



<b>Report to:</b>	Audit Committee	<b>Date:</b>	11 January 2018
<b>Report title:</b>	Regulation of Investigatory Powers Act 2000 (RIPA) Update		
<b>Report from:</b>	Gerald Almeroth - Strategic Director Resources		
<b>Ward/Areas affected:</b>	Borough Wide		
<b>Chair of Committee/Lead Member:</b>	Councillor David Hicks		
<b>Author(s)/Contact Number(s):</b>	Peter Rollins, Lawyer, South London Legal Partnership 020 8545 4696 Julie Turner, Assistant Director Resources (Interim) 020 8770 4496		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• An Open Council</li> <li>• A Fair Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	22 December 2017

## 1. Summary

- 1.1. This report updates the Audit Committee on the implementation of the Council's Social Networking Policy; the outcome of the recent RIPA Inspection undertaken by the Office of Information Commissioner; and the RIPA update training for Authorised Officers within the Council.

## 2. Recommendations

The Audit Committee is recommended to:

- 2.1 Note that the Social Networking Policy has been implemented and is available for all Council staff and members via the intranet;
- 2.2 Note the findings of the Office of Surveillance Commissioners Report dated 7 August 2017;
- 2.3 Note the current position in relation to the Home Office Consultation on the Draft Codes of Practice; and,
- 2.4 Note the change of office to Investigatory Powers Commissioners Office with effect from 1 September 2017.



### 3. Background

#### Introduction to RIPA

- 3.1. The Regulation of Investigatory Powers Act 2000 provides the statutory framework for the covert use of investigatory tools by local authorities and other enforcement agencies. The main purpose of the Act is to ensure that investigatory powers are used in accordance with human rights legislation.
- 3.2. The Committee will be aware that there has been a significant decline in the numbers of authorisations for Directed Surveillance by the Council, which has been attributed to the loss of the Councils dedicated benefit fraud investigation team. The Committee has at the same time noted that there has been a rise in the number of Authorisations for Non - RIPA activities, where the Council has undertaken investigations utilising directed surveillance which does not require the need for judicial oversight, but does take on board and endorse the principles of “Necessity” and “Proportionality” as set out within the Human Rights Act 1998.
- 3.3. The Office of Surveillance Commissioner has been deemed the Council’s approach to Non RIPA Authorisations to be “Good Practice” and also recommended that the Council develop a policy that takes into account the use of Social Networks. Social Media has been acknowledged as a valuable open source tool for local authority investigators. A recent decision of the High Court in Manchester, encouraged its use by Social Services when they were trying to locate a party for adoption proceedings.

#### The Social Networking Policy

- 3.4. The Council has a Social Media Policy and adopted a three pronged approach to ensure that staff are aware of the benefits of using social media whilst conducting investigations.
- 3.5. Initially, there was an awareness campaign which appeared in “Insight” setting out the advantages of the use of Social Media as an investigative tool.
- 3.6. The awareness campaign comprised of the following:
  - A. Publication of the RIPA Social Networking Policy on the Council’s intranet site, which included a dedicated RIPA page;
  - B. The provision of training to relevant officers within the Council; and
  - C. The production of Non-RIPA Authorisation forms and procedure detailing the Human Rights Act considerations of “necessity” and “proportionality”.
- 3.7. The RIPA Social Networking Policy, together with guidance notes have been published on the intranet. The pages have been developed to ensure that they are easily accessible with key words and contains the relevant policies, legislation and training notes to ensure that all staff have an awareness of the principles governing the use of RIPA by local authorities.



- 3.8. In terms of training, an external provider provided a RIPA update course with the emphasis on the role and responsibilities of the Authorising Officer.
- 3.9. The session also focused on the use of Social Media as an investigative tool, together with the use of “open source” websites for investigative purposes. The session was attended by a variety of Council officers and provided a useful forum where the training facilitator shared his vast knowledge within the area and ensured that the audience were appraised with the principles of necessity and proportionality.
- 3.10. In addition to the Authorised Officers training, lawyers from the South London Legal Partnership (SLLP) ran 6 RIPA Awareness / Social Media Policy briefing sessions which were advertised Council wide through Insight. It was acknowledged that many of the attendees had no prior experience of the RIPA legislation and naturally the sessions focussed on the principles of RIPA and the Human Rights Act 1998.
- 3.11. There was also a focus on the current position in relation to the use of RIPA and the need for Judicial approval and more importantly on Non RIPA Authorisations which do not require Judicial Approval. A significant period of time was spent exploring the current use of Social Media within Sutton and the various scenarios where it may be necessary to obtain a Non – RIPA authorisation for the surveillance of Social Media accounts. Staff were informed of the do’s and don’ts when undertaking research / investigations whilst using Social Media, namely that they must use the official departmental accounts and not their own personal social media accounts.
- 3.12. The sessions also included a short section on the use of “open source” websites that could be used in conjunction with Social Networks for investigative purposes. The feedback received to date has shown that the course was well received and informative.
- 3.13. All of the Council’s policies for Directed Surveillance, guidance and procedural notes, training materials together with the relevant forms to ensure compliance with the Human Rights Act, (Cancellation, Review, Renewal of Directed Surveillance) are available for applicants via the intranet pages as well as a list the authorising officers.

