East Lothian Council

REPORT TO: Cabinet

MEETING DATE: 10 May 2016

BY: Depute Chief Executive (Resources & People Services)

SUBJECT: Regulation of Investigatory Powers (Scotland) Act – Social Media Policy

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1 PURPOSE

1.1 To set out the formal Council position on the use of Social Media within the context of the Regulation of Investigatory Powers (Scotland) Act, providing a clearer framework for how these areas of activity interact.

2 RECOMMENDATIONS

2.1 That the Cabinet approve the attached policy.

3 BACKGROUND

3.1 The Regulation of Investigatory Powers (Scotland) Act Policy which sets out the wider use of these powers by the Council was approved in March 2013, but did not address the specific nuanced concerns that existing within the sphere of social media.

3.2 This policy will show a positive development in our compliance with our obligations.

4 POLICY IMPLICATIONS

4.1 This policy is a continuation and clarification on the work already progressed within the Regulation of Investigatory Powers (Scotland) Act Policy and will support our overall compliance with the Act.

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy

6 RESOURCE IMPLICATIONS

6.1 Financial – all implications will be met from existing resources

6.2 Personnel - all implications will be met from existing resources.

6.3 Other – all implications will be met from existing resources.

7 BACKGROUND PAPERS

7.1 Regulatory of Investigatory Powers (Scotland) Act Social Media Policy.

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EAST LOTHIAN COUNCIL

Surveillance through Social Media Policy

East Lothian Council

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1. Introduction

1.1 This document sets out East Lothian Council's policy regarding internet surveillance using Social Media.

1.2 Reference is made to East Lothian Council's Regulation of Investigatory Powers (Scotland) Policy ('RIPSA Policy'), to which this policy is subsidiary.

1.3 In some circumstances, it may be necessary for East Lothian Council employees, in the course of their duties, to access social media websites either by creating covert identities or through the officer's private or departmental identity.

2. Statement of Intent

The aim of this policy is to provide the framework outlining the Council's process for authorising and managing internet surveillance operations using social media, and to set the parameters for expected good practice.

3. Objective

The objective of this policy is to ensure that all surveillance through social media conducted by East Lothian Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with East Lothian Council's RIPSA Policy, the relevant legislation, the Scottish Government's Code of Practice on Covert Surveillance ('the Code of Practice') and any guidance which the Office of Surveillance Commissioners may issue from time to time.

4. East Lothian Council's Social Media Presence

East Lothian Council has an internet presence as a corporate entity as well as different services and departments. The corporate entity currently has a Facebook page and a twitter account. Access to these is limited to the Communications Team. Various other business units within the council also have a Social media presence, however a documented procedure must be followed before access is granted, which includes a business case being presented and approved by the Head of Council Resources. . All approved services

utilise their respective corporate accounts to post information about the Council's activities and events. Also, individual schools have social media presence.

5. Types of Investigators' Accounts

There are three different ways in which social media websites may be accessed by council officers to carry out investigations:

- Using the officer's private social media account
- Through an identity created specifically as the department's representative
- Through a covert identity using a false name

6. Types of Surveillance

Investigators utilise social media in two different ways:

- By simply visiting/viewing third party accounts or groups
- By entering into a personal relationship with the third party/group member

7. Privacy Settings of Account under Investigation

Most social media websites will have a variety of privacy settings that users can apply to protect their accounts from others accessing the information contained therein. Facebook is the social media website that is most commonly used by East Lothian Council Officers to investigate service users or potential service users and it has several different privacy settings. Therefore, Facebook will be used as an example in this policy. Depending on what privacy setting a user chooses, different people can access the account and see all or some of its contents.

7.1 'Public': All Facebook users can see the account and all of its content, including the user's "friends", their timeline and photographs. Non-Facebook users can see photographs and posts published on the account, but not who has 'liked' a post or the marital status and geographic location of the user.

7.2 'Friends': Only those who the user has accepted as Facebook 'friends' are able to see the entire content of the user's page.

7.3 'Custom': The user can create lists of specific contacts and Facebook users and designate them as the audience for – or block them from view of – any posts.

Of these three options, the relevant ones for investigating officers are 'public' and 'friends', as option 3 is a subcategories of 'friends'.

8. Utilisation of Social Media

8.1 Directed Surveillance using the officer's private account

- 'Public' privacy setting

  If an investigating officer views a service User's Facebook profile, with whom they are not 'Friends' via a normal route, and where the content is not protected by any privacy settings, then information on this profile can be treated as being in the public domain. Any viewing/visiting of this profile will be overt and no authorisation under RIPSA will be required.

  If the officer frequently or regularly views/visits the same individual's profile this must be considered as targeted. However if the service user posts publically, they can have no expectation of privacy and will give everybody the right to view their posts at any time and as many times as that person wishes to. Therefore, no authorisation under RIPSA for directed surveillance is required.

  If an investigating officer enters into a 'conversation' with the service user, and if the officer informs them that he is contacting them in his role as an employee of ELC, then this contact will be overt and no authorisation under RIPSA will be required.

- 'Friends' privacy setting

  To investigate a service user whose Facebook account is protected by privacy settings, the investigating officer will have to send the service user a 'friend request'.

8.2 Surveillance using identity as department's representative or departmental account

- 'Public' privacy setting

  The same applies as when the investigating officer uses his private identity

- 'Friends' privacy setting

  To investigate a service user whose Facebook account is protected by privacy settings, the investigating officer will have to send the service user a 'friend request'. As it is obvious from the department name that the person behind it is an East Lothian Council employee, then the action could not be classified as covert. No RIPSA authorisation would be needed

8.2 Surveillance using covert identity

If an investigating officer befriends a service user under a covert identity, then a CHIS authorisation will always need to be in place before that is done.

9. Best practice for the use of social media in investigations

As a matter of best practice, whenever a Council officer intends to investigate a particular service user through social media, rather than conducting a general sweep of social media sites, an appropriate RIPSA authorisation should be completed.

10. Authorisation for all types of surveillance

Please refer to East Lothian Council's Regulation of Investigatory Powers (Scotland) Act Policy.

11. Review of Policy

This policy will be reviewed every three years from the date of approval.