

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

AUDIT COMMITTEE

6 JUNE 2016

1. MONITORING POLICIES ON RAISING CONCERNS AT WORK – WHISTLE BLOWING STANDING ORDER 2/20 AND REGULATION OF INVESTIGATORY POWERS ACT 2000

Joint report of the Chief Fire Officer and the Monitoring Officer.

RECOMMENDED

- 1.1 THAT the Audit Committee notes that there has been One allegation of whistle blowing reported through the Whistle Blowing Policy (SO 2/20) and this matter reached a satisfactory conclusion to all parties involved. There have not been any requests to enact the Regulation of Investigatory Powers Act 2000 in West Midlands Fire Service in the last year up to 31 March 2016.
- 1.2 THAT the Audit Committee notes the content of the Whistle Blowing Standing Order 2/20 (attached as Appendix 1) and the Data Protection Policy 1998 Standing Order 2/16 (attached as Appendix 2).

2. PURPOSE OF REPORT

This report is submitted to inform the Committee of the monitoring of the referrals under the Whistle Blowing Standing Order and the use of the Regulation of Investigatory Powers Act under the Data Protection Standing Order. Revision of the Data Protection Framework 2/16 are currently being consulted in line with the Employment Relations Framework.

3. BACKGROUND

Whistle Blowing

- 3.1 The Whistle Blowing Standing Order was consulted on 4th June 2014 and then published 27th November 2014. Minor amendments were made to include names of new personnel who have responsibilities under Whistle Blowing.

[IL1: PROTECT]

This Standing Order will be reviewed and amended every three years or reviewed earlier if required under any changes in legislation.

- 3.2 In relation to Whistle Blowing; in May 1996 the Committee on Standards in Public Life stated that “All organisations face the risk of things going wrong or of unknowingly harbouring malpractice. Encouraging a culture of openness within an organisation will help: prevention is better than cure.”
- 3.3 The Public Interest Disclosure Act 1998 sets out a framework for public interest whistle blowing which protects workers from reprisal because they have raised concern about malpractice. Only a disclosure that relates to one of the broad categories of malpractice can qualify for protection under the Act. These include concerns about actual or apprehended breaches of civil, criminal, regulatory or administrative law; miscarriages of justice; dangers to health, safety and the environment and the cover up of any such malpractice. Case law continues to develop this area of law.
- 3.4 In addition to employees, the Act covers for example, workers, contractors, trainees, agency staff. This list is not exhaustive.
- 3.5 To be protected, the person blowing the whistle must believe that their disclosure is “in the public interest”, i.e. disclosure is made in the reasonable belief that there is an issue such as wrongdoing in public office or something that presents a risk to the public that warrants disclosure.
- 3.6 The Committee should note that there has been One allegation of Whistleblowing raised by an employee over the last twelve months using the Whistle Blowing Policy up to 31 March 2016.

Data Protection

- 3.7 The Data Protection Act 1998 was consulted on and amended to include a policy on surveillance in May 2012. This policy is currently under review and in consultation. The new Data Protection Framework 2/16 is an amalgamation of Standing Order 2/16 Data Protection Act 1998 and Standing Order 2/21 Personal Information.

Regulation of Investigatory Powers

- 3.8 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework for control and supervision of investigatory powers exercised by public bodies, including local authorities, in order to balance the need to protect privacy of individuals with the need to protect others, particularly in light of the Human Rights Act 1998.
- 3.9 In 2014 West Midlands Fire Service was inspected under RIPA by Office of Surveillance Commissioners (OSC) a report was submitted with clear recommendations, which the Service has delivered. Training was put in place for senior managers to familiarise themselves with RIPA rules and guidelines.
- 3.10 The Committee should note that the Service has not approved any surveillance under RIPA legislation in the last twelve months up to 31 March 2016.
- 3.11 The West Midlands Fire Service will continue to raise awareness through training on the Whistle Blowing Policy, Data Protection Policy and RIPA to all of our partners.

4. EQUALITY IMPACT ASSESSMENT

In preparing this report an Equality Impact Assessment is not required, due to the fact that all our policies have Equality Impact Assessments carried out when updating and amending.

5. LEGAL IMPLICATIONS

- 5.1 Data Protection: Depending on the level and or seriousness of a breach of the Data Protection Act 1998; there are various levels of prosecution ranging from enforcement notices, financial penalties and in extreme cases custodial sentences.
- 5.2 RIPA: if surveillance operations are not carried out in accordance with the safeguards as laid down in RIPA, the evidence obtained may not be admissible in legal proceedings and the Service may be subject of a claim on infringing the human rights of the person under surveillance.

6. FINANCIAL IMPLICATIONS

[IL1: PROTECT]

Monetary Penalty notices: fines of up to £500,000 for serious breaches of the DPA.

7. **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications arising from this report.

BACKGROUND PAPERS

The Public Interest Disclosure Act 1998 (PIDA)

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