

AUDIT AND RESOURCES COMMITTEE

Tuesday, 8 February 2022

RIPA ANNUAL REPORT AND REVIEW OF RIPA POLICY

Report of the Legal Services Manager

Recommendation(s)

It is recommended that the Audit and Resources Committee note:

- 1) the contents of this report and;
- 2) that the Council has not made use of its RIPA powers since the previous inspection by the Investigatory Powers Commissioner in 2019.

Summary

The Regulations of Investigatory Powers Act 2000 (“the 2000 Act”) (RIPA) regulates the use of investigatory powers by public bodies including local authorities.

The Council has previously adopted a policy for the reference of officers relating to the exercise of its powers under the 2000 Act (“the RIPA Policy”). The RIPA Policy requires elected members to set the Council’s Strategy and to consider internal reports on the use of the 2000 Act on a periodic basis.

The RIPA policy is being currently reviewed to ensure it up to date with legislative changes and policy changes. The Council has now received notification that a desktop inspection is to be carried out in the early part of this year by the Investigatory Powers Commissioner’s Office. Following this inspection the revised policy will be brought back to this Committee to adopt

Focus for Scrutiny

To note that there has been no use of RIPA powers since the previous inspection in 2019.

Statutory Powers

Regulation of Investigatory Powers Act 2000

Strategic Implications

1. This report relates to the Council’s surveillance powers which may be used to achieve objectives relating to having an Excellent Environment for All, Tackling Deprivation and Enabling Health and Wellbeing (Corporate Plan 2015-2025). The report meets the need for sound and robust policy-making and governance and

governance, which underpins all the Council's statutory functions and Corporate Plan objectives.

Introduction

2. The Regulation of Investigatory Powers Act 2000 (RIPA) sets out the ways in which the Council can lawfully carry out investigations when it wants to use surveillance techniques. There are 3 types of surveillance techniques available to local authorities:
 - the acquisition and disclosure of communications data (such as telephone billing information or subscriber details);
 - directed surveillance (covert surveillance of individuals in public places); and
 - covert human intelligence sources (CHIS) (such as the deployment of undercover officers)
3. Local authorities may use covert techniques where they are responsible for enforcing the law in respect of environmental crime; consumer scams; loan sharks; taxi cab regulation; underage sale of knives, alcohol, and tobacco; and the employment of minors. CHIS and directed surveillance techniques are used in test purchase operations to investigate the sale of tobacco, alcohol, and other age-restricted products. Of course, not all these functions are within the scope of activities carried out by a district council.
4. Local authorities may only use covert surveillance for the prevention and detection of crime, and only in those cases where the offence under investigation is subject to a term of imprisonment of 6 months or more. In addition, since the Protection of Freedom Act 2012 came into force, all local authorities must get approval from a magistrate before they undertake any form of covert surveillance.
5. The Home Office's codes of practice relating to the 2000 Act recommends that elected members have oversight of the use of these powers on a regular basis.

Report on exercise of powers under 2000 Act

6. As a matter of best practice, elected members of an authority should review the authority's use of RIPA at least once a year.
7. The Council has not exercised its powers under the 2000 Act during the past twelve months or since the last inspection report on 4 February 2019.
8. The relevant authorising officers for RIPA at Eastleigh Borough Council have received their annual training, this was completed in November 2021. Training for investigating officers who need knowledge of RIPA was also completed in November 2021
9. The Legal Services Manager is the designated Senior Responsible Officer.

Inspection by the Investigatory Powers Commissioner's Office

10. The Investigatory Powers Commissioner's Office ("IPCO") is responsible for overseeing the use of covert surveillance by specified bodies including Eastleigh Borough Council.
11. IPCO carry out inspections on a periodic basis which is typically every three years to review public authorities' use of their powers under the 2000 Act.
12. The Council was previously inspected by Inspector, Ges Horne. This was carried out remotely by way of a desktop-based documentary inspection and the report was issued on 4 February 2019.
13. The Commissioner was satisfied that the information provided had demonstrated a satisfactory level of compliance and advised that it was anticipated that the next inspection would be a physical inspection in three years' time when it is next due.
14. The 2019 report stated that the Council was found to have a clear and comprehensive RIPA policy which is supported by refresher training. There were some recommendations made which related to the RIPA policy, which required the policy to be revised and amended.
15. The amendments to the policy were –
 - a. The policy is amended to clarify that authorisations for preventing disorder cannot be authorised unless it involves a criminal offence punishable by a maximum term of six months imprisonment.
 - b. Where there is reference to trespass, it is to be amended to make it clear to officers that local authorities are not empowered to conduct property interference under the Police Act 1997.
 - c. Substitute reference to Surveillance Commissioners with Judicial Commissioners.
 - d. Amend the policy to reflect the principles outlined in Section 3.13 of the Covert Surveillance and Property Interference Code of Practice in relation to online privacy settings and social media use by ensuring appropriate safeguards are in place.
16. It is also to be noted that any suspected errors must be notified by the Senior Responsible Officer (SRO) to the Investigatory Powers Commissioner as soon as reasonably practicable, and no later than ten working days after the error has been identified.
17. Staff were also reminded of the use of social media use for investigations and that it must be used in a controlled, auditable, and well understood manner. A social media policy is being formulated currently.
18. The Council has recently received notification that we are to receive a desktop-based inspection in the next few weeks. This will involve the Inspector being provided with the relevant documents.

19. The current RIPA policy is being reviewed. The draft policy will be sent to the Inspector for comment and following any amendments that may be advised or suggested following this, the revised RIPA policy will then be brought back to members for adoption.

Financial Implications

20. There are no financial implications from this report.

Risk Assessment

21. The Council could be in breach of the law if fails to follow its policies and procedures.

Equality and Diversity Implications

22. It is considered that for this decision the Equality Duty does not need to be addressed and an Equality Impact Assessment (EqIA) has not been carried out. It is a report dealing with internal or procedural matters only.

Climate Change and Environmental Implications

23. There are no climate change or environmental implications within this report.

Conclusion

24. This report is to note the Council's use of RIPA powers from the date of the last inspection report and that a revised Policy will be presented to this Committee for adoption following the IPCO inspection.

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SENIOR CHARTERED LEGAL EXECUTIVE

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Appendices Attached: 1

LOCAL GOVERNMENT ACT 1972 - SECTION 100D

The following is a list of documents which disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report. This list does not include any published works or documents which would disclose exempt or confidential information.

* List Background Papers or state None.