

East Herts Council

Overview and Scrutiny Committee

Date of Meeting: 16th June 2020

Report by: James Ellis, Head of Legal and Democratic Services

Report title: Revised Regulation of Investigatory Powers Act (RIPA) Policy and Use of Social Media in Investigations Policy

Ward(s) affected: ALL

Summary

RECOMMENDATION:

(a) That the revised Regulation of Investigatory Powers Act (RIPA) Policy and the new Use of Social Media in Investigations Policy be reviewed with suggested amendments, additions, deletions and/or clarifications raised for consideration by the Executive Member for Corporate Services and the Head of Legal and Democratic Services prior to the final proposed versions, and accompanying report, be sent for adoption by the Executive.

1.0 Proposal(s)

- 1.1 It is proposed that the council's existing Regulation of Investigatory Powers Act (RIPA) Policy, which has not been reviewed since 2010, be revised and updated taking into account significant legislative changes which have occurred in the intervening decade.
- 1.2 That a new Use of Social Media in Investigations Policy be adopted in order to deal specifically with investigation carried

out by these means.

- 1.3 That other steps being taken with respects the findings of the IPCO report be noted.
- 1.4 The Council's Constitution states that the Overview and Scrutiny Committee shall "agree reports and make recommendations to ... the Executive in connection with the discharge of any functions".

2.0 Background

- 2.1 The Regulation of Investigatory Powers Act 2000 ("RIPA") came into force on 25 September 2000 and sought to regulate covert investigation practices undertaken by a number of bodies, including local authorities.
- 2.2 Local authorities must have an up to date policy in place which is reviewed and approved by Members annually. Additionally the Council's use, or otherwise, of RIPA needs to be reported to Members on a quarterly basis.
- 2.3 The Investigatory Powers Commissioner's Office ("IPCO") independently scrutinises the use of RIPA powers by the investigatory bodies that are subject to it.
- 2.4 The Commissioners inspect Councils to ensure compliance with RIPA and can audit/review the Council's policies and procedures, as well as individual authorisations.
- 2.5 The IPCO carried out a physical inspection of East Herts Council on 21st November 2019. The resulting report gave a recommendation of "Critical", outlining several areas where the Council was not meeting legal requirements, and eight actions that were required to address them.
- 2.6 One such area was the policy document itself which had remained unchanged since 16th December 2010, and was

therefore not reflective of several quite big legislative changes which took place with the introduction of The Protection of Freedoms Act 2012 and the Investigatory Powers Act 2016, as well as updated Home Office Codes of Practice.

- 2.7 The IPCO report also stated that *"At present, there are three designated Authorising Officers, as well as the Chief Executive and his Director. In light of the low/absent use of the powers in recent times, and the change in roles and responsibilities of some officers, it was timely to look afresh at who was best placed to be designated under the revised Policy."*
- 2.8 The updated policy has addressed this and designates new Authorising Officers at Appendix B of the policy.

Social Media

- 2.9 Another area of societal change since 2010 is the use of social media, which has become far more ubiquitous in our daily lives than it was at the start of the last decade. The IPCO expects the use of social media to be specifically included in all up to date policies, and is covered at paragraph 13 of the new draft policy.
- 2.10 Further, it is proposed that with the introduction of the Use of Social Media in Investigations Policy, an entirely new policy which has not previously existed at East Herts, the Council will go above and beyond what is required as a minimum so as to ensure that this ever changing landscape is given the attention it deserves.

Other required changes

- 2.11 Of the eight actions identified in the IPCO report, adoption of the new Policy would address actions A1, A4 and A8, namely;

A1 – The Council's RIPA Policy document must be updated to

incorporate the numerous legislative changes since 2010,

A4 – *Designation of Senior Responsible Officer and Authorising Officers to be determined in early 2020,*

- Addressed in Appendix B of the draft policy

A8 – *Ensure procedures are clear should judicial approval under The Protection of Freedoms Act 2012 be required*

- Addressed at paragraph 7.7 of the draft policy.

2.12 The remaining five requirements, and how these will be met are as follows;

A2 – *Regular updates to elected members and their annual approval of the RIPA policy must take place.*

- Quarterly reporting of the Council's use, or otherwise, of RIPA will begin to take place through the Member's Information Bulletin, ensuring that elected members are kept informed of its application at East Herts Council. The RIPA policy will also be kept under constant review, with an annual review reported to Overview and Scrutiny, and any proposed changes latterly adopted by the Executive.

A3 – *A Central Record must be reinstated.*

- It is a requirement for there to be a centrally retrievable record of all provisional and judicially approved authorisations under RIPA. It had been thought at the time of the IPCO inspection that East Herts Council had failed to maintain such a register however in the months since the inspection; an old central register was found. This Central Record has been updated and is now reinstated.

