation and statutory guidance.

## **5. REASONS FOR RECOMMENDATIONS**

- 5.1 It is best practice for Members to have involvement in the overall approach to RIPA and monitor the Authority's surveillance processes, culture and controls.

## **6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

There are no specific financial implications relating to this report. However, a failure by the Council to exercise its powers appropriately and in accordance with the law could result in legal challenge and possibly in a claim for damages.

### **6.2 Legal Implications**

The legal implications are set out within the body of this report.

### **6.3 Property Implications**

There are no specific property implications arising from this report.

## **7. KEY RISKS**

- 7.1 The key risks to the Council are that without clear and robust policies and procedures in place, there would be a risk that officers/members would fail to comply with the relevant legislation and associated codes of practice. Consequently, complaints may be made against the Council by aggrieved persons, which may proceed to investigation by the independent tribunals set up by the Office of the Surveillance Commissioner. The Tribunals have the power to cancel authorisations, order the destruction of any records obtained in exercise of the powers conferred by RIPA and award compensation as they see fit.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

Scrutiny by Members of the Council's Use of its powers under RIPA assists in ensuring that the Council does not misuse its powers resulting in injustice to any individual.

### **8.2 Growth and Sustainability**

No direct relevance

**8.3 Strong Communities**

Scrutiny by Members of the Council's use of its powers under RIPA helps to generally promote the local population's confidence in the Council.

**9. PERFORMANCE MANAGEMENT IMPLICATIONS**

There are no specific performance management implications arising from this report.

**10. HEALTH AND SAFETY IMPLICATIONS**

There are no specific health and safety implications arising from this report.

**Background Papers**

None