

**OVERVIEW AND SCRUTINY  
20 SEPTEMBER 2016**

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**9**

**TITLE OF REPORT: REGULATION OF INVESTIGATORY POWERS ACT - INSPECTION AND ANNUAL POLICY REVIEW AND NEW USE OF SOCIAL MEDIA IN INVESTIGATIONS POLICY AND PROCEDURE**

REPORT OF THE CORPORATE LEGAL MANAGER AND MONITORING OFFICER

**1. SUMMARY**

- 1.1 This Report updates on the recent Office of Surveillance Commissioners' (OSC) inspection of the Council's procedures and use of RIPA and reports on proposals for the annual policy review.
- 1.2 The Report also introduces the proposed new Use of Social Media in Investigations policy and procedure.
- 1.3 The policies are being considered by Overview and Scrutiny Committee prior to seeking Cabinet approval for

**2. RECOMMENDATIONS**

That Overview and Scrutiny Committee recommend to Cabinet that:-

- 2.1 The content of the report be noted, in particular the positive inspection of the OSC.
- 2.2 The adoption of the amended RIPA Policy attached at Appendix A.
- 2.3 The adoption of the Use of Social Media in Investigations Policy and Procedure attached at Appendix C.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To comply with best practice guidance and implement the OSC findings.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 None.

## **5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 5.1 None with external organisations, although incorporates the views of the OSC elicited through the recent inspection. The Council's internal Corporate Enforcement Forum was consulted on the proposed new Policy.

## **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 The OSC inspects Councils approximately every three years. The last inspection was in 2013 and all recommendations were implemented. In previous years the OSC has physically attended the Council to inspect documentation and interview relevant staff, before writing their report.
- 7.2 The Council's current RIPA Policy was approved by Cabinet in September 2015. The RIPA Policy must be reviewed annually.
- 7.3 Members have also previously been informed at the meeting of the Overview & Scrutiny Committee held on 22<sup>nd</sup> September 2015 and Cabinet on 29<sup>th</sup> September 2015 that a separate policy, specifically dealing with the use of Social Media when investigating cases for potential prosecution, was being developed.

## **8. ISSUES**

### **OSC Inspection**

- 8.1 The quarterly RIPA report to Overview and Scrutiny Committee on 19 July 2016 explained that the Council had recently received an inspection from the OSC. As previously explained, due to the reduced use of RIPA (for example this Council has not used the powers since the last inspection), the OSC has introduced a new approach to inspections. Authorities are asked to complete a detailed questionnaire, plus supply supporting documentation including policies and procedures, record keeping, training etc. That questionnaire is then considered by the OSC, before deciding whether an on site inspection is required. After completing the questionnaire the OSC were broadly satisfied with the information given and sought a telephone call with the Senior Responsible Officer (the Corporate Legal Manager) in order to clarify some minor points and discuss the Council's approach to RIPA.
- 8.2 The report of the OSC is attached and is very positive in terms of the Council's policies and the organisation's approach generally. There are only minor amendments suggested to the RIPA policy and these are attached at Appendix A, shown in track changes in sections 1 and 12.
- 8.3 By way of clarification, paragraph 21 of the OSC report refers to CCTV. The Council utilises overt CCTV on its buildings and deploys overt mobile CCTV cameras (ie all cameras have signs advising of their presence). None of the CCTV is covert and therefore it does not fall under the remit of RIPA, which is what paragraph 21 refers to.

- 8.4 Paragraphs 14 and 20 of the OSC report makes reference to the Council's need to address the potential for the inadvertent and inappropriate use of social networking sites through a separate policy. This policy is contained at Appendix C.

### **Annual Review**

- 8.5 The proposed changes to the policy are in response to the OSC report. No other changes are proposed at this time. The Use of Social Media in Investigations Policy links to the RIPA Policy and forms part of this joint report, rather than appearing separately.
- 8.6 The OSC refer to an "unspoken requirement" that the Council continues to offer RIPA related training at appropriate intervals and it was mentioned to the OSC Inspector that training is planned as part of the roll out of the new Policy once it is adopted.

### **Current Use of RIPA**

- 8.7 There have been no further RIPA authorisations since the last Report to the Overview and Scrutiny Committee. There are currently no ongoing RIPA authorisations.

### **Use of Social Media in Investigations Policy**

- 8.8 The OSC refer to "the newly developing hazards of using Social Networking Sites" and of the "potential dangers of overenthusiastic but unguided research". The Use of Social Media in Investigations Policy is designed to navigate those hazards and provide guidance to those officers involved in investigation of potential criminal offences on behalf of the Council.
- 8.9 It is currently the case that many of the Council officers who regularly investigate matters as part of their duties already use various forms of Social Media to assist them when conducting their investigations. This policy will help manage and regulate that use to ensure it remains lawful and does not inadvertently render evidence as inadmissible, should a case proceed to court.

## **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).
- 9.2 The Overview and Scrutiny Committee are asked to consider this report and make a recommendation to Cabinet in line with its Terms of Reference. It is Cabinet's responsibility to adopt the RIPA Policy.
- 9.3 Paragraph 5.6.1 of the Council's Constitution states that Cabinet may, by resolution, prepare and agree to implement policies and strategies other than those reserved to Council.

## **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 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> 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. Staff will be notified of the updated RIPA Policy and new Use of Social Media in Investigations Policy through Team Talk bulletins and the Senior Management Group. Officers that carry out investigations work will be specifically updated on the new Use of Social Media in Investigations Policy through the Corporate Enforcement Forum.

**15. APPENDICES**

- 15.1 Appendix A – RIPA Policy with proposed amendments
- Appendix B – OSC Inspection Report, dated 11 July 2016
- Appendix C – Proposed Use of Social Media in Investigations Policy

**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](mailto:anthony.roche@north-herts.gov.uk)

James Ellis, Advisory and Litigation Solicitor  
Telephone 01462 474319. E-Mail address [james.ellis@north-herts.gov.uk](mailto:james.ellis@north-herts.gov.uk)

**17. BACKGROUND PAPERS**

- 17.1 None