

## Regulatory and Other Committee

### Open Report on behalf of Richard Wills, Executive Director Environment and Economy

Report to:	<b>Audit Committee</b>
Date:	<b>20 June 2016</b>
Subject:	<b>Regulation of Investigatory Powers Act 2000</b>

#### Summary:

To provide an update on the Council's compliance with the Regulation of Investigatory Powers Act 2000 regarding the use of surveillance powers and the actions taken following the inspection of the Council by the Office of Surveillance Commissioners in January 2015

#### Recommendation(s):

To note the position in relation to the Council's compliance with the Regulation of Investigatory Powers Act 2000 and endorse the proposal to prepare a policy on authorising surveillance where the provisions of the statutory regime do not apply

#### Background

This report has been prepared to update the Audit Committee on the Council's compliance with the Regulation of Investigatory Powers Act 2000 (RIPA). Further, this report provides an update on the actions required following the inspection by the Office of Surveillance Commissioners in January 2015.

The Human Rights Act 1998 requires the Council and organisations working on its behalf, pursuant to Article 8, to respect the private and family life of a citizen, his home and correspondence. This is not an absolute right and is qualified to enable organisations to interfere with that right in certain circumstances.

RIPA provides a statutory mechanism for authorising covert surveillance, the use of covert human intelligence sources (CHIS) (i.e. undercover agents) and the acquisition of communications data. It seeks to ensure that any interference with an individual's right under Article 8 is necessary and proportionate. In doing so, RIPA seeks to ensure that both the public interest and the human rights of individuals are suitably balanced.

The Protection of Freedoms Act 2012 and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2010 amended the situations where a Local Authority may exercise the

powers under RIPA. The Council may therefore now only use the directed surveillance powers to prevent or detect criminal offences that:

- Are punishable with a term of six months imprisonment or more, or
- Are related to the sale of tobacco or alcohol to underage persons.

In order to obtain approval for the use of the RIPA provisions, a Local Authority must seek the authorisation from a Justice of the Peace or a District Judge at the Magistrates Court before it takes effect.

The changes have reduced the Council's use of surveillance powers. For the year 2015/16, the Council obtained 4 authorisations for directed surveillance and 7 authorisations for the use of cover human intelligence sources.

The sole user of the powers under RIPA within the Council is the Trading Standards Service. Examples of where they use the powers includes conducting covert directed surveillance on markets where counterfeit goods are being sold and the CHIS powers to undertake test purchases in respect of on-line sales.

As the Audit Committee may be aware, the Council (along with all other Local Authorities), is subject to periodic inspections by the Office of Surveillance Commissioners (OSC). His Honour Norman Jones QC conducted an inspection of the Council on 7th January 2015 a copy of his report is attached as Appendix 1 to this report.

In general, HH Judge Jones was largely complementary about the Council's thorough and thoughtful approach of the use of surveillance powers under RIPA. He did, however, make a number of recommendations to the Council to improve its use of powers under the statutory provisions. The recommendations are listed at paragraph 46 of his report.

They can be summarised as follows:

- (1) Create a central record of authorisations split into those relating to Directed Surveillance (DS) and those for the use of Covert Human Intelligence Sources (CHIS);
- (2) Amend the CHIS forms referenced in the existing RIPA policy to reflect current Home Office forms;
- (3) The Senior Responsible Officer (SRO) and RIPA Co-ordinating Officer should exercise more robust oversight of authorisations;
- (4) Improve RIPA awareness throughout the Council;
- (5) Consider reducing the number of authorising officers and ensure those remaining are adequately trained;
- (6) Ensure that a controller, handler and record keepers are appointed to manage each CHIS;

- (7) Establish a training programme for those engaged in RIPA applications, and
- (8) Amend the corporate policy.

Legal Services Lincolnshire is responsible for maintaining the central record of authorisations. As the primary user of the surveillance powers, Trading Standards has historically worked closely with Legal Services to ensure that the Council's policy is as up-to-date as possible.

The RIPA Co-ordinating Officer (Legal Services) met with the SRO (Richard Wills) to agree an implementation plan to ensure completion of the recommendations. As a result, the following actions have been taken:

- (1) The central record of authorisations has been separated. The central record is stored on the Council's Information Management Portal with both Legal Services and Trading Standards having access to it.
- (2) The policy has been amended to include links to the Home Office website to ensure that officers are using the most up-to-date forms.
- (3) The amended policy now includes designations in respect of the two posts. The SRO is taking a more proactive oversight of the Council's compliance with the statutory provisions and Legal Services are working closely with Authorising Officers to ensure compliance.
- (4) In order to improve awareness of surveillance, Legal Services will be preparing briefing notes for DMT's. It was also agreed that the annual Information Governance training (accessed through Lincs2Learn) would include a section on surveillance. This element will be completed shortly.
- (5) The policy was amended to reduce the number of authorising officers.
- (6) Trading Standards have implemented this change and did so with immediate effect.
- (7) An external provider was commissioned to provide authorising officers with training on RIPA. That training was delivered in July 2015. As a result of that training, the Council is considering producing a policy which should be applied where RIPA authorisation is not required though the Council wishes to undertake surveillance. In essence, the policy is intended to ensure that the Council complies with its obligations under Article 8 of the Human Rights Act 1998 (right to respect for private life).
- (8) The Council's corporate policy has been amended.

As the Committee will note from the number of authorisations included above, the Council is not a significant user of surveillance powers and indeed utilises other forms of investigation wherever possible. Officers work closely with other

enforcement agencies and will often allow them to take the lead in obtaining authorisations.

Officers consider that creating a new policy to allow an authorisation process where RIPA does not apply would be beneficial and prudent. Whilst RIPA does not prevent surveillance from being undertaken where the statutory provisions do not apply, it would be sensible to create an audit trail and checking mechanism to ensure that any surveillance undertaken by the Council is lawful and does not contravene the provisions of the Human Rights Act 1998.

### **Conclusion**

The Council's use of surveillance powers under RIPA is low and the Office of Surveillance Commissioners was largely complimentary as to the thorough approach taken by officers.

It is recommended that a new policy be created to ensure appropriate human rights consideration is given to non-RIPA authorisations and the Committee is asked to endorse this approach.

### **Consultation**

#### **a) Policy Proofing Actions Required**

n/a

### **Appendices**

These are listed below and attached at the back of the report	
Appendix A	Office of Surveillance Commissioners Inspection report January 2015

### **Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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