

|   |                             |                |
|---|-----------------------------|----------------|
| <b>6 February 2014</b>  |                             | <b>ITEM: 8</b> |
| <b>Standards and Audit Committee</b>  |                             |                |
| <b>Regulation Of Investigatory Powers Act 2000</b>  |                             |                |
| <b>Report of the Monitoring Officer:</b> Fiona Taylor, Head of Legal Services and Monitoring Officer                        |                             |                |
| <b>Wards and communities affected:</b><br>N/A   | <b>Key Decision:</b><br>N/A |                |
| <b>Accountable Head of Service:</b> Fiona Taylor, Head of Legal Services and Monitoring Officer                             |                             |                |
| <b>Accountable Director:</b> Graham Farrant, Chief Executive  |                             |                |
| <b>This report is</b> public  |                             |                |
| <b>Purpose of Report:</b> To provide the Committee with an update in relation to the RIPA inspection and report by the OSC. |                             |                |

## **EXECUTIVE SUMMARY**

This report provides an update on the implementation of recommendations received by the Office of Surveillance Commissioners in their Inspection Report dated 6 November 2013, particularly in relation to training, management of approval consents and amendments to the RIPA Corporate Policy.

### **1. RECOMMENDATIONS:**

- 1.1 That the Committee note the report and the attached table of recommendations and implementation actions.**
- 1.2 That the Committee note the attached RIPA training log which includes proposed practical training on approvals.**
- 1.3 That the Committee approves that in accordance with the Inspector's comments, a RIPA activity report will be brought before the Committee on a quarterly basis, supplemented by an annual report on whether changes to the RIPA Corporate Policy are required.**
- 1.4 That the Committee note the statistical information relating to the use of RIPA from July 2013 to December 2013.**
- 1.5 That the Committee approves the amended RIPA Corporate Policy, to incorporate the amendments set out in the report, including the**

**reduction in the number of AO's, and a further SRO checking stage for quality control.**

## **2. INTRODUCTION AND BACKGROUND:**

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA), and the Protection of Freedoms Act 2012, legislates for the use of local authorities of covert methods of surveillance and information gathering to assist in the detection and prevention of crime in relation to an authority's core functions.
- 2.2 The Council's use of these powers is subject to regular inspection and audit by the Office of the Surveillance Commissioner (OSC) in respect of covert surveillance authorisations under RIPA, and the Interception of Communications Commissioner (IOCCO) in respect of communications data. During these inspections, authorisations and procedures are closely examined and Authorising Officers are interviewed by the inspectors.
- 2.3 Following the OSC Inspection in 2011, the Committee approved amendments to a revised corporate RIPA policy, which was implemented in 2011.
- 2.4 In addition the Council implemented further systems whereby the Council's Senior Responsible Officer (SRO) (Monitoring Officer) and the RIPA Co-ordinating Officer (Principal Lawyer) maintain a register, and prepare quarterly internal audit documentation on applications and approvals by Authorising Officers (AOs) which are then audited by the internal auditing officer (Chief Executive).
- 2.5 On 8 October 2013, the Assistant Surveillance Commissioner of the OSC, HH Norman Jones QC, visited the Council in order to inspect and review the Council's management of covert activities. The subsequent OSC Inspection Report, by cover letter dated 6 November 2013 was received by the Council from the Chief Surveillance Commissioner, Sir Christopher Rose. A copy of the Inspection Report is attached at Appendix C.
- 2.6 The report notes the improvement of the Council's processes in the intervening period and congratulates the work done by officers in relation to that development. However it also sets out a number of recommendations for further improvement which are dealt with in more detail below.

## **3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:**

### **3.1 Report Conclusions**

In his conclusions the Inspector noted at paragraph 30 that the Council had overseen a dramatic improvement in the management of covert surveillance since the previous inspection, stating as follows:

*“30. When Mrs. Ringshaw-Dowle visited Thurrock in 2011 she was somewhat unimpressed by the quality of RIPA management and performance. The Council had undergone a long period of problems with no less than five CEOs in six years. The present CEO, Mr Farrant, had just taken over. [Mrs. Ringshaw-Dowle’s] critical but helpful report made five recommendations. It is very encouraging to be able to observe that the Council immediately produced an action plan to address these recommendations and have enthusiastically followed it through. As a result it can be reported that three of the five recommendations have been discharged and a fourth partly so. Consequently there is now in place a strong RIPA management structure with an SRO and RIPA co-ordinating officer, a dedicated quality control and audit system, a good RIPA guide and an excellent training programme. I have already remarked that the RIPA management structure and training programme is akin to a Rolls Royce. For these achievements the Council and Mr Farrant must be congratulated.*

*33. The officers interviewed impress as enthusiastic and determined that the Council acts in a manner compliant with RIPA. They are determined that their good work of the past two and a half years will be built upon and the highest of standards will be achieved.”*

- 3.2 However, the report noted that there were still areas for improvement, chiefly that the quality of the content of some of the earlier applications for approval for the use of covert surveillance, and the content of the authorisations, need to be more detailed. Of the samples reviewed, the inspector noted in some cases the Authorising Officer (AO) could have been more specific in relation to the parameters of what was being authorised, or should have provided a greater level of detail of the considerations of necessity or on the topic of proportionality. These are felt to be largely historical however.
- 3.3 The inspector noted that the quality of the applications and authorisations had improved since the commencement of the Protection of Freedoms Act 2012 (which requires the further stage of Magistrate/JP approval).
- 3.4 Although the Council conducts a quarterly audit of RIPA applications and authorisations the Inspector noted that these were insufficient to identify and rectify authorisations in a timely manner, but that this can be addressed by instigating a system of review/oversight by the SRO and the RIPA Co-ordinating officer at the time before the authorisation is submitted to the Magistrate for approval.
- 3.5 The Inspector observed that Authorising Officers required further practical training when completing authorisation forms, and that the reduction in the number of Authorised Officers will also assist the process.
- 3.6 The Inspector also noted that while there were no occasions for the use of Covert Human Intelligence Sources (CHIS) during the intervening period, there was a need for training for officers in relation to this area.

