

SLOUGH BOROUGH COUNCIL

REPORT TO: Audit & Corporate Governance Committee

DATE: 8 March 2018

CONTACT OFFICER: Sushil Thobhani, Service Lead (Governance) & Deputy Monitoring Officer

(For all enquiries) (01753) 875036

WARD(S): All

PART 1 **FOR INFORMATION**

SCHEDULE OF ACTIVITY – REGISTRATION OF MEMBERS WITH THE INFORMATION COMMISSIONER’S OFFICE AND INSPECTION AND REPORT BY THE INVESTIGATORY POWERS COMMISSIONER’S OFFICE

1 Purpose of Report

The purpose of this report is to update members of the Committee on the activity undertaken by the Council’s Monitoring Officer in relation to:

- registration of Members with the Information Commissioner’s Office (ICO); and
- an inspection and report by the Investigatory Powers Commissioner’s Office (IPCO)

2 Recommendation(s)/Proposed Action

The Committee is requested to note details of the report.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

The delivery of all these strategic priorities is dependent on the highest possible standards of openness, honesty and accountability. This is underpinned by good governance arrangements being in place.

4 Other Implications

(a) Financial

There are no financial implications arising from this report save as identified below in paragraphs 5.1.3 to 5.1.5.

(b) Human Rights Act and Other Legal Implications

The law relating to registration of Data Controllers with the ICO is contained in the Data Protection Act 1998, that relating to investigatory powers and the oversight of their use is contained in the Regulation of Investigatory Powers Act 2000 (“RIPA”) and the Investigatory Powers Act 2016.

(c) Equalities Impact Assessment

There is no identified need for an EIA arising from this Report.

5 Supporting Information

5.1 Registration of Members with the Information Commissioner's Office (ICO)

5.1.1 The ICO consider that all elected Members are required to be individually registered with the ICO as Data Controllers under the Data Protection Act 1998.

5.1.2 The ICO guidance to elected and prospective councillors is that when councillors sit on a Council committee (for instance to decide whether a taxi licence should be renewed or a council tenant should be evicted) then the data is processed as part of the Council's statutory function and will be covered by the Council's data protection registration. In the discharge of their duties to constituents, however, Councillors determine how they deal with constituents' complaints and respond to issues raised by constituents. It is individual Councillors who diarise surgery appointments, correspond as they see fit on behalf of their constituents and determine how and why that data is to be processed. The Council do not tell them how they should deal with the issues raised. There is a clear distinction between the councillor when he or she is a data controller in his/her own right when he or she is dealing with constituency casework (as he or she decides how personal data are handled) when he or she is carrying out duties as a representative of the Council rather than as a representative of his or her constituent.

5.1.3 It is the ICO's opinion, therefore, that elected councillors who process personal data electronically for the purpose of constituency casework are required to have their own registration under the terms of the Data Protection Act 1998.

5.1.4 Registration for individual councillors is annual and the current annual registration fee is £35.00.

5.1.5 In the circumstances, following consultation with the Monitoring Officer and Group Leaders, all current Members have been registered individually with the ICO in respect of their constituency work to ensure compliance by them with the Data Protection Act 1998 and all Members have been notified accordingly. It has been agreed that following the elections in May all new Members will be requested to authorise that the registration fee be deducted from their member allowance and that, on renewal, all existing members will be asked to do likewise.

5.2 Inspection and Report by the Investigatory Powers Commissioner's Office (IPCO)

5.2.1 The IPCO has regulatory duties to oversee the use of investigative powers by local authorities in the carrying out of their functions, and especially over the use of powers of obtaining evidence covertly.

5.2.2 The Council are subject to requirements to submit periodic returns to the IPCO about their use of such powers and to periodic inspections carried out by the IPCO. The last routine inspection was carried out by the IPCO on 4 April 2017.

5.2.3 The Council have a policy and procedural guidance for covert surveillance, which was updated on 24 March 2017, and minor amendments were made following the

IPCO inspection report received in May 2017 . The policy is published on the Council's intranet. Under this policy the Monitoring Officer is the Senior Responsible Officer (SRO) and the Council's Service Lead for Regulatory Services is the RIPA Co-ordinator.

