

17 December 2019

Agenda Item: 6

REPORT OF SERVICE DIRECTOR – CUSTOMERS GOVERNANCE AND EMPLOYEES AND SENIOR RESPONSIBLE OFFICER FOR RIPA

REGULATION OF INVESTIGATORY POWERS ACT 2000 – ANNUAL REPORT

Purpose of the Report

1. To report to the Committee:
 - a. Activity by the Council under the Regulation of Investigatory Powers Act (RIPA) for the periods from January to December 2018 and January to November 2019; and
 - b. The outcome of the inspection of the Council by the Investigatory Powers Commissioner's Office (IPCO).

Information

Background

2. The Regulation of Investigatory Powers Act 2000 (RIPA) gives the Council the power to undertake covert surveillance in relation to certain investigations. Since 2017 the Investigatory Powers Commissioner's Office (IPCO) has been responsible for the oversight of the use of RIPA.
3. There is a strict authorisation process set out in the legislation; applications are considered by senior officers before final approval is given by the Magistrates Court. The Council is required to submit an annual statistical return to the IPCO on the number of authorisations made and is subject to periodic inspections.
4. The Council is also able to obtain certain communications data (i.e. data about electronic communications) through the National Anti-Fraud Network (NAFN), an expert provider accredited by the IPCO and the Home Office. NAFN submits the annual statistical return to the IPCO on the number of submissions made by the Council.
5. A programme of monitoring and review is set out in the Council's RIPA policy and guidance. Since 2017 annual reports are made to the Governance and Ethics Committee. Throughout the year quarterly reports of Trading Standards activity, which includes use of RIPA, are made to the Communities and Place Committee.

6. This is the second oversight report to Governance and Ethics Committee since November 2017. This report covers 2 years: January to December 2018; and January to November 2019.

Annual Activity 2018 (January to December)

7. Throughout 2018 RIPA powers were not used by the Council and no new authorisations for covert surveillance were granted. Trading Standards successfully concluded one prosecution relating to supply of illicit and counterfeit cigarettes and tobacco, for which evidence was gathered in April 2016 using covert surveillance.
8. There were no new applications for communication data access. There was one Crown Court case where communications data obtained before 2018 was used in respect of fraud offences.
9. As a result of the above, a nil return was submitted for the annual statistical return to IPCO for the period 1 January 2018 to 31st December 2018

Annual Activity 2019 (January to November)

10. Throughout 2019 the Council has used RIPA sparingly and towards the end of the year the Council successfully completed an IPCO inspection.
11. Two new authorisations have been made in relation to the same investigation of illicit and counterfeit cigarettes and tobacco. The first authorisation was cancelled once the conditions no longer applied. The second authorisation yielded evidence which is currently being assessed for future proceedings. There have also been 5 new applications for communication data access.
12. The Council will submit the annual statistical return to IPCO for the 2019 period by March 2020.
13. Training and awareness raising activity has been undertaken as follows:
 - a. Refresher RIPA training was undertaken by the Council's Senior Responsible Officer (SRO) for RIPA (the Service Director for Customers, Governance and Employees) and Trading Standards Officers, (44 Officers including managers) during January and February 2019. In June 2019 the Trading Standards Group Manager attended the roadshow of National Anti-Fraud Network.
 - b. Awareness raising for employees and staff has also been undertaken throughout the year including the Chief Executive's blog, articles in Team Talk, and via the Council's Intranet News.
14. The Council was also represented at the meeting of the RIPA District Working Group, made up of representatives of all the local councils in Nottinghamshire, held in April.

IPCO Inspection

15. The Council is inspected by the IPCO approximately every 3 years with the last inspection being in April 2016. This year's IPCO inspection commenced in September 2019 and was successfully completed on 1st November 2019. This was a desk-top documentary inspection.
16. The IPCO noted that there was no annual report to this Committee in 2018; the Council's RIPA policies are undergoing amendment to reflect changes in RIPA statutory guidance; the Council's social media policy would also benefit from amendment to reflect the Council's updated RIPA Policy and guidance; and that the Council's CCTV policy would benefit from consideration of instances where CCTV is used under RIPA.
17. The amendments to the RIPA Policy are minor consequential changes resulting from changes in RIPA guidance (largely changes to reflect the altered name of the Commissioner bodies, a reference to nicotine inhaling products and a reference to this Committee). As there are no substantive changes to the Policy and changes to supporting guidance is also limited, authority is sought for the Service Director for Customers, Governance and Employees to approve the changes. Colleagues in Legal Services and Information Governance are also working through the suggested changes to other policies/procedures raised by the IPCO inspection and will update the IPCO on progress before the end of the year.
18. The next IPCO inspection will be in 2022 and it is anticipated that this will consist of a physical inspection.

Other Options Considered

19. None. Activity under the RIPA Policy requires reporting to Committee.

Reason/s for Recommendation/s

20. To ensure the Council is able to exercise its statutory powers in relation to RIPA where it is necessary and proportionate to do so.

Statutory and Policy Implications

21. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Where appropriate consultation has been undertaken and advice sought on these issues as required

Crime and Disorder Implications

22. Use of surveillance can assist the Council in relation to the reduction of crime in Nottinghamshire.

Human Rights Implications

23. Every authorisation for surveillance requires consideration of human rights including the right to privacy and the right to a fair trial. The rights of people under surveillance need to be balanced against public safety and the prevention of crime. Every authorisation, therefore, has to clearly set out why the surveillance is considered necessary and proportionate in the circumstances.

RECOMMENDATION/S

1. That members consider whether there are any actions they require in relation to the matters contained within the report.
2. That the Service Director for Customers, Governance and Employees be authorised to approve the minor consequential changes to the RIPA Policy to reflect changes to the RIPA statutory guidance.

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Constitutional Comments (HD – 22/11/2019)

The proposals set out in this report fall within the remit of this Committee.

Financial Comments (RWK – 25/11/2019)

There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Electoral Division(s) and Member(s) Affected

All