### 3.7 Recommendations

Paragraph 32 of the Inspection Report makes recommendations as follows:

- I. Address the issues raised in this report by further training, preferably by an external professional trainer especially the quality of authorisations and the management of CHIS.
- II. Adopt a system of robust quality control to identify and rectify below standard authorisations.
- III. Reduce the number of nominated Authorising Officers.
- IV. Amend the RIPA Corporate Policy.

### 3.8 Implementation Actions

A Recommendation and Implementation Action Log has been drafted which is attached for reference at Appendix B. Further detail on the proposed implementation actions are set out below and referred in the action log.

#### 3.9 Recommendation I. - Training

Attached at Appendix A is the updated training log which proposes practical training to be rolled out as soon as possible in accordance with the inspection recommendations.

#### 3.10 Recommendation II. – SRO check and countersign of AO approvals

The RIPA Corporate Policy has been amended (Appendix C) to include a further stage in the application and approval process whereby the SRO will review approval forms signed off by AOs, before the application goes on to the Magistrate approval stage. If the SRO identifies areas where the approval form is below the inspector's expected standard of detail on the matters set out in the report or related guidance, the SRO will return the form to the AO for amendment before the application proceeds any further.

#### 3.11 Recommendation III. – Reduction in AOs

The RIPA Corporate Policy has been amended (Schedule 5) to reduce the number of AOs to four, being the two senior officers overseeing the fraud team and trading Standards teams respectively, and with the Chief Executive, and Monitoring Officer (also SRO) added to cover for any absences.

#### 3.12 Recommendation IV. - RIPA Guide amendments

The RIPA Corporate Policy has been amended to account for the above matters and for minor amendments listed in more detail at paragraph 26 of the Inspection Report.

### 3.13 Standard RIPA Activity Report on quarterly basis

Although not a recommendation, the Inspector expressed the preference (paragraph 29) that a RIPA Activity Report be brought to Members on a quarterly basis. It is proposed that officers bring a standard report in the simple format attached (Appendix E) and this be noted on the forward plan for future committee meetings. This will be supplemented with an annual report on the RIPA Corporate Policy so that members may determine if the policy is appropriate, or in order to identify any amendments that may be required.

### 3.14 Statistical Information on RIPA Activity since last report:

|   |   |          |
|---|---|----------|
| <b>July 2013 - December 2013</b><br>(inclusive) | <b>Total No. Of RIPA authorisations</b> | <b>1</b> |
| Comprising:                                     |   |          |
|   | Trading Standards                       | 0        |
|   | Fraud                                   | 1        |
|   | Regulatory                              | 0        |
|   | No. Of CHIS authorisations              | 0        |

## **4. CONSULTATION (including Overview and Scrutiny, if applicable)**

- 4.1 Legal Services have been in contact with the relevant departments affected by the changes set out in this report.
- 4.2 The portfolio holder for Central Services is being updated in relation to the RIPA recommendation implementation, as a matter coming under his remit, and an ongoing meeting takes place with the Monitoring Officer in her role as Senior Responsible Officer for RIPA purposes.

## **5. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT**

- 5.1 Monitoring compliance with the Regulation of Investigatory Powers Act 2000, and the Protection of Freedoms Act 2012, supports the Council's approach to corporate governance. Ensuring the appropriate use of RIPA in taking action to tackle crime and disorder supports the corporate priority of ensuring a safe, clean and green environment.

## 6. IMPLICATIONS

### 6.1 Financial

Implications verified by: **Mike Jones**  
Telephone and email: **01375 652772**  
**Mxjones@thurrock.gov.uk**

There are no financial implications directly related to this report.

### 6.2 Legal

Implications verified by: **Daniel Toohey**  
Telephone and email: **01375 652049**  
**Daniel.Toohy@bdtlegal.org.uk**

Legal implications comments are contained within this report above.

### 6.3 Diversity and Equality

Implications verified by: **Teresa Evans**  
Telephone and email: **020 8227 3478**  
**tevens@thurrock.gov.uk**

There are no such implications directly related to this report.  
However the Council should monitor the application of this policy to ensure that no adverse impact is noted at a later stage.

### 6.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

Compliance with the requirements of RIPA legislation will ensure the proper balance of maintaining order against protecting the rights of constituents within the borough. There are no implications other than them contained in this report.

## 7. CONCLUSION

- 7.1 This report provides a further update to the annual report in September 2013, in that it covers the Council's use of RIPA over the succeeding 6 months, as well as details of further actions to implement the recommendations received by the Office of Surveillance Commissioners in their Inspection Report dated 6 November 2013, particularly in relation to training, management of approval consents and amendments to the RIPA Corporate Policy.

## **BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

- OSC Inspection Report and cover letter dated 6 November 2013

## **APPENDICES TO THIS REPORT:**

- Appendix A - RIPA Training Log including proposed training for 2014
- Appendix B - Table of Recommendations and Implementation Actions
- Appendix C - OSC Inspection Report and cover letter dated 6 November 2013
- Appendix D - Proposed Amended RIPA Corporate Policy
- Appendix E – Format for Quarterly RIPA Activity Report

## **Report Author Contact Details:**

**Name:** Daniel Toohey

**Telephone:** 01375 652049

**E-mail:** Daniel.Toohy@bdtlegal.org.uk