

**OVERVIEW AND SCRUTINY
19 JULY 2016**

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

11

**TITLE OF REPORT: REGULATION OF INVESTIGATORY POWERS ACT UPDATE AND
USE OF SOCIAL NETWORKING SITES IN INVESTIGATIONS UPDATE**

REPORT OF THE CORPORATE LEGAL MANAGER

1. SUMMARY

- 1.1 This Report updates on the Council's current use of RIPA, the Office of Surveillance Commissioners (OSC) programmed inspection and an update on the proposed new Use of Social Networking Sites in Investigations policy.

2. RECOMMENDATIONS

- 2.1 That the content of the report be noted.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To comply with best practice guidance and the Committee's terms of reference.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 None.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 Members are referred to previous Reports of the Corporate Legal Manager. Members will recall that the Codes of Practice state that elected Members should review the local authority's use of RIPA.
- 7.2 Members will be aware that the Office of Surveillance Commissioners carries out an inspection of each Local Authority's use of covert surveillance in accordance with the provisions of the Regulation of Investigatory Powers Act 2000, approximately every three years. The last inspection was in April 2013.

- 7.3 Members have also previously been informed at the meeting of the Overview & Scrutiny Committee held on 22nd September 2015 that a separate policy, specifically dealing with the use of Social Networking Sites when investigating cases for prosecution, was being developed.

8. ISSUES

Council's Use of RIPA

- 8.1 Members may recall that it was considered that the quarterly report to Overview and Scrutiny Committee should continue even though RIPA is not currently being used, as this provides a useful mechanism to ensure that the issue of RIPA remains in the consciousness of Members (and Officers).
- 8.2 There have been no further RIPA authorisations since the last Report to the Committee. There are currently no ongoing RIPA authorisations.

OSC Inspection

- 8.3 Having been last inspected by the Office of Surveillance Commissioners (OSC) in April 2013, the Council was contacted by the OSC on 10th May 2016 in relation to its next planned inspection.
- 8.4 The OSC has adopted a more flexible approach to the arrangements for OSC inspections of District and Borough Councils, so that where appropriate, inspections are based on an examination of the relevant documentation, without a visit by one of the Surveillance Inspectors or Assistant Surveillance Commissioners.
- 8.5 Pursuant to this new approach, the OSC requested that the Council completed a questionnaire and provide some relevant documentation pertaining to use of surveillance powers. In addition a follow up telephone conference with the Monitoring Officer was requested by the OSC in order to seek further information.
- 8.6 Having complied with this process, the OSC's appointed inspector; His Honour Brian Barker CBE QC, concluded that no follow up visit was considered necessary. This decision was communicated during the telephone appraisal, however a more detailed written response will be provided in due course with any recommendations for the Council to action.
- 8.7 It is proposed to report to Overview and Scrutiny in September with the outcome of the OSC inspection and the annual review of the RIPA Policy.

Use of Social Networking Site in Investigations Policy

- 8.8 This proposed separate policy, focusing specifically on the use of Social Networking Sites as a tool for gathering evidence when investigating cases for prosecution, has been referred to in previous reports. The OSC has an interest in the use of Social Networking Sites in investigations and ensuring that local authorities are compliant with RIPA in their use. The proposed approach being developed is in line with the OSC's views.

- 8.9 Since the last update, the nature and scope of the policy has been widened to include other aspects of information technology which may not fall into the common understanding of what constitutes “Social Networking”. There are many different IT and internet based tools which can be utilised when investigating criminal activity, and so it was decided to include these within the same policy.
- 8.10 This wider approach to the new policy was discussed with the OSC who were welcoming of the thorough approach being taken by North Hertfordshire District Council.
- 8.11 The policy is currently in the drafting stage and will need to be finalised and consulted with relevant officers, through the Corporate Enforcement Forum and SMT before it is put before members.

9. LEGAL IMPLICATIONS

- 9.1 The Overview and Scrutiny Committee’s Terms of Reference and Council’s Constitution at paragraph 6.2.7(r) states that it shall be entitled to consider reports relating to the authority’s use of the Regulation of Investigatory Powers Act (2000) (RIPA).

10. FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications arising from this Report.

11. RISK IMPLICATIONS

- 11.1 It is important that the Council continues to operate in accordance with RIPA to ensure that it is able to effectively manage its reputational risk whilst also exercising its legitimate evidence gathering powers in connection with enforcement activity.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 8.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups. The commencement of improvements arising from the ‘Protections of Freedoms Act’ strengthens existing Human Rights Legislation, protecting individuals from inappropriate levels of covert surveillance, such as that used by some authorities, featured in the national media, regarding the enforcement of school catchment areas.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans.

15. APPENDICES

- 15.1 None

16. CONTACT OFFICERS

- 16.1 Anthony Roche, Corporate Legal Manager and Monitoring Officer.
Telephone 01462 474588. E-mail address anthony.roche@north-herts.gov.uk

James Ellis, Advisory and Litigation Solicitor, Telephone 01462 474319. E-Mail address james.ellis@north-herts.gov.uk

17. BACKGROUND PAPERS

- 17.1 None