- 5.2.4 Towards the end of 2017 the IPCO carried out a special inspection of the Council because of reports and judicial observations, in a safeguarding case concerning vulnerable persons involving the Council, that the Council may inadvertently have engaged in unauthorised covert surveillance in relation to that matter and also because of general concern at the IPCO in the previous two years that local authorities may be undertaking unauthorised covert surveillance in this area. The IPCO issued their report following this special inspection on 21 December 2017. Although the parties in this report are anonymised the identities of the vulnerable persons involved could be discovered and the IPCO asked that the Report remain confidential. It is not proposed, therefore, to exhibit that Report or to provide extensive details of that report herein.
- 5.2.5 The evidence obtained by the Council covertly in the case referred to above was admitted in evidence and as a consequence the safeguarding outcome desired by the Council in seeking to protect the vulnerable persons concerned was achieved, albeit that the judicial observations referred to above were made in that case.
- 5.2.6 The Report of the IPCO concluded that the procedures adopted in the case fell substantially short of that required of public authorities who engage in covert surveillance principally because insufficient consideration was given to the availability of RIPA authorisation for directed surveillance. Specifically, there was failure to seek advice from the Council's RIPA Officers, there was failure to access the Council's RIPA Covert Surveillance Policy and Procedural Guidance or to consider the Home Office RIPA forms, there was failure to ensure that the authoriser was a Council authorising officer who would have been fully trained, there was a failure to adequately articulate within the application prime the considerations required of such applications and a failure to identify the officer making the decision and a failure by the "authoriser" to articulate within the authorisation the essential elements of any authorisation including failing to state the issues considered in determining necessity, proportionality, collateral intrusion and what had been authorised and when, where and how the surveillance was to be undertaken.
- 5.2.7 The IPCO made recommendations for awareness to be raised within the Council and allied bodies of the requirement that RIPA authorisation should always be considered whenever surveillance is contemplated, to contact the RIPA officers for advice and to publicise their names and contact details, that officers are made aware that whenever authorisation for surveillance is considered the procedures outlined in the Council's RIPA Covert Surveillance Policy and Procedural Guidance are followed in conjunction with the Home Office forms (or a model based on those forms) the Codes of Practice and IPCO Procedures and Guidance, that all newly appointed officers who may have involvement in any form of investigation and irrespective of seniority are made aware of these recommendations as part of their induction, that officers authorising covert surveillance fully articulate in a written authorisation each relevant consideration they have made in reaching their decision, that (if available to the Council) any application to undertake covert surveillance should be made under the provisions of RIPA and that the Council ensure that all officers who may engage in the use of covert surveillance either as investigators, applicants or authorising officers are fully and regularly RIPA trained.

- 5.2.7 The procedures adopted in the case referred to above were used by officers who are not part of the Council's regulatory enforcement teams who are specifically used to engaging in carrying out investigations and gathering evidence and trained in RIPA requirements and procedures. Those officers were acting in novel and unfamiliar circumstances for the whilst they were seeking to discharge the Council's safeguarding duties and this inexperience and lack of training is recognised in the IPCO Report
- 5.2.7 The IPCO report also recognises that the Council's Service Lead for Regulatory Services was quickly astute to what had transpired and notes that actions have been taken by her to produce a flowchart which includes the procedure to be followed to initiate a non RIPA application/authorisation in such circumstances and has commenced the process to draft procedures to effect such actions. She has also prepared a briefing note for key managers to cascade down information to staff to alert them to the requirements of authorisation whenever covert surveillance is contemplated. She has also arranged training, which has already been undertaken, by authorising officers, investigating officers and by the officer who acted as the authoriser in the case referred to above. In addition, she has discussed with the IPCO Inspector other means of raising awareness throughout the Council and these have been proposed and accepted as being use of the Council intranet to regularly publish the basic requirement that RIPA authorisation should be fully considered whenever any form of surveillance is contemplated, regular widespread management cascading of RIPA information to staff and the use of RIPA learning modules.
- 5.2.8 The Council's Interim Chief Executive has also now written to the IPCO to thank them for their extremely thorough report and to confirm that actions have already been taken by the Council, that an improvement plan has been drawn up based upon the Report's recommendations which will ensure that awareness is maintained throughout the Council's teams of how similar situations should be dealt with in the future and where RIPA may apply, and that this matter would be reported to this Committee.

6 **Conclusions**

The Committee is requested to note this Report, the actions taken since the receipt of the IPCO Report and the actions proposed to be taken to ensure awareness of RIPA requirements across the Council and compliance with its requirements.

7 **Background Papers**

- A. Information Commissioner Office's Advice for Elected and Prospective Councillors The Data Protection Act (Version 3.0).
- B. IPCO Inspection Report dated 21 December 2017.