OVERVIEW AND SCRUTINY
16 JUNE 2020

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: REGULATION OF INVESTIGATORY POWERS ACT ('RIPA') UPDATE AND ANNUAL REVIEW

REPORT OF THE SERVICE DIRECTOR LEGAL AND COMMUNITY & MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR MARTIN STEARS-HANDSCOMB

COUNCIL PRIORITY: BUILD THRIVING AND RESILIENT COMMUNITIES

1. EXECUTIVE SUMMARY

1.1 This report provides an annual update and proposed amendments to the Council's current RIPA Policies following an inspection and report.

2. RECOMMENDATIONS

That the Overview and Scrutiny Committee

2.1. notes the content of this and the Investigatory Powers Commissioner's Office Inspection report (Appendix A)[1]; and

2.2. recommends to Cabinet the approval of the RIPA Policy and Social Media in Investigations Policy as amended (in Appendices B-C).

3. REASONS FOR RECOMMENDATIONS

3.1 To comply with the Inspector's recommendations and best practice.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 The Chair of Overview & Scrutiny and Executive Members (Leader and Deputy in their relevant roles) have been kept informed of the situation relating to the annual review, Inspection and the fact that amendments will be required to relevant policy documents.

6. FORWARD PLAN

6.1 It is not a key decision; however, it has been referred to in the Forward Plan on 5 May 2020.

[1] The IPCO has confirmed it can be disclosed, subject to the Inspector's name being redacted.

7. BACKGROUND

7.1 The Council is required to have a Policy and the current one was last approved by Cabinet in January 2019. The RIPA Policy must be reviewed annually and was due to be reviewed in January 2020, but delayed, firstly, as training was arranged for relevant officers (and amendments could be identified) through an external training body; secondly, following notification of the Investigatory Powers Commissioner's Office's ('IPCO') inspection for April, and subsequent delay of meetings due to the coronavirus.

7.2 Members should note the Council has not used surveillance powers or accessed communications data for some time, lastly noted in **2011**. The Shared Anti-Fraud Service ('SAFs') does, however, utilise such powers and these are regulated through Herts County Council's processes. The Council was last Inspected by the IPCO predecessor - the Office of Surveillance Commissioners in June 2016.

8. RELEVANT CONSIDERATIONS

Annual Review of RIPA, IPCO Inspection and RIPA Policy

8.1 The last full review of the Policy was undertaken in 2018/19 as indicated.

Inspection April 2020

8.2 Since the last full review in 2016, the Council has been inspected. Whilst this was a telephone/ document review on 16 April 2020 (due to the coronavirus lockdown), the Inspector was satisfied with the arrangements in place. In particular:

8.2.1 that the Policy was largely accurate, succinct and easy to digest;
8.2.2 the Council's approach to monitoring social media and the Policy was comprehensive and a valuable reference tool (respectively);
8.2.3 oversight arrangements in terms of quarterly audits and reporting these through to Members via MIS and an annual report, met the Home Office Covert Surveillance and Property Interference Code of Practice requirements[2];
8.2.4 the IPCO was pleased that training had been arranged for relevant officers as recently as January.

Essentially two recommendation were put forward:

8.2.5 Revision of the Policy in terms of communications data to reflect the legislative changes arising from the implementation of the Investigatory Powers Act 2016 (this is covered under the proposed changes to section 5 'Acquisition and disclosure of Communications Data in Appendix B);
8.2.6 To review the Council's Data Retention Policy yearly *(note that this is something the Council already does).*

8.3 Other than those changes relating to the above, the most notable amendments to the RIPA Policy are management structure or cosmetic in nature (e.g. to reflect the change in authorisation from the Chief Executive to the 'Head of Paid Service' to cover the change in Tier 1 and Tier 2 effective after 17 July 2020 and gender neutral terms).

Social Media Policy in investigations Policy

8.4 Whilst the Inspector did not recommend any changes, the version attached with tracked changes at Appendix C was the one viewed by the Inspector. This has proposed amendments following the training received in January 2020 from ACT Now, which included reference to overt Facebook reviews and accounts which may be used as set out under paragraphs 4.1-4.2 and 5.6 of the Policy.

[2] Paragraph 4.47

Council's Use of RIPA

8.5 None since the last report (see 7.2). No ongoing authorisations.

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. Training by Act Now was at a cost of £1650.00 and offered/ provided to all those authorising and potentially applying for authorisations.

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 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.

12.2 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.

13. SOCIAL VALUE IMPLICATIONS

13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans. Further training is in the process of being arranged relating to the use of communications data in investigations and application process by SAFs with relevant officers.

15. ENVIRONMENTAL IMPLICATIONS

15.1 There are no known Environmental impacts or requirements that apply to the amended Policy/this report.

16. APPENDICES

16.1 Appendix A – IPCO inspection report.
16.2 Appendix B – RIPA Policy amended draft showing tracked changes.
16.3 Appendix C – RIPA Social Media Policy amended showing tracked changes.

17. CONTACT OFFICERS

Author
17.1 Jeanette Thompson, Service Director Legal and Community.
jeanette.thompson@north-herts.gov.uk; ext. 4370

Contributors
17.2 Ian Couper, Service Director Resources
ian.couper@north-herts.gov.uk; ext. 4243

17.3 Reuben Ayavoo, Policy and Community Engagement Manager
reuben.ayavoo@north-herts.gov.uk; ext. 4212

18. BACKGROUND PAPERS

18.1 None other than the documents referred to above.