A5 – *Training to be maintained on a regular basis, designed to incorporate social media guidance and awareness raising*

amongst officers.

- East Herts fared well on the matter of training, with the IPCO report stating that “a much better situation existed in relation to RIPA training, which had been provided on a regular and suitably tailored basis to a good range of officers in September 2016, March 2017 and July 2018.” This will continue, and broaden to include the use of social media and the new Use of Social Media in Investigations Policy.

A6 – *Determine internal quality assurance regime and means of updating Senior Leadership Team on regular basis.*

- Internal oversight of RIPA will sit with the Head of Legal and Democratic Services, who will ensure that the topic, as well the Council’s use, or otherwise, of RIPA powers is reported to Leadership Team on a quarterly basis.

A7 – *Check that any recording equipment is stored, managed and inventoried correctly.*

- Noise monitoring equipment and cameras held by the Council for investigatory purposes are managed by the relevant enforcement teams. Each team has been asked to conduct a new inventory of the equipment they keep, and to maintain this regularly so that it is kept up to date.

Conclusion

2.13 The IPCO Inspector stated in her report that the inspection in November 2019 “revealed a local authority that had, for whatever reason, taken its “eye off the ball” as far as RIPA policies and procedures and internal oversight was concerned.”

2.14 The draft policy, newly designated Authorising Officers and the additional steps outlined above at paragraph 2.12 above will rectify that situation and place East Herts back in a state of

compliance.

2.0 Reason(s)

- 3.1 The adoption of the new RIPA Policy is a matter for the Executive and in due course a final draft of the revised policy will be put to Executive for consideration and adoption.
- 3.2 The reason the revised policy is being put in front of the Overview and Scrutiny Committee is that it is appropriate and timely that members of the Committee should exercise their scrutiny functions under the Local Government Act 2000, notably to 'review draft strategies'.
- 3.3 Any issues or suggestions made by the Overview and Scrutiny Committee in connection with its review of the draft RIPA Policy and draft Use of Social Media in Investigations Policy will either be incorporated into the final draft or brought to the Executive's attention in the report accompanying the draft policy put in front of Executive so as to aid the Executive's decision-making.

4.0 Options

- 4.1 In exercising its power to 'review draft strategies', the Overview and Scrutiny Committee has the option to:
 - Signal its contentment with the revised RIPA Policy and Use of Social Media in Investigations Policy as currently drafted. If this approach is taken, this will be relayed to Executive when it considers the final draft version or
 - Suggest amendments, additions, deletions and/or clarifications to the report. If this approach is taken, all such suggestions will be considered by the Executive Member for Corporate Services and the Head of Legal and Democratic Services and will either be incorporated into the final draft or brought to the Executive's attention as

being the views of the Committee in the accompanying report to the final draft version put to Executive in due course or

- Consider that there is an insufficient case for the revised policy, whether amended or not, to be put to Executive for determination. If this approach is taken, the Overview and Scrutiny Committee should make their rationale for this approach explicit so that the Executive Member for Corporate Services and the Head of Legal and Democratic Services can assess whether to desist from putting the policy to Executive in its current form or to proceed to determination by the Executive in which case the Committee's views would be included in the accompanying report.

5.0 Risks

If the policy was not revised

- 5.1 East Herts Council would be in breach of its legal requirements to comply with the Regulation of Investigatory Powers Act, the Protection of Freedoms Act, the Investigatory Powers Act 2016 as well as Home Office Codes of Practice.
- 5.2 The Council would fail to comply with the IPCO report and be at a heightened risk of breaching human rights law.

If the policy was revised

- 5.3 The Council would become compliant with relevant law governing the use of RIPA.
- 5.4 The IPCO's recommendations will have all been complied with and would address the "Critical" finding made by the IPCO inspection in November 2019.

6.0 Implications/Consultations

- 6.1 The implications of not adopting the new RIPA Policy are grave, including potential breaches of criminal law.
- 6.2 This is less so of the Use of Social Media in Investigation Policy, but it is advised that this is also implemented so as to address East Herts Council's lack of policy on this matter currently.

Community Safety

Yes – Allows the Council to legal make use of investigatory practices governed by RIPA, which could be utilised to protect communities from illegal activities.

Data Protection

No

Equalities

No

Environmental Sustainability

No

Financial

No

Health and Safety

No

Human Resources

No

Human Rights

Yes – The use of powers under RIPA directly affects a person's right to respect for private and family life under Art 8 of the Human Rights Act. It is imperative that RIPA is utilised correctly so as to make legal those potential intrusions.

Legal

Yes – The Council is not in compliance with the relevant legislation

unless and until it adopts a new RIPA policy.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

7.1 Appendix A – Draft RIPA Policy

7.2 Appendix B – Draft Use of Social Media in Investigations Policy.

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