

**TITLE OF REPORT:** Annual Report –Information Governance and the Council’s use of powers under the Regulation of Investigatory Powers Act 2000

**REPORT OF:** Mike Barker, Strategic Director, Corporate Services and Governance

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### Summary

This report provides the Committee with an overview of arrangements for Information Governance across the Council. It also provides details of the Council’s use of covert surveillance and offers assurance that when authorising covert surveillance the Council is compliant with the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA).

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#### Information Governance

##### **Introduction**

1. This is the third annual report to the Committee regarding the Council’s Information Governance framework. It aims to provide the Committee with the legislative context within which the Council manages a range of sensitive information and personal data, compliance with relevant guidance and good practice, and the Council’s performance in this area over the last twelve months. It is, therefore ,intended to form an important part of the Council’s Overview & Scrutiny Framework, alongside other annual performance reporting.

##### **Background**

2. Public trust in the way public services handle and share data is increasingly important, particularly in the context of greater digital storage and transfer of information. Service users expect easier access to services and a 'one stop' delivery experience. They want to be in control of their interactions with council services and for those services to be delivered at lower cost, more quickly and based on individual needs. This lies at the very core of what all local public services strive to do, and in Gateshead is captured within our policy objectives as set out in the Council Plan 2015-20 and our Digital Strategy.
3. Success in this area depends on many factors, but effective and secure exchange and management of information is vital for both good service delivery, and for compliance with an increasingly onerous and prescriptive legislative framework at both a national and European level. The public and regulatory bodies must have

confidence in the way that any data we hold is treated, taking privacy and confidentiality into account, and that it is kept safe from misuse. Without that assurance service users are unlikely to engage, services will be less efficient and much poorer as a result, and we face stiffer penalties if found to be failing to meet our legal responsibilities..

4. In 2010 the Local Government Association produced data handling guidelines for local authorities. Those guidelines, which were revised in 2014, set out the steps that every local authority should take to monitor and control the management of information and to mitigate the risk should personal information be lost or data protection systems fail. The Council's approach to information governance is based on these guidelines.
5. The Council recognises that there must be a systematic and planned approach to the management of its information. This will ensure that from the time a record is created, until its disposal, standards and handling will be consistent across the organisation and that the record can be tracked throughout its lifecycle to ensure it serves the needs of the Council and its stakeholders, and complies with relevant legislation.
6. The way the Council manages its information is also crucial to maintain effective and efficient business operations. Information management is about providing an integrated records and information system to ensure quick, efficient and consistent access to records across the organisation. Public sector organisations have more demands than ever before to be open and transparent. The introduction of the Freedom of Information Act 2000, on 1 January 2005 and the government's transparency agenda means anyone can request information from the Council. This can be achieved quickly and efficiently if effective information management systems are in place.
7. The Council has an Information Charter and an Information Strategy. The strategy provides a framework which enables the Council to manage its information efficiently, recognising its value as a corporate asset for the delivery of effective, appropriate and transparent services.
8. With the approval of the new General Data Protection Regulation (GDPR), which has been ratified by the European Parliament and comes into effect in the UK on 25 May 2018, there is a move away from seeing the law as a box ticking exercise, and instead to work on a framework that can be used to build a culture of privacy that pervades an entire organisation.
9. The Council formed an information rights working group in March 2017 to start preparing for GDPR implementation. A lot of work has been done. So far:-
  - a. All information assets are being captured in information asset registers
  - b. Privacy notices have been prepared for children's services, schools, elections, councillors and staff. Templates are being prepared to roll out across the rest of the Council
  - c. Web pages are being updated to include contact details of the Data Protection Officer which is a new statutory role which public sector organisations will be required to have

- d. Information asset registers also contain the legal basis for processing and the retention periods
- e. Consent forms are being revised to be GDPR compliant
- f. Data collection forms and systems are being re-engineered to comply with data minimisation and privacy by design
- g. All data controller/processor agreements are being reviewed
- h. Forms and procedures have been devised for privacy impact assessments
- i. All schools have received training
- j. Training for governors is scheduled in March
- k. A members seminar is scheduled for March
- l. Staff in procurement, I.T, web design , and legal have been trained
- m. Roll out of training to all remaining employees starts in February
- n. Data sharing and handling agreements are being drafted for all of our trading companies, including GHC

10. **Internal Audit** are responsible for conducting an annual information audit. The aims of the audit are to ensure services are complying with the Information Governance framework that has been put in place.

