



AUDIT AND RISK MANAGEMENT COMMITTEE

Monday, 5 July 2021

REPORT TITLE:	REGULATION OF INVESTIGATORY POWERS ACT 2000(RIPA)
REPORT OF:	DIRECTOR OF LAW AND GOVERNANCE (MONITORING OFFICER)

REPORT SUMMARY

This report informs the Committee of the outcome of an inspection on 21 May 2021 by the Investigatory Powers Commissioner (IPCO).

It also invites the Committee to agree to additions to the Policy and Procedure Guidance on the Council's use of covert surveillance in the light of the IPCO's recommendations on data retention and security.

RECOMMENDATIONS

The Audit and Risk Management Committee are recommended to;

- 1) note the contents of the report of the Inspector appointed by the Investigatory Powers Commissioner on the use of covert surveillance by the Council and adopts its recommendations.
- 2) approve the Policy and Procedure Document contained in Appendix 3 on the use of powers under the Regulation of Investigatory Powers Act 2000 (RIPA) as amended by the additional Section 12 on Data Security and Retention.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATIONS

- 1.1 The Home Office Codes of Practice on covert surveillance require every Council to have regard to its provisions and any recommendations from IPCO when applying RIPA and drawing up its policies and procedures.
- 1.2 It is important to provide guidance to officers as to when covert surveillance is lawful and how and when it can be authorised.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Not to accept IPCO's recommendations. This was rejected because it could lead to serious breaches of RIPA and the Data Protection Act 2018 and adverse reports on future inspections

3.0 BACKGROUND INFORMATION

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public bodies use surveillance methods. The Council may use covert surveillance for the purpose of preventing or detecting crime or preventing disorder.
- 3.2 The origin of RIPA lies in the Human Rights Act 1998 which places restrictions on the extent to which public bodies may interfere with a person's right to respect for his or her home and private life and correspondence during the course of an investigation into suspected criminal activities. The provisions of RIPA ensure (in summary) that any such interferences are in accordance with the law and are necessary and proportionate (i.e. the seriousness of the suspected crime or disorder must outweigh any possible interferences with the personal privacy of the persons being investigated and of persons who associate with them).
- 3.3 The Council's Constitution authorises Directors to designate Heads of Service and Service Managers to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA. Since 1 November 2012 such authorisations require the further approval of a magistrate where the legislation applies.
- 3.4 The Office of Surveillance Commissioners (OSC) was responsible for overseeing the operation of RIPA. The OSC inspected the Council on 13 May 2015. The outcome of that inspection was reported to the Committee on 22 September 2015. The Committee approved amendments to the Council's Policy and Guidance Document made in response to the Report and subsequently on 22 November 2016.
- 3.5 The functions of the OSC have now been transferred to the Investigatory Powers Commissioner Sir Brian Leveson. One of the Commissioner's inspectors (Graham Wright) conducted an inspection of the Council's use of RIPA on 17 December 2018. The outcome of that inspection is attached at Appendix 1 and was reported to this Committee on 11 March 2019 which adopted its recommendations

3.6 The Council's Policy and Guidance Document was amended to include expanded sections on surveillance of open social media sites at meetings of this Committee on 11 March 2019 and 27 January 2020

4.0 INSPECTION ON 21 MAY 2021

- 4.1 The Investigatory Powers Commissioner instructed Graham Wright to conduct a further inspection of the Council's use of RIPA in April 2021 His report dated 21 May 2021 is attached at Appendix 2. The inspection was conducted remotely because of the restrictions imposed as a result of the COVID 19 pandemic. All documents requested by Mr Wright were forwarded to him.
- 4.2 The report of the previous inspection on 17 December 2018 is attached at Appendix 1. Mr Wright was satisfied that the Council had carried out the recommendations made in that report.
- 4.3 Mr Wright was satisfied with the arrangements made for the annual training of authorising officers and applying officers. He considered the training was very helpful and noted that over 40 staff had attended sessions in 2019 and 2020. Further training should be organised for this year.
- 4.4 Mr Wright examined three authorisations given by Authorising Officers for covert surveillance. All had been approved by a magistrate although he had some criticisms to make of some gaps in one of the two authorisations for surveillance of retailers suspected of underage sales of tobacco. On the other hand, the authorisation for covert surveillance of suspected fly tipping sites was regarded as exemplary and a model for future applications.
- 4.5 Mr Wright was satisfied that this Committee received regular reports on the use of RIPA and was responsible for approving any policy changes.
- 4.6 Mr Wright considered that the Council Policy and Procedure on the use of Powers under the Regulation of Investigatory Powers Act was a useful guide to practitioners and had been suitably expanded to include the use of social media to support investigations. It is attached at Appendix 3.
- 4.7 In particular there was now more detailed guidance on the use of internet and social networking sites for those departments "outside of the usual RIPA audience" viz Children's Services. Social workers were using information from those sites quite properly to protect children but needed to be made aware of those circumstances where authorisation for directed surveillance would be required because the monitoring of the site was planned to be repeated and systematically targeted on specific individuals.
- 4.8 There are regular quarterly meetings of RIPA co-ordinators chaired by a solicitor who gives advice and guidance on this complex area of the law. Social workers from the Children's Services Department are now invited in order to discuss issues of common concern and particular areas of difficulty. They were invited to the annual training events held in 2019 and 2020 and will be invited to future training events.

