

# WEST NORTHAMPTONSHIRE COUNCIL AUDIT AND GOVERNANCE COMMITTEE

27 March 2024

Report Title	Update Report - Regulation of Investigatory Powers Act 2000 (as amended)
Report Author	Sarah Hall, Deputy Director Law and Governance <a href="mailto:Sarah.Hall@westnorthants.gov.uk">Sarah.Hall@westnorthants.gov.uk</a>

Contributors/Checkers/Approvers		
DSO	Sarah Hall	19/03/2024
Assistant Director Finance-Accountancy	Audra Statham	19/03/2024

## List of Appendices

Appendix 1: Proposed amended Policy - *Surveillance Policy - Regulation of Investigatory Powers Act 2000 (as amended)*

### 1. Purpose of Report

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1.1 This report:

- a) provides an update on the Council's use of powers available to it under the Regulation of Investigatory Powers Act 2000 (as amended) ('RIPA');
- b) proposes amendments to the RIPA Policy;
- c) updates Members on officer training undertaken and scheduled following the last report to the Audit and Governance Committee (25 January 2023); and
- d) updates Members on other actions being undertaken to strengthen the Council's RIPA framework.

### 2. Executive Summary

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2.1 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.

2.2 In May 2022 the Council underwent an inspection from the IPCO (Investigatory Powers Commissioner's Office). The results of that inspection were reported to Cabinet, and Cabinet

designated the Audit and Governance Committee as the responsible statutory committee to oversee the operation of RIPA policies.

- 2.3 This report advises the Committee about the Council's use of RIPA powers, proposes the RIPA Policy be updated, and provides an update on training and other actions being undertaken to strengthen the Council's RIPA framework.

### **3 Recommendation**

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3.1 It is recommended that the Audit and Governance Committee:

- a) Approves the proposed amended RIPA Policy as set out at Appendix 1.
- b) Endorse the training scheduled for relevant officers as detailed in paragraphs 6.8 to 6.10 of this report.
- c) Note the update at paragraph 6.12 of this report on use of RIPA powers in 2023.

### **4 Reason for Recommendation**

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- 4.1 To ensure the Committee receives an annual update on the Council's use of RIPA powers and development of the Council's RIPA Framework.
- 4.2 Keeping the RIPA Policy and supporting provisions under regular review helps to ensure that the Policy is up to date and effective, and that any covert surveillance is carried out in compliance with the law.

### **5 Report Background**

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#### Summary of RIPA Provisions

- 5.1 The origin of RIPA lies in the Human Rights Act 1998 which gave effect in UK law to the rights set out in the European Convention on Human Rights (ECHR). This 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.
- 5.2 RIPA sets out the authorisation requirements for all covert surveillance carried out by public authorities where that surveillance is likely to result in the obtaining of private information about a person. It is mandatory for the Council to have a policy which applies to all surveillance carried out by the Council.
- 5.3 Surveillance, for the purposes of RIPA, includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained. It may also be obtained by using a covert human intelligence source (CHIS) to acquire information covertly where it is appropriate and legal to do so. A CHIS is an individual

who covertly uses a relationship to obtain information or to provide access to any information to another person.