11. An essential part of the information management role is protecting records from elements such as floods, fire, theft and loss. The Council follows the National Archives Records Management Recovery plans standard for the management of government records. This standard is a best practice benchmark for all organisations creating or holding public records.

### **Information Storage**

12. Storage of the Council's paper based records is reviewed annually in line with retention periods and records are destroyed or transferred to archive if required.

### **Risk Assessment**

13. Information governance is included in the Council's Strategic Risk Register.

### **Data breach reporting**

14. Data breaches can be reported to the Information Rights Officer or via the incident reporting mail inbox.

The Senior Information Risk Owner, (Mike Barker), is informed in the event of a data breach and the Information Rights Officer provides advice to the service concerned about what remedial action they need to take.

The Siro makes a determination whether the incident has to be reported to the Information Commissioner in line with the Information Commissioner's guidance on data breach reporting.

The incident reporting inbox is an inbox which internal audit access and can investigate in relation to serious breaches. In 2017 there have been 7 reported breaches.

Month	Data breach	outcome
Jan 2017	Duty manager sent an email to service users without using the BCC facility so all service users received everyone else's email address. 100 service users affected	2 complaints received and dealt with. Staff member provided with training.
Feb 2017	A Child Protection Plan was sent out to the wrong address.	The original documentation was retrieved – service user made aware
March 2017	Report sent to the wrong address	The original documentation was retrieved – service user made aware
March 2017	Closure letter out to 66 individuals across Gateshead which included a client's personal details	Client informed
March 2017	A Child Protection Plan was sent out to the wrong address	The original documentation was retrieved – service user made aware
12/06/2017	Paperwork containing information about one service user lost	Service user informed , staff member trained
10/08/2017	Report disclosed containing the address of a service user	Service user informed, report retrieved

Should a complaint be made to the Information Commissioner or a breach is reported to the Information Commissioner by the Council, the Information Rights Officer liaises with the Information Commissioner to reach a satisfactory outcome. There have been no complaints in 2017.

### **Regulation of Investigatory Powers Act 2000 (RIPA)**

#### **Background**

15. This is the second report in relation to the Council's use of RIPA. It was recommended in the new codes of conduct produced by the Office of the Surveillance Commissioner at the end of last year, that Councils should report their use of RIPA to elected members at least annually.

16. RIPA provides a statutory mechanism (i.e. 'in accordance with the law') for authorising directed and covert surveillance and the use of Covert Human Intelligence Sources (CHIS). It also permits public authorities to compel telecommunications and postal companies to obtain and release communications data in certain circumstances. It seeks to ensure that any interference with an individual's rights under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA seeks to ensure that both the public interest and the human rights of individuals are suitably balanced.
17. Covert surveillance involves, monitoring, observing, listening to persons, watching or following their movements, and is carried out in such a way that the subject of the surveillance is unaware it is taking place.
18. There are two types of covert surveillance that the Council can use:
  - Directed surveillance – this involves observing, following or watching the subject of the surveillance
  - CHIS – this involves using volunteer adults or children to attempt to make test purchases
19. Typically this council uses RIPA in relation to benefit or council tax fraud when information is received that a claimant has someone living with them or is working and claiming benefits. Surveillance will be used to watch the property to see if there is any evidence of another person living there. If evidence is found the subject of the surveillance will be invited in for an interview under caution.
20. The Council uses CHIS (normally members of staff or child volunteers), when it receives information that, for example, a householder is selling illegal tobacco or a shop is selling age restricted products such as alcohol, cigarettes or fireworks to underage children. The CHIS will be used to attempt to make a test purchase. If the test purchase succeeds then the subject of the surveillance is invited in for an interview under caution.
21. The Protection of Freedoms Act 2012 amended RIPA to restrict when councils can use RIPA. An authorisation for directed surveillance or CHIS can only be made by councils now if certain conditions are met:
  - That the authorisation is for the purpose of preventing or detecting crime
  - The criminal offence is or would be an offence which is punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months imprisonment or
  - Is an offence under:
    - Section 146 of the Licensing Act 2003 (sale of alcohol to children)
    - Section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children)
    - Section 147A of the Licensing Act 2003 (persistently selling alcohol to children)
    - Section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc to persons under 18)

22. Covert surveillance should only be used in exceptional circumstances when necessary information cannot be uncovered by overt means – open CCTV or officers patrolling with visible body worn video cameras. The decision to use covert surveillance must take into account the issue of proportionality - the surveillance must not be excessive in relation to the seriousness of the problem it seeks to address.

