

North East Derbyshire District Council

Standards Committee

26th January 2022

REVIEW OF RIPA POLICY

Report of the Monitoring Officer

Classification: This report is public

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PURPOSE / SUMMARY

- To update the Committee on the use of RIPA powers in the last year.
 - To advise the Committee of a review of the policy and procedures covering the Council's activities under the Regulation of Investigatory Powers Act 2000 (RIPA).
 - To recommend that the revised RIPA Corporate Policy and Procedures be approved.
 - To consider the proposed use of social media sites such as Facebook by officers for the purpose investigations and evidence gathering.
 - To consider the proposed Social Media Use policy as an Annex to the RIPA Policy.
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RECOMMENDATIONS

That Standards Committee:

- (1) note the update provided on the use of the policy;
- (2) approve the revised RIPA Policy and Procedure document; and
- (3) agree the use of one Corporate account for social media sites.

IMPLICATIONS

Finance and Risk: Yes No

Details:

Failure of the Council to adhere to the legal requirements of RIPA could lead to unlawful investigatory activity being undertaken, making the Council vulnerable to complaints, legal challenge and reputational damage and costs. It is important therefore that the policy is regularly reviewed and that officers receive sufficient training which will mitigate the likelihood of this risk occurring.

On Behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details:

The legal implications are addressed within the policy.

On Behalf of the Solicitor to the Council

Staffing: Yes No

Details:

On behalf of the Head of Paid Service

DECISION INFORMATION

Decision Information	
Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Significantly Affected	None
Consultation: Leader / Deputy Leader <input type="checkbox"/> Cabinet <input type="checkbox"/> SAMT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	No Details:

Links to Council Plan priorities or Policy Framework including Climate Change, Equalities, and Economics and Health implications.

Good Governance

REPORT DETAILS

1 Background

- 1.1 The Regulation of Investigatory Powers Act (RIPA) enables the Council to use covert surveillance; covert human intelligence sources (CHIS); and the acquisition of service use or subscriber information in relation to communications data in a manner that is compatible with Article 8 of the European Convention on Human Rights governing an individual's right to respect for their private and family life, home and correspondence. There are various criteria which must be met, including a 'seriousness threshold' for the use of directed surveillance, and any requests by the Council to use the RIPA powers must be approved by a Magistrate, under the current legislation.
- 1.2 Local authorities are sparing users of RIPA legislation and North East Derbyshire District Council has not used them since the last update to Committee in March 2019. The last time RIPA powers were utilised was in 2012.

2. Details of Proposal or Information

Inspection

- 2.1 The Council has been periodically inspected by the Office of Surveillance Commissioners. The last inspection was in 2019. The Office of Surveillance Commissioners has been superseded by the Investigatory Powers Commissioner's Office (IPCO). Inspections of local authorities are scheduled for every three years, however the Council has been notified that a review will be taking place shortly.
- 2.2 Recommendations from the last RIPA inspection were reported to Standards Committee in September 2019. The outcome of the Inspection was overall very positive. The Inspector found the Council's policy to be a 'comprehensive and well written document' and only minor recommendations were made in respect of updating the policy. Other recommendations related to:
 - Non-RIPA authorisations – it was recommended that where surveillance is carried out in relation to crimes that do not meet the RIPA threshold, the process should be reviewed to ensure necessity, justification and proportionality arguments are recorded and elected Members are suitably informed of any such activity.

- Social Media and Internet Investigations – the introduction of suitable control measures for the use of online surveillance or investigations was recommended.

Non-RIPA Authorisations and Use of Social Media

- 2.3 The inspection recommendations on Social Media were in relation to the accessing and use of social media sites by Council officers either using their own devices or, where access is allowed, using Council equipment.
- 2.4 The IPCO guidance states that:-
- “The Internet is a surveillance device as defined by RIPA section 48(1). Surveillance is covert ‘if, and only if’ it is conducted in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is, or may be, taking place.’ Knowing that something is happening is not the same as an awareness that it is or may be taking place.”*
- 2.5 To carry out an activity/surveillance under RIPA there must be internal approval of an Authorising Officer as well as and that of a magistrate. However, RIPA is permissive legislation, so failure to obtain appropriate authorisation does not render surveillance automatically unlawful. It could however lead to any evidence obtained being deemed inadmissible and/or civil action taken against the Council / Officers for breach of the subject’s right to privacy under Article 8 of the European Convention on Human Rights.
- 2.6 Online communication via the internet has, in recent years, become the preferred method of communication with other individuals, within social groups or with anyone in the world with internet access. Such communication may involve web sites, social networks (e.g. Facebook), chat rooms, information networks (e.g. Twitter) and/or web based electronic mail.
- 2.7 Investigations by Service areas which could potentially access social media for intelligence / information gathering in the course of their duties indicates that in most cases the actions being investigated would not meet the crime threshold for a RIPA authorisation. Where a proposed investigation does not relate to an activity that meets the crime threshold for obtaining court authorisation under RIPA, the Council will now follow a similar procedure for assessment, evidencing necessity / proportionality with internal Authorising Officer review (although without the involvement of a Magistrate), in order to provide a documented trail as a defence in the event of subsequent litigation.
- 2.8 Just because other people may also be able to see information posted on the internet, does not necessarily mean that a person has no expectation of privacy in relation to it. Using covert techniques to observe, monitor and obtain private information can amount to an interference with a person’s right to respect for their private and family life. Authorisation regimes, such as RIPA, must be considered although RIPA is not the only legislation which can render such interference lawful.