- 5.4 Surveillance is covert if, and only if, it is carried out in a manner calculated to ensure that any persons who are subject to the surveillance are unaware that it is or may be taking place. 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). Part II of RIPA provides a lawful mechanism for public bodies such as the Council to use covert surveillance and covert human intelligence sources compatibly with Article 8 of the ECHR and the Data Protection Act 2018, where it is for the purpose of the detection or prevention of crime.
- 5.5 Local authorities may authorise the use of Directed Surveillance under RIPA. Directed surveillance is covert surveillance that is not intrusive (see paragraph 5.6 below) but is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under RIPA).
- 5.6 Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle (and that involves the presence of an individual on the premises or in the vehicle or is carried out by a means of a surveillance device). Local authorities cannot authorise intrusive surveillance.
- 5.7 The grounds on which local authorities can rely to authorise directed surveillance are narrower than those available to the police or security services. Local authorities in England and Wales can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment or are related to the underage sale of alcohol and tobacco or nicotine inhaling products. Local authorities cannot authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence punishable by a maximum term of at least 6 months' imprisonment.
- 5.8 Following the amendments made to RIPA by the Protection of Freedoms Act 2012 the use of Directed Surveillance or CHIS by a local authority are subject to judicial approval.
- 5.9 The Investigatory Powers Act 2016 provided powers to local authorities to access communications data to carry out their statutory functions as a Competent Authority under the Data Protection Act 2018.
- 5.10 The Investigatory Powers Commissioner (IPCO), Sir Brian Leveson, is responsible for overseeing the application of RIPA and the use of investigatory powers by public authorities. The Commissioner has a statutory obligation to inspect the use of investigatory powers as part of his oversight. Inspections are carried out approximately once every three years. The Council is also required to submit an annual return to the IPCO detailing the Council's use of RIPA.

## The Council's RIPA Arrangements

- 5.11 The Council must have a RIPA Surveillance Policy which applies to all surveillance carried out by the Council. The Council has a RIPA Surveillance Policy in place.
- 5.12 In September 2022, Cabinet designated the Audit and Governance Committee as the responsible statutory committee to oversee the operation of RIPA policies.
- 5.13 The Council's Senior Information Responsible Officer (SIRO) is the Director of Law and Governance. The SIRO is responsible for the implementing of the RIPA policy and for ensuring that relevant staff are adequately trained. Relevant staff includes Executive Directors (Authorising Officers) and also employees of the Council who may use surveillance.
- 5.14 The Council's Executive Directors are designated Authorising Officers. These Officers review the applications that are completed by operational officers who are requesting authorisation to undertake covert surveillance. (The Magistrates Court is responsible for considering the applications approved by the Authorising Officers and determining the request to undertake surveillance).

## **6 Issues and Choices**

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### RIPA Policy Update

- 6.1 Minor draft amendments have been made to the Council's RIPA Policy for the consideration and approval of the Committee. The effect of these amendments are to clarify the introduction to the Policy, highlight the fact that the Council is not authorised to conduct intrusive surveillance, clarify the reference to noise nuisance monitoring given in the Policy (to ensure it does not suggest intrusive surveillance) and to include authorisation durations in relation to CHIS authorisations. These amendments will ensure that the Policy is user friendly, clearly reflects the legal position and takes account of all comments made by the Inspector during the last IPCO Inspection in May 2022.
- 6.2 The Audit and Governance Committee is therefore recommended to approve the amended draft RIPA Surveillance Policy at Appendix 1.

### Monitoring Officer Guidance

- 6.3 The Policy must be supported by guidance and material to assist operational officers in understanding how and when RIPA applies to ensure compliance with the law.
- 6.4 The potential use of internet research in investigations, including the use of information from social media is an area where it is advisable to have specific practical guidance in place for Officers in addition to the guidance contained within the Home Office Covert Surveillance and Property Interference Practice Guide. Therefore, a Monitoring Officer Guidance document on this topic has been developed and will be made available to staff, as it will be placed on a RIPA resources area of the intranet alongside the formal RIPA Policy.

- 6.5 The Monitoring Officer Guidance document covers some of the practical issues surrounding use of the internet in a covert manner as part of investigations. For example, the Guidance expressly states that Officers must not use their own social media profiles to carry out investigative work. It is important that only profiles established by, and equipment owned by the Council are used in Council investigations. The importance of this is in part to ensure that staff do not compromise their own safety through the possibility of being digitally traced back to their personal accounts/devices.
- 6.6 The Monitoring Officer can update practical guidance from time to time. If a need for other guidance documents arises, these will be developed and added to the intranet resources.

