

Report to: **Council**

Date: **5 December 2017**

Title: **Regulation of Investigatory Powers Act 2000 (RIPA) Policy and update**

Portfolio Area: **Support Services**

Wards Affected: **All**

Relevant Scrutiny Committee: N/A

Urgent Decision: **N** Approval and clearance obtained: **N/A**

Date next steps can be taken:
(e.g. referral on of recommendation or implementation of substantive decision) **Immediately following this meeting**

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RECOMMENDATIONS

That Council RESOLVES that the guidance on Social Networking Sites in investigations (Appendix B) be approved and included in the Council's RIPA policy.

1. Executive summary

- 1.1. The purpose of this report is to:
 - 1.1.1. review the Council's RIPA policy and approve guidance on Social Networking Sites in investigations
 - 1.1.2. update Members on the use of RIPA, and
 - 1.1.3. report on the role of the Office of Surveillance Commissioners (OSC)
 - 1.1.4. report on training for Officers
- 1.2. The Regulation of Investigatory Powers Act 2000 (RIPA) was designed to regulate the use of investigatory powers, and its effect is that formal authorisation must be obtained before carrying out certain surveillance, monitoring and other evidence gathering activities. RIPA ensures that the right balance is achieved between public interest and individual human rights.

- 1.3. RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary, proportionate and is properly authorised. These procedures are set out in the RIPA Policy attached to this report (Appendix A) and they are designed to protect the Council against a claim of a breach of Article 8 of the Human Rights Act if correctly followed (right to respect for private and family life, home and correspondence).
- 1.4. RIPA also requires the Chief Surveillance Commissioner to keep under review the use of RIPA by local authorities, and this is carried out by inspectors from the OSC. Historically these reviews were carried out by an Inspector's visit to all local authorities every three years, but given the reduction in the number of RIPA authorisations by local authorities, the OSC has changed the inspection regime, and visits are no longer automatic.
- 1.5. The Chief Surveillance Commissioner is now applying a more flexible approach to RIPA inspections to ensure compliance with RIPA. The Council was due a visit in August 2017 (the previous inspection having been carried out in August 2014) but this has been carried out this year by the completion of a questionnaire and submission of relevant documentation. The Inspector will send a report based on the information we have supplied in due course and a further report will be brought back to the Overview & Scrutiny Committee.
- 1.6. The Overview and Scrutiny Committee considered this matter at its meeting on 5 September 2017. In its discussions, Committee Members welcomed the Policy being reviewed to reflect the emerging trends relating to Social Media and proceeded to recommend that the guidance be approved and included in the Council's RIPA Policy (Minute O&S 35 refers).

2. RIPA Policy

- 2.1. The Council's RIPA Policy is attached at Appendix A. It was amended following the last OSC visit in 2014 to reflect the minor amendments recommended by the Inspector, and to also reflect changes to the Authorising Officers following the appointment of the current Senior Leadership Team.
- 2.2. The previous Inspector confirmed that (subject to the above minor amendments made at the time) the Policy is comprehensive and very clear and no further amendments have been made at this time. The 2017 Inspector's report may make recommendations on any updates that he considers are necessary (see 1.5 above) but if this is the case, a further report will be brought to Overview & Scrutiny.
- 2.3. The previous Inspector recommended that the Council adopts guidance on the use of Social Networking Sites for RIPA investigations and a draft is attached at Appendix B to this report for Members' approval. The approved version will form Annex B to the Council's RIPA Policy to ensure all of the policy documentation is accessible in one document.

3. RIPA activity

3.1. No RIPA authorisations have been applied for, or granted, in the three years since the inspection in August 2014.

3.2. The reasons are due a combination of factors, including the fact that for local authorities, the only statutory reason for a RIPA authorisation is for the purposes of preventing or detecting a criminal offence where that offence is punishable by a minimum term of at least 6 months imprisonment. The OSC also cite reduced resources, greater access to data-matching and overt, rather than covert, law enforcement.

4. OSC report

4.1. The OSC is responsible for reviewing RIPA activity and monitoring compliance with RIPA and previously had a three-year inspection programme for councils. On this basis, the Council was due a visit in August 2017. As set above, the OSC recognise that, for a variety of reasons, local authorities have granted fewer RIPA authorisations with many councils not having granted any authorisations over the last three years. The OSC can therefore elect to review a Council's RIPA activity through a questionnaire, submission of documents and details of training undertaken by relevant officers. This is the case for West Devon, and a report is awaited from the Inspector in due course. It is likely that the Inspector will make recommendations in the same way that he has made recommendations following a visit, and a further update will be brought to Members once that has been received.

5. Training

5.1. The Senior Leadership Team (the Authorising Officers) together with the Monitoring Officer, and officers who would be responsible for carrying out any RIPA investigations, attended RIPA training in February this year. The training covered a wide range of issues including the following:

- Why RIPA?
- RIPA and Local Authorities
- Surveillance
- CHIS
- Communications Data
- Role of authorising officers
- Necessity and proportionality
- Judicial Approval
- Social Networks
- The Investigatory Powers Act 2016

5.2. As the Council has not made any RIPA applications in the previous three years, (unless recommended otherwise by the OSC Inspector) further training will only be required when we appoint new Authorising or Investigating Officers or as a refresher to those currently trained officers. This will be built into the Councils' developing training programmes.

6. Outcomes/outputs

- 6.1. The Council aims to achieve compliance with the RIPA requirements and where authorisations are granted, that these are authorised as necessary and proportionate and in accordance with Policy.
- 6.2. Regular reviews of Council Policy, monitoring and reporting of any RIPA activity will ensure that compliance is achieved.

7. Options available and consideration of risk

- 7.1. The Council is obliged under the Regulation of Investigatory Powers Act, a series of regulations and Home Office guidance, to have a RIPA Policy in place and ensure compliance with that Policy. Home Office guidance also requires that officers are trained in RIPA in the future event that the Policy needs to be applied and authorisations granted.
- 7.2. Failure to review the Policy and non-compliance with the Policy, exposes the Council to the risk that it breaches the Human Rights Act, and is unable to legally enforce against unlawful activity.

8. Proposed Way Forward

- 8.1. To consider the current Policy attached at Appendix A. Pending the OSC Inspector's report, no amendments are recommended at this time save for the approval of the guidance for Social Networking Sites investigations to be added as Annex B to the Policy.

9. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Council's duties for covert surveillance are set out in RIPA and these requirements are reflected in the Council's RIPA Policy at Appendix A. The Home Office guidance on covert surveillance recommends that Members should review the RIPA policy annually, and regularly consider reports on the use of RIPA. Reports on the use of RIPA will be brought to O&S if the Council grants any authorisations.
Financial	N	There are no direct financial implications to this report.
Risk	Y	Adoption of (and compliance with) a RIPA policy will minimise any risk to the Council of breaches of the Human Rights Act in any future investigations involving covert surveillance. Regular review of Policy

		and RIPA use, together with reporting to O&S will further mitigate that risk and ensure consistent application of the policy.
Comprehensive Impact Assessment Implications		
Equality and Diversity		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Safeguarding		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Community Safety, Crime and Disorder		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Health, Safety and Wellbeing		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Other implications		N/a

Supporting Information

Appendices:

Appendix A: RIPA Policy

Appendix B: Guidance on the use of Social Networking Sites for RIPA investigations

Background Papers:

Overview and Scrutiny Committee agenda and minutes – 5 September 2017 meeting.