



# WEST NORTHAMPTONSHIRE COUNCIL CABINET

13 SEPTEMBER 2022

## CABINET MEMBER RESPONSIBLE FOR HR AND CORPORATE SERVICES: COUNCILLOR MIKE HALLAM

Report Title	Regulation of Investigatory Powers Act 2000 (RIPA)
Report Author	Catherine Whitehead, Director of Legal and Democratic Services (catherine.whitehead@westnorthants.gov.uk)

### Contributors/Checkers/Approvers

Monitoring Officer	Catherine Whitehead	07/09/2022
Chief Finance Officer (S.151 Officer)	Martin Henry	09/09/2022
Communications Lead/Head of Communications	Becky Hutson	07/09/2022

### List of Appendices

Appendix A: RIPA Surveillance Policy

#### 1. Purpose of Report

- 1.1 The report asks Cabinet to note the RIPA Surveillance Policy (Appendix A) and recommends that Cabinet designate the Council's Audit and Governance Committee as the responsible statutory committee to oversee the operation of RIPA policies.

#### 2. Executive Summary

- 2.1 It is mandatory for the Council to have a policy which applies to all surveillance carried out by the Council, including external surveillance covered by RIPA authorisations, communication data acquisitions covered by the Investigatory Powers Act 2016 (IPA) and

internal surveillance covered by the Employment Practice Codes. The Policy at Appendix A provides a framework for the carrying out of covert surveillance of the public and staff by the Council. Some amendments to the policy were made following the recent inspection.

2.2 In May this year the Council underwent an inspection from IPCO (Investigatory Powers Commissioners Office). The results of that inspection were reported to the Chief Executive and noted that:

2.3

Your Council was recently the subject of a remote inspection by one of my Inspectors, Mr Paul Gratton.

‘While no authorised activity has taken place since the new authority was formed, it is good to see that a clear process is in place to manage such activity should authorisation be sought. Mr Gratton has had sight of the organisation’s surveillance policy and has shared a number of observations’.

2.4 The Council’s Senior Information Responsible Officer (SIRO) is the Director of Law and Governance. The SIRO is responsible for the implementing of this policy and for ensuring that relevant staff are adequately trained. Relevant staff includes Executive Directors (Authorised Officers) and also employees of the Council who may use surveillance.

2.5 Pursuant to this responsibility, an external training provider has been identified and engaged to ensure relevant staff will receive in-depth training. This report also recommends that Cabinet designates the Council’s Audit and Governance Committee as the responsible statutory committee to oversee the operation of RIPA policies.

### **3 Recommendations**

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3.1 It is recommended that the Cabinet:

- a) Note the revised RIPA Surveillance Policy set out at Appendix A
- b) Agree to designate the Council’s Audit and Governance Committee as the responsible statutory committee for overseeing the operation of RIPA surveillance policies.
- c) Notes that an external training provider has been identified to provide in-depth training to nominated staff (i.e. Authorised Officers and employees of the Council who may use surveillance).

### **4. Reason for Recommendations**

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4.1 Reasons for Recommendations:

- The Council must have a policy in place to ensure that such directed surveillance is carried out in compliance with the law and does not breach the human rights of any of the surveillance subjects, and that surveillance in or around the workplace is also carried out in compliance with the law. The updated RIPA Investigatory Policy is set out at Appendix A.

- The Council must also designate a committee as the responsible statutory committee for overseeing the operation of RIPA surveillance policies.

## **5. Report Background**

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- 5.1 The Human Rights Act 1998 gave effect in UK law to the rights set out in the European Convention on Human Rights (ECHR). Amongst the qualified rights is a person's right to respect for their private and family life, home and correspondence, as provided for by Article 8 of the ECHR. It is Article 8 that is most likely to be engaged when public authorities seek to obtain private information about a person by means of surveillance.
- 5.2 Part II of the 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. Any use of those powers must be proportionate and necessary both in use and scope.
- 5.3 Part II of the RIPA also provides a statutory framework under which covert surveillance activity undertaken by the Council can be authorised and conducted. Surveillance, for the purpose of the 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.
- 5.4 The Employment Practices Code provides a framework under which surveillance activity of employees can be authorised and conducted compatibly with Article 8 and the Data Protection Act 2018.
- 5.5 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.
- 5.6 Specifically, covert surveillance may be authorised under the 2000 Act if it is either intrusive or directed:
- 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) (NB local authorities cannot authorise intrusive surveillance).
  - Directed surveillance is covert surveillance that is not intrusive 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 the 2000 Act).
- 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. A local authority can only

authorise directed surveillance of a member of the public if the designated person believes such surveillance is necessary and proportionate for the purpose of preventing or detecting crime.

- 5.8 In most cases the crime for directed surveillance must be an offence for which there is a minimum prison sentence of 6 months, and the surveillance must be authorised by a magistrate.
- 5.9 The Protection of Freedoms Act 2012 amended s28 of RIPA and brought in the requirement for a magistrate to approve a RIPA authorisation when the crime threshold was met (criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.).
- 5.10 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.

## **6. Issues and Choices**

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- 6.1 It is mandatory for the Council to have a RIPA Surveillance Policy which applies to all surveillance carried out by the Council, including external surveillance covered by RIPA authorisations, communication data acquisitions covered by the Investigatory Powers Act 2016 (IPA) and internal surveillance covered by the Employment Practice Codes.
- 6.2 The revisions to the RIPA Surveillance Policy attached at Appendix A relate to the following issues:
  - 6.2.1 The introduction to the policy was felt by the Inspector to require further clarity and should outline the scope of surveillance which can be carried out by the council and make it explicitly clear that local authorities cannot carry out intrusive surveillance, and this change has been incorporated.
  - 6.2.2 The section entitled “Applicability to investigations carried out by or on behalf of West Northamptonshire Council” outlines some examples of the activity likely to be carried out by the Council. The deployment of noise reduction should not imply intrusive surveillance and therefore this section has been amended to be explicit on this point.
  - 6.2.3 Authorisation periods in the policy should include those for CHIS (Covert Human Intelligence Source), which have now been added.
  - 6.2.4 The section entitled ‘social media’ has been further strengthened in line with the Inspector’s comments.
- 6.3 The Council must also designate a committee as the responsible committee to oversee the operation of RIPA policies. It is suggested that the Audit and Governance Committee be selected as its terms of reference most closely align with this duty and this will be included within the policy.

## **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.

### **8.1 Legal**

- 7.1.2 The RIPA 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 Commissioners Office on an annual basis and provide an update on its activity to members.

### **8.3 Risk**

- 7.1.3 Failure to comply with the 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 policy and procedures will be shared with relevant officers to ensure that they understand the requirements.

### **8.4 Consultation**

- 8.4.1 Consultation is not required in relation to the RIPA Surveillance Policy. The Audit and Governance Committee will be charged with monitoring implementation of the policy.

### **8.5 Consideration by Overview and Scrutiny**

- 8.5.1 RIPA is a statutory matter and has therefore not been referred to overview and scrutiny. Future oversight of the policy will be undertaken by the Audit and Governance Committee.

### **8.6 Climate Impact**

- 8.6.1 This report does not identify any adverse impacts on the Council's objectives relating to climate change.

### **8.7 Community Impact**

- 8.7.1 The 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.

## 9 Background Papers

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9.1 None.