The Council must ensure that:

- All covert surveillance exercises conducted by the Council comply with the requirements of RIPA;
- All authorisations contain the detail of the surveillance which is to be permitted and why the authorising officer believes the surveillance to be necessary. To demonstrate the necessity of the covert surveillance all authorisations must mention all other possible means of discovering the desired information and the reason for their rejection.

23. Councils are not permitted to undertake intrusive surveillance i.e. tapping phone lines or any surveillance inside private property or placing tracking devices on a subject's vehicle or person.

24. Only authorising officers can be permitted to authorise a covert surveillance exercise.

### Arrangements

25. The Council's compliance with RIPA is independently audited periodically by two Commissioners; the Office of the Surveillance Commissioner and the Office of the Communications Surveillance Commissioner. The Home Office has produced a code of conduct in relation to covert surveillance. The Commissioner audits how the Council has used its powers under the Act and how well it has complied with the code of practice.

26. In addition, the Protection of Freedoms Act 2012 amended RIPA, meaning that before a surveillance exercise can take place, an application which has been authorised by an authorising officer, has to be approved by a magistrate before the proposed surveillance activity takes place.

27. The Investigatory Powers Tribunal can hear complaints from any person aggrieved at the conduct carried out in challengeable circumstances within one year. The tribunal can award compensation or can quash or cancel any authorisation and can order the destruction of records of any information obtained by exercising any power.

28. The Act designates various roles to officers, these roles are held by specific Council officers as follows:

- Senior Responsible Officer (SRO) – this role is held by the Service Director, Legal and Democratic Services. SRO is responsible for:
  - Ensuring that all authorising officers are of an appropriate level of seniority and have had training

- The integrity of the process in place within the public authority to authorise directed and intrusive surveillance and interference with property or wireless telegraphy;
  - Compliance with Part II of the 2000 Act, Part III of the 1997 Act and with the codes of practice
  - Engagement with the Commissioners and inspectors when they conduct their inspections, and where necessary, overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner
- RIPA Co-ordinating officer - this role is held by the Litigation Manager and Information Rights Officer. The role is responsible for:
    - maintaining the central record of authorisations
    - collating the original applications/authorisations, review, renewals, cancellations
    - oversight of the submitted RIPA documentation
    - organising the RIPA training programme
    - raising RIPA awareness within the Council

29. Authorising Officer - these roles are assigned to service managers or above who have been trained to authorise requests for directed surveillance and the use of CHIS.

RIPA does not:

- make lawful conduct which is otherwise unlawful
- prejudice or disapply any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under this Act. For example, it does not affect the Council's current powers to obtain information via the DVLA or to get information from the Land Registry as to the ownership of a property.

### Statistics

30. Gateshead Council uses its power under RIPA when it is appropriate to do so.

- In 2017 the powers were used four times – three for counterfeit goods being sold via Facebook and one for the sale of animals on facebook without a licence. An application was made to use RIPA in relation to sale of cigarettes to underage children, but the district Judge refused to authorise the surveillance.
- In 2016 the powers were used twice – both for illegal tobacco sales.
- In 2015 the powers were used five times - on four occasions for illegal tobacco sales and once for counterfeit goods.
- In 2014 the powers were used four times - on two occasions for counterfeit goods, once for benefit fraud and once for illegal tobacco.
- In 2013 the powers were used 5 times – on four occasions for illegal tobacco sales and once for theft.

## Inspection

31. In July 2016 the Council was re-inspected by the Surveillance Commissioner and found to be fully compliant with the requirements of RIPA

## **Recommendation**

32. The Corporate Resources Overview and Scrutiny Committee is asked to endorse the information in the annual report, and satisfy themselves that the Information Governance is operating satisfactorily and that the Council uses the powers under the Regulation of Investigatory Powers Act appropriately.