#### **4. Issues**

##### RIPA Inspection

- 4.1 On 7 August 2017, the London Borough of Sutton was inspected by the Office of the Surveillance Commissioner (OSC). This was a programmed inspection, the last one taking place in May 2014. During the course of the inspection, the Inspector examined the Council’s policies, procedures and operations in respect of conducting Directed Surveillance and Covert Human Intelligence Sources. (CHIS).



- 4.2 The Inspector found that the Council had discharged all of the recommendations, from the 2014 inspection. It was noted that the RIPA Policy had been ratified by the Council since the last inspection and that the RIPA Policy for Directed Surveillance had also been reviewed and amended.
- 4.3 The Inspector had sight of the RIPA intranet pages and reviewed the Social Media Policy and guidance and was satisfied that the Council had implemented and discharged this recommendation. The inspector was satisfied that the content of the intranet site reflected the current legislation and clearly set out the permitted activities that can be undertaken with and without a RIPA authorisation.
- 4.4 The Inspector had sight of the bespoke training materials that had been provided by the external trainer and additional training provided to staff and was satisfied that the content was appropriate.
- 4.5 The final recommendation from the 2014 report required that an operating policy be introduced internally for Sutton Housing Partnership (SHP), who as an entity were not permitted to undertake directed surveillance as defined in the RIPA legislation. In light of the changes to (SHP) since the last inspection the requirement for an operating policy is now obsolete and the recommendation has been discharged.
- 4.6 At the conclusion of the inspection, the Inspector was satisfied that RIPA Policies demonstrated a good standard of compliance with the OSC guidance and made one recommendation, which has been implemented.
- 4.7 Recommendation from the inspection;

Recommendation	Outcome
The use of Social Media in Investigations is amended to introduce controls for the use of online pseudonyms and management oversight of online social media research requiring a directed surveillance authorisation.	Following a review of the Social Media Policy in December 2017 controls have been introduced.

Other matters arising Investigatory Powers Commissioner Office

- 4.8 In relation to other matters, the Inspector informed the Council of the internal changes that were made within the Office of Surveillance Commissioner (OSC). As of 1 September 2017, the OSC, became the Investigatory Powers Commissioners Office and the IPCO will merge the offices of the Surveillance Commissioner, Interception of Communications and Intelligence Service Commissioners. Lord Justice Adrian Fulford, has been appointed as the Investigatory Powers Commissioner.



- 4.9 The new body will be responsible inspecting public authorities, intelligence agencies, law enforcement agencies local authorities and prisons.

Consultation of revised codes of practice under Parts 2 and 3 of the Regulation of Investigatory Powers Act 2000.

- 4.10 The Home Office has published a Consultation document and is seeking responses on the draft codes of practice, which will set out the processes and safeguards governing the use of investigatory powers by public authorities, including the police and security and intelligence agencies.
- 4.11 The codes will give detail on how the relevant powers should be used, including examples of best practice and are intended to provide additional clarity and to ensure the highest standards of professionalism and compliance with this important legislation.
- 4.12 These codes are primarily intended to guide those public authorities which are able to exercise powers under the Regulation of Investigatory Powers Act 2000.
- 4.13 Once issued, the codes of practice have statutory force and individuals exercising functions to which the codes relate must have regard to them. They are admissible in evidence in criminal and civil proceedings and may be taken into account by any court, tribunal or supervisory authority when determining a question arising in connection with those functions. Each code includes an introductory chapter to explain its individual scope and the powers it relates to.
- 4.14 The Deadline for the submission of a response to the Consultation is 28 December 2017 and the London Borough of Sutton will be submitting a response in respect of the proposed draft code of conduct.

**5. Options Considered.**

- 5.1 None

**6. Impacts and Implications**

Financial

- 6.1 There are no financial implications arising from this report.

Legal

- 6.2 The legal implications are contained within the report.



**7. Appendices and Background Documents**

<b>Appendix letter</b>	<b>Title</b>
N/A	None

<b>Background documents</b>
None

<b>Audit Trail</b>		
Version	Final	Date: 19 December 2017
<b>Consultation with other officers</b>		
Finance	No	N/A
Legal	Yes	Peter Rollins
Equality Impact Assessment required?	No	N/A