

27 January 2022

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 2000 (RIPA) for the periods from January 2021 to December 2021.
  - b. Activity by the National Anti-Fraud Network (NAFN) on behalf of the Council under the Investigatory Powers Act 2016 (IPA) in respect of Communications data.
  - c. An update on mandatory training for Officers.

#### **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. This process is now carried out in accordance with the Investigatory Powers Act 2016 (IPA). NAFN submits the annual statistical return to the IPCO on the number of submissions made by it on behalf of 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 fourth oversight report to Governance and Ethics Committee since November 2017. This report covers January 2021 to December 2021.

### **Annual Activity January 2021 to December 2021**

7. Two new authorisations have been made in relation to on-going investigations in relation to illicit and counterfeit cigarettes and tobacco. Both have yielded evidence which is currently being assessed for future criminal proceedings and both were duly cancelled upon their expiry. NAFN has confirmed that it has made six new applications for communication data access for the relevant period on behalf of NCC; three in respect of doorstep crime and three in respect of food labelling investigations.
8. The Council will submit the annual statistical return to IPCO for the 2021 period by 31 January 2022.
9. 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) on 7 July 2021, and for the Service Director of Children's Services on 17 November 2021.
  - b. Trading Standards Officers are to view an EM Law Share webinar in relation to RIPA during the week commencing 10 January 2022. They are also in the process of securing additional external training for 2022.
  - c. Awareness raising for employees and staff has also been undertaken via the Council's Intranet News, with an article having been published in the November 2021 Team Talk.

### **IPCO Inspection/Update**

10. The Council is inspected by the IPCO approximately every 3 years with the last inspection being successfully completed on 1st November 2019. This was a desk-top documentary inspection. The next IPCO inspection will be in 2023 and it is anticipated that this will consist of a physical inspection.
11. The Council has now purchased and uses drones which currently assist the work of the Place Department. This is in relation to flood risk management, property inspections, assessing waste and soil heaps. While at present the drones are solely used by the Place Department, any team within the Council could potentially use the drones, subject to the approval of the single point of contact for drones (Callum Smith, Principal Officer for Flood Risk Management) who would ensure that the proposed use would not breach any data protection or Civil Aviation Authority rules. The Council currently owns three drones and has five trained CAA approved pilots. When flying drones for the Council strict policies and procedures are in place to avoid the unintentional capturing of personal data. The Council's use of Drones is pre-planned, pre-approved and overt, ensuring full visibility and transparency of use. There may be future situations where covert operations involving drones are needed and in such scenarios the appropriate RIPA authorisation would be sought prior to any use, ensuring that any flight made is

necessary and proportionate. NCC guidance on the use of drones is contained in the Surveillance Camera (CCTV) Procedure.

12. Amendments to the current RIPA Policy and Guidance have been made to reflect the process for NAFN seeking authorisation to obtain Communications data on the Council's behalf, and to make reference to the use of drones. These are minor amendments and as there were no substantive changes to the Policy or Guidance, authority was sought for the Service Director for Customers, Governance and Employees to approve the changes and these were approved on 7 January 2022.

### **Other Options Considered**

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

### **Reason/s for Recommendation/s**

14. To ensure the Council is able to exercise its statutory powers in relation to RIPA (and for NAFN to make the relevant applications on its behalf in respect of communications data in relation to IPA) where it is necessary and proportionate to do so.

### **Statutory and Policy Implications**

15. 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**

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

### **Human Rights Implications**

17. 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.

**Marjorie Toward**

**Service Director, Customers Governance and Employees and Senior Responsible Officer for RIPA**

**For any enquiries about this report please contact:**

Emma Hunter, Legal Services: [emma.hunter@nottscc.gov.uk](mailto:emma.hunter@nottscc.gov.uk)

### **Constitutional Comments (CEH 10.01.2022)**

18. The report falls within the remit of Governance and Ethics Committee for consideration.

### **Financial Comments (SES 11/01/2022)**

19. 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.

- None

### **Electoral Division(s) and Member(s) Affected**

- All