- 2.9 A review was carried out of all service areas within the Council in respect of the following:
- Which officers currently have access to social media sites using Council equipment
 - Which officers access social media sites using their own devices for work purposes
 - Which social media sites are used/accessed
 - What purposes do officers use social media sites
 - How is social media accessed, is this covertly or overtly
 - What type of information is retained/collected/recorded and how is this done
 - How long is this information retained for
- 2.10 On 24th August 2020 a meeting with Service Managers and Heads of Service from departments using or most likely to use social media was held to discuss the outcomes, control measures, checks and balances which would be practical and possible for officers to implement when accessing social media sites. Although some officers felt that keeping a record in a spreadsheet for example could be onerous, it was accepted that a record should be kept for audit purposes either by way of the spreadsheet or recorded on teams own electronic system such as ECINs. Most managers felt that a clear process to follow would benefit their staff who felt reluctant or unsure about using social media, despite the advantages it could have in their investigations.
- 2.11 A spreadsheet will be designed for this purpose, to ensure officers are accessing information stored on social media lawfully. If the spreadsheet is not used, then officers will be expected to record similar type information within their own team's electronic systems. The additional benefit of a spreadsheet is that the information can be easily extracted should the IPCO require it. The Communication Team will monitor Social Media usage to assist with this.
- 2.12 The IPCO recommendations have been considered and amendments in line with the suggested changes are included within a revised RIPA Policy appended to this report. Other changes are housekeeping amendments, such as revising the Policy to focus solely on NEDDC (rather than jointly with BDC), and updating key officer details.

Training

- 2.13 It is imperative that regular training is undertaken as well as refresher sessions for officers involved in investigations as well as senior officers appointed as authorising officers and designated persons.
- 2.14 This is an area for improvement for the Authority over the coming months. Whilst operating officers have maintained a fresh understanding to administer the policy, refresher training to Authorising Officers has not been delivered during the pandemic period. The reasons for this are self –explanatory.

- 2.15 In order to rectify this, an external learning provider will be commissioned to ensure all training requirements are fulfilled and an up to date knowledge is maintained by all whom require it.
- 2.16 It is also recommended that training be procured for services for whom social media investigations may be a benefit to. Training is available on tools that can extract publicly available information from social media sites, which will also cover how capture and store evidence gathered. The training would also cover the legal restrictions such as RIPA relating to the use of social media which will inform the development of policies and procedures.

3 Reasons for Recommendation

- 3.1 It is recognised that the use of social media is vital to some investigations undertaken by the Council carrying out its enforcement functions. However, the Council needs to ensure that officers are supported using such techniques in a lawful manner and ensuring their safety in doing so.
- 3.2 Any online research and investigation leaves a trace or 'footprint'. It is recommended that the Council ensures that research/interrogation that our officers undertake is attributable i.e. capable of being traced back to the Local Authority. Where officers are using their own accounts, the Councils cannot ensure that:
- Officers are kept safe i.e. that individuals cannot trace research back to officers own accounts which may hold a lot of personal information about themselves and their families
 - That the research is being undertaken lawfully
 - necessary; and
 - proportionate.
- 3.2 The review has proposed amendments arising from the RIPA Inspection in late 2019, including introducing an Annex to the Policy detailing advice for use of Social Media in Investigations, and it is timely that this is agreed and implemented.

4 Alternative Options and Reasons for Rejection

- 4.1 The Council is recommended to review and update its RIPA policy regularly as failure to do so could result in the policy failing to comply with legislative changes and lead to unlawful investigatory actions taking place.
- 4.2 The Council could impose a restriction on officers using social media sites as part of their investigations. This is not recommended as it is a vital tool to investigations, evidence gathering and enforcement. The view taken is that information is readily available and can be used to make a real difference in making the community of North East Derbyshire a better place to live. Such use has been used to secure successful prosecutions, as well as supporting other staged enforcement across the Council.

DOCUMENT INFORMATION

Appendix No	Title
1	Revised RIPA Policy
2	Annex 1 to RIPA Policy (Use of Social Media Guidance)
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet you must provide copies of the background papers)	
None	