### Training

- 6.7 Corporate RIPA Training was last delivered in tranches between September 2022 and February 2023 by an external organisation. The training was delivered to Officers whose job roles require them to have an awareness of RIPA and other legislation relevant to covert surveillance. The Executive Leadership Team ('ELT') also had a RIPA training session specifically tailored towards Authorising Officers because the Council's designated Authorising Officers sit on the Council's ELT and must understand their role and how to consider applications to undertake directed surveillance / approve the use of a CHIS.
- 6.8 It was reported to Audit Committee in January 2023 that annual training would be delivered to all operational officers undertaking or who may potentially undertake covert surveillance and that Authorising Officers would also receive annual refresher training.
- 6.9 This year's annual training will be delivered in-house by the Council's Legal Services department, who themselves will have received detailed training/refresher training prior to training operational staff and Authorising Officers.
- 6.10 To ensure that the training is tailored to the current requirements of operational staff, members of the officer Enforcement Group will be consulted about the type of investigations they undertake or may wish to undertake in the future, and their training requirements. (Membership of the Enforcement Group covers the following Council service areas; Legal Services, Environmental Protection and Environmental Crime, Trading Standards and Licensing, Planning Enforcement, Private Sector Housing, Counter Fraud, Internal Audit and Risk, Community Safety, Transport and Highways, Strategic Housing, Early Help, Safeguarding and Childrens Services, Health Protection and Business Support, and Information Governance).
- 6.11 It is also proposed that going forwards the Enforcement Group be used as a forum where RIPA Policy/Guidance issues be raised, so that Legal Services can ensure that the resources put on the intranet remain up to date and useful. Specific operational queries requiring advice on RIPA implications will continue to need to be the subject of a request for legal advice made to the in-house Legal Services Department.

## Use of RIPA powers in 2023

6.12 In January 2024, the Council responded to IPCO's annual survey enquiring about the Council's use of powers to conduct directed surveillance and employ CHISs under RIPA. After the survey was circulated to all Officers involved in undertaking investigations, a nil response was returned indicating that there had been no use of RIPA powers during the previous year.

## **7 Implications (including financial implications)**

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### **7.1 Resources and Financial**

7.1.1 There will be a small cost attached to provision of training for the nominated staff. Costs will be met from within existing operational budgets.

### **7.2 Legal**

7.2.1 The RIPA 2000 requires the Council to have processes for authorising, recording and reviewing any covert surveillance that it carries out that it is regulated by the Act. The processes must comply with the Act, relevant regulations and any statutory codes of practice. In accordance with the statutory Code of Practice, a local authority must have a policy covering its use of covert surveillance. Further, the Council must report its RIPA activity to the Investigatory Powers Commissioner's Office on an annual basis and provide an update on its activity to members.

### **7.3 Risk**

7.3.1 Failure to comply with the RIPA Surveillance Policy and procedural guidance could result in evidence being inadmissible in court proceedings and potential claims that an individual's right to privacy has been breached. However, the Council will have a clear policy in place and officers will have received the necessary training to ensure compliance. Information on the RIPA Policy and procedures will be shared with relevant officers to ensure that they understand the requirements.

### **7.4 Consultation**

7.4.1 Consultation is not required in relation to the RIPA Surveillance Policy. As stated above, operational Officers will be consulted about their RIPA training requirements.

### **7.5 Consideration by Overview and Scrutiny**

7.5.1 RIPA is a statutory matter and has therefore not been referred to overview and scrutiny.

### **7.6 Climate Impact**

7.6.1 There are no immediate climate implications arising from this report.

## **7.7 Community Impact**

7.7.1 The RIPA Surveillance Policy contains safeguards to protect individuals and businesses from unfair or inappropriate surveillance, minimising as far as possible any adverse impact on the community. Proportionate enforcement activity will also have a positive impact upon local communities.

## **8 Background Papers**

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8.1 None