- 4.9 Any staff wishing to conduct social media research must seek approval from a RIPA trained officer who will assess whether an authorisation needs to be sought as would be the case if the monitoring were repeated, systematic and targeted visits to a site. If no authorisation is required, a log of the internet activity will be completed to be reviewed periodically by the solicitor assigned to RIPA.
- 4.10 IPCO had written to all authorities in September 2020 expressing concerns about the security and retention of personal data which are derived from RIPA authorised investigations. The letter is attached at Appendix 4.
- 4.11 The letter had been discussed at the quarterly meetings of the RIPA co-ordinators. A draft policy had been produced which is attached at Appendix 5. It has been approved by Mr Wright and the Committee is recommended to approve it for incorporation into the Policy and Procedure Document as an additional Section 12.

5.0 CHANGES IN LEGISLATION

- 5.1 The Protection of Freedoms Act 2012 came into force on 1 November 2012 and made the following changes to the law;
- A Magistrate's approval is required for a local authority's use of RIPA. It is in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
 - Use of RIPA to authorise directed surveillance is confined to cases where the offence under investigation carries a custodial sentence of six months imprisonment or more except in relation to underage sales of alcohol and tobacco, where this sentencing threshold will not apply.

6.0 ANNUAL TRAINING

- 6.1 This took place on 7 July 2020 and was conducted remotely by Stephen Morris who is one of the trainers employed by Act Now Training Ltd who are acknowledged experts in this field.
- 6.2 It was attended by officers who are required to undertake refresher training every 2 years.
- 6.3 Mr Morris dealt in detail with the requirements for authorisations under RIPA and the quality of his training has been commended by Mr Wright.
- 6.4 Further training will be organised for this year in accordance with the recommendations of IPCO.

7.0 ADDITIONS TO THE POLICY AND PROCEDURE DOCUMENT

- 7.1 This document is attached as an Appendix 3 to the report. It updates the Guidance in the light of IPCO's letter on data security and retention and the Committee is invited to approve this document.

8.0 FINANCIAL IMPLICATIONS

- 8.1 **There are no direct financial implications.** Annual training, which is required to maintain current high standards, will be funded out of existing resources.

9.0 LEGAL IMPLICATIONS

- 9.1 The Protection of Freedoms Act 2012 came into force on 1 November 2012 and made the following changes to the law;

- A Magistrate's approval is required for a local authority's use of RIPA. It is in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
- Use of RIPA to authorise directed surveillance is confined to cases where the offence under investigation carries a custodial sentence of six months imprisonment or more except in relation to underage sales of alcohol and tobacco, where this sentencing threshold will not apply.

10.0 RESOURCE IMPLICATIONS :ICT,STAFFING AND ASSETS

10. Staff experienced in the use of RIPA left the Council's employment in 2018 and 2019. Their replacements, and social workers in the Children's department, will require continuous training and advice and guidance on the law and the various techniques of lawful and proportionate covert surveillance to prevent or detect crime and to prevent harm to children.

11.0 RELEVANT RISKS

- 11.1 These have been discussed in previous reports. They include the risk of inadvertent breaches of the law which is mitigated by annual training and access to internal legal advice.
- 11.2 There is a risk that some investigations of anti-social behaviour will not be able to use covert surveillance because the suspected criminal behaviour does not carry a custodial sentence of 6 months or more.
- 11.3 The Anti-Social Behaviour Team are however intent on applying to the Court for approval of covert surveillance in suitable cases of suspected harassment of individuals which would amount to an offence under the Protection from Harassment Act 1997 (which can attract a sentence of 6 months or more imprisonment).
- 11.4 Where RIPA does not apply but covert surveillance would be legitimate necessary and proportionate then it would have to be authorised by the Authorising Officers in accordance with the Data Protection Act 2018 e.g to supply evidence in disciplinary or care proceedings as explained in paragraphs 10 and 11 of the Policy and Procedures Guidance Document.

12.0 ENGAGEMENT/CONSULTATION

12.1 None.

13.0 EQUALITY IMPLICATIONS

13.1 None.

14.0 ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS.

14.1 Covert Surveillance is intended to be used to detect environmental offences such as fly tipping. The use of covert cameras to monitor sites where waste is unlawfully deposited is lawful if it is necessary and proportionate and approved by a magistrate. The siting of the cameras has to ensure that any invasion of the privacy of innocent persons is minimised.

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APPENDICES

- Appendix 1 - Report of the Inspector on 17 December 2018.
- Appendix 2 - Report of the Inspector on 21 May 2021.
- Appendix 3 - Revised Policy and Procedure on the use of Powers under the Regulation of Investigatory Powers Act 2000.
- Appendix 4- IPCO's letter of September 2020.
- Appendix 5- Draft Policy on Security and Retention of Personal Data Derived from RIPA Investigations.

BACKGROUND PAPERS

None other than the Home Office Codes of Practice on RIPA and the use of Communications Data

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Reports to the Audit & Risk Management Committee	25 September 2017 12 February 2018 24 September 2018 11 March 2019 27 January 2020 16 November 2020

