

Committee: Full Council

Date: 20 July 2021

Title: Adoption of policy regarding the use of Covert Surveillance under the Regulation of Investigatory Powers Act 2000

Report Author: Elizabeth Smith, Solicitor.

esmith@uttlesford.gov.uk

Summary

This report is submitted for Members to consider whether or not to adopt the draft policy and procedural document setting out the circumstances under which powers under the Regulation of Investigatory Powers Act 2000 (RIPA 2000) may be exercised (annexed hereto).

Recommendations

That the Council do adopt of the draft policy as set out above and set in place provisions for training to be undertaken by relevant key officials. It is further recommended that such amendments to the Council's scheme of delegation as set out in its Constitution as may be needed to implement this policy be authorised.

Financial Implications

As part of its statutory responsibilities the Council undertakes investigations into certain criminal offences. The investigatory process may by definition be in breach of the Human Rights Act 1998 and accordingly must be undertaken in accordance with the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA 2000) and guidance issued by various Government agencies and specifically the Home Office Code of Practice for Covert Surveillance and Property Interference. Failure to do so will render the Council liable in damages and may also cause reputational harm.

The training referred to above will also have a financial cost as there are only a limited number of suitable trainers (see post).

Background Papers

1. The following papers were referred to by the author in the preparation of this report and are available for inspection.
 - a. Draft Regulation of Investigatory Powers Act Policy and Procedural Guidance.
 - b. Regulation of Investigatory Powers Act 2000
 - c. Home Office Code of Practice for Covert Surveillance and Property Interference (August 2018 revision)

- d. Uttlesford District Council CCTV Code of Practice (April 2019)
- e. Websites of various training providers (Links available on request).

Impact

| | |
|---------------------------------|--|
| Communication/Consultation | None. |
| Community Safety | The authority has a duty to investigate offences and is obliged to do so in accordance with the law. |
| Equalities | None. |
| Health and Safety | None. |
| Human Rights/Legal Implications | <p>The European Convention of Human Rights sets out 18 Convention rights incorporated into UK law by S1(3) Human Rights Act 1998 and set out in full in Schedule 1 Part I thereof.</p> <p>Article 8 States as follows:-</p> <p>“Right to respect for private and family life</p> <ol style="list-style-type: none"> 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” |
| Sustainability | None. |
| Ward-specific impacts | None. |
| Workforce/Workplace | None. |

Situation

1. Historically the position has been that due to resource constraints any relevant investigations have been carried out by the Council in partnership with another agency (eg the Police or the DWP) who have taken the lead and have therefore obtained any relevant authorisations that might be necessary. An inspection was undertaken by the IPCO on 27th July 2018 following which a number of recommendations were made (see post) but as a result of changes in staffing within the Council these were unfortunately not implemented in a timely manner save for the undertaking of a one day training course on use of the Internet and Social Media in the investigation of offences undertaken by some 40 officers on various dates in July 2019.
2. The recommendations made by IPCO in the preceding paragraph are as follows:-
 - a. The Council's RIPA Policy/SOP required updating to include guidance upon the use of covert human intelligence sources (CHIS) and to address the points raised in the IPCO report.
 - b. A training needs analysis at both strategic and operational levels in relation to RIPA to be completed and suitable events organised, the former to have priority. The Council is currently in discussion with the favoured provider for this namely <https://www.bondsolon.com>.
 - c. Designate suitable senior officials to the role of Authorising Officers and ensure they receive suitable training. This will require amendments to the Council's Constitution to ensure the appropriate delegations are in place. The current position is that this responsibility rests with the Assistant Director: Planning and Building Control but henceforth Members are requested to approve the transfer of the delegation to the Director of Public Services (acting in conjunction with the Assistant Director: Law and Governance) to act as Senior Responsible Officer (SRO) who shall appoint a) all Assistant Directors to the responsibility of an Authorising Officer and b) a RIPA 2000 Co-Ordinator, being the Senior Litigation Lawyer
 - d. Following a further inspection in May 2021 training is being arranged for the officers listed in paragraph (c) above as a matter of urgency. The training provider selected, Bond Solon, is highly recommended and the course takes the form of a one day online seminar with considerable inter-active participation.
 - e. It is also recommended that following the delivery of this strategic training, an analysis of the training needs of potential RIPA practitioners is conducted by an independent expert consultancy. The Social Media training referred to in para 1 above was conducted by an associate of ACT Now, a highly recommended consultancy and it is recommended subject to any necessary procurement exercise that they be commissioned to undertake this work. On completion of the recommended training a Practitioners Group will be formed, chaired by the RIPA Co-Ordinator, meeting on a quarterly/bi-annual basis to securing continuing professional development in this area.

- f. Evidence obtained via the means of RIPA activity is subject to additional safeguards contained within the Code of Practice and therefore requires a clearly defined retention, review and destruction policy replicating the contents of the Code. This must cover such issues as limitation on access thereto, and the copying, sharing and destruction thereof, and a register must be kept specifying all of this plus the manner and date of destruction and the identity of the person undertaking the task.
3. It was also indicated that Members should have an awareness of the Council's use of these powers, the legislation and Codes of Practice, that they should review use of RIPA powers (if any) on an annual basis and they should also review the policy on a regular basis.
 4. A further Inspection took place on 24th May 2021 in the course of which the Inspector was given assurances as to the progress made. It was indicated that future inspections will focus upon the implementation of and on-going compliance with the recommendations contained herewith, in order that practitioners understand and apply the safeguards should it become necessary to use RIPA powers in the future.

Risk Analysis

| Risk | Likelihood | Impact | Mitigating actions |
|--|--|--|---|
| An investigation might be undertaken without complying with the requirements of the Act and Codes of Practice made thereunder. | 3 – Staff undertake relevant activities without a full understanding of what steps must be taken prior to so doing.. | 4 – Breach of the subject's Art 8 rights leading to a) any evidence thereby being rendered admissible and b) liability to them in damages under the Act. | Adopting these policies and procedures and implementing the required training packages without delay. |

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.