

Central Bedfordshire Council

GENERAL PURPOSES COMMITTEE 27 October 2016

Review of Policy and Procedure under the Regulation of Investigatory Powers Act 2000

Advising Officer: Quentin Baker, Senior Responsible Officer and Director of LGSS Law Ltd

Quentin.Baker@centralbedfordshire.gov.uk

Contact Officer: Maria Damigos, Corporate Lawyer LGSS Law Ltd

maria.damigos@centralbedfordshire.gov.uk

Purpose of this report

To update the Committee on the review of the Policy and procedures under the Regulation of Investigatory Powers Act 2000 (RIPA) following an inspection by the Office of Surveillance Commissioners at the end of April 2016.

RECOMMENDATIONS

The Committee is asked to:

1. Consider and comment on the updated Policy and Procedure Guide on the use of covert surveillance and covert human intelligence sources.
2. Note and endorse the appointment of 3 Authorising Officers by the Senior Responsible Officer.
3. Agree an annual review of the Council's Policy and Procedure Guide to ensure it remains fit for purpose, and to receive an update of the Council's use of RIPA and its compliance to the date of the review

Introduction

1. As part of its statutory functions it is sometimes necessary for the Council to carry out covert surveillance. This is normally in the area of enforcement such as trading standards or in relation to other suspected criminal activity such as benefit fraud.
2. As surveillance may infringe the rights of individuals, it must be carried out in accordance with RIPA and the procedure within the Council's

Policy and Procedure Guide in order to ensure it is reasonable and proportionate and does not breach other legislation such as the Data Protection Act 1998 or the Human Rights Act 1998.

3. The Office of Surveillance Commissioners carries out regular inspections of public bodies that have powers under RIPA to provide independent oversight of their use of RIPA and to ensure policies, procedures and any surveillance carried out complies with legislation.

The Process

4. Within the Policy and Procedure Guide there are details of exactly what the process is. In summary, in order to carry out surveillance, an Investigation Officer must provide a report to an Authorising Officer (AO) who must approve the surveillance. The surveillance must be proportionate and necessary under RIPA and there may be other considerations under legislation to take account of to ensure it is also reasonable and in the public interest. In addition, a Local Authority can only carry out covert surveillance if it relates to preventing or detecting serious criminal behaviour which would carry a custodial sentence of at least 6 months or relates to offences for the sale of alcohol and tobacco to children.
5. The AO will then complete the relevant paperwork and send it to the Monitoring Officer who will arrange for it to be checked and approved.
6. An application will then be made to the Magistrates Court who will either allow the surveillance or will reject the application.

Inspection of Central Bedfordshire Council/Improvement Plan

7. As a result of an inspection by the Office of Surveillance Commissioners on 26 April 2016 a number of recommendations were made and an improvement plan was produced by LGSS which included, amongst other things, a review of the Council's RIPA Policy and procedures. These were mainly to simplify the Policy and to increase the number of AOs to create more resilience. The following activities were identified within the improvement plan to give effect to the recommendations:
 - Review, update and simplify the RIPA Policy
 - Appoint extra AO's
 - Provide training for the new AO's and provide refresher training for current AO's
 - Awareness training for all Council staff
 - Create webpage on Intranet for training, FAQs and to publish the new Guide and relevant forms and Office of Surveillance Commissioners Codes of Practice

Current Position

8. The Policy had been amended to make it more user friendly and understandable. A copy of the Policy and Procedure Guide is attached at Appendix A. The changes to the Policy are detailed below and include recommendations by the Inspector:
 - Emphasise the requirements (i.e. “shall” or “must” instead of “should”)
 - Include links within the Policy for ease of navigation
 - Setting out the role and responsibilities of the SRO
 - Detailing the Authorising Officers and their roles
 - Making the legal role of checking as well as record keeping clear
 - Giving background of Office of Surveillance Commissioner and linking to website
 - Updating in respect of recent guidance for social media and urgent provisions
9. An AO must be competent and of an appropriate seniority within the Council. In order to ensure impartiality they should not be connected with the investigation. There are currently 2 AO’s appointed for the Council: Richard Carr and Su Childerhouse. In order to ensure resilience and impartiality it is proposed to appoint 3 further AOs making a total of 5 AOs for the Council.
10. There is no statutory process for the appointment of AO’s however the Council’s Constitution provides that the Monitoring Officer will add to or amend the list of Authorising Officers and accordingly after consultation with other officers of the Council, the Monitoring Officer has selected and designated 3 further AO’s who are identified within the Guide at Appendix A .
11. Training for the new AOs has also been identified and will take place on 4 November 2016. The training will also be attended by some managers of investigating officers, the SRO and legal advisors to ensure a breadth of knowledge.
12. General awareness training across the Council, preferably via an online tool, is currently being researched. This training is important as it will assist all Council officers to recognise when RIPA procedures should be invoked. This will be rolled out once identified.
13. The webpage on the Intranet is to be created. This is to be user friendly and aimed at both AOs and investigating officers plus any other officer who is potentially looking at taking action that may trigger RIPA. It will include easily accessible documents, including the Policy, details of the procedures and a list of frequently asked questions as well as clear contact details for who to speak to for advice. Once the webpage is created, links within the Guide will be inserted into the Guide.

14. The Office of Surveillance Commissioners is satisfied with the improvements to be made and the Inspector has scheduled his next inspection in 12 months.

Annual Report

15. It is considered best practice in the Home Office's Code of Practice for Covert Surveillance and Property Interference for Local Authorities to have an ongoing review by their Members of both an organisation's Policy and compliance with the Policy. It is accordingly proposed that an annual report to General Purposes Committee is implemented to allow a general oversight of RIPA by Members and ensure compliance with the Code of Practice as well as transparency.

Council Priorities

16. The Policy and effective and compliant use of RIPA supports all of the Council's priorities through reducing fraud or other criminal activity either as part of the Council's regulatory activities or to ensure proper use of resources and services.

Corporate Implications

Risk Management

17. It is important that the Council has in place an effective legal procedure for carrying out surveillance within the framework of RIPA. The risk to the Council of a failure in this area is the failure to obtain a conviction with attendant costs and reputational damage and/or the incorrect and potentially illegal expenditure of resources on or with services users who are not entitled to such services.

Staffing (including Trades Unions)

18. There are no specific staffing issues arising from this report apart from those already mentioned.

Legal Implications

19. All organisations have a duty to comply with RIPA. Failure to do so may render any surveillance information inadmissible in Court or leave any decisions made open to legal challenge. Non-compliance with RIPA may also mean that there is a breach of the Human Rights Act 1998 or the Data Protection Act 1998.
20. The new Guide, training and publication should raise awareness and ensure that those who regularly use RIPA or any that may need to use RIPA can be well versed in procedures and know what to do. This should ensure the Council continues to comply with RIPA and minimise the risks.

Financial Implications

21. There are no direct financial implications arising from this report save as already detailed.

Equalities Implications

22. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. These requirements will form part of the tests carried out within the RIPA procedures.

Conclusion and next Steps

23. The committee is asked to comment on the Policy & Procedure Guide, agree an annual report and note the appointment of the AO's.

Appendices

Appendix A is the RIPA Policy and Procedure Guide

Background Papers

There were no background papers taken into account save as already mentioned. The Home Office Codes are available via the following link:
<https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>