



WEST NORTHAMPTONSHIRE COUNCIL AUDIT AND GOVERNANCE COMMITTEE

25th JANUARY 2023

Report Title	Regulation of Investigatory Powers Act 2000 (RIPA)
Report Author	Sarah Hall, Deputy Director of Law and Governance (Sarah.Hall@westnorthants.gov.uk)

Contributors/Checkers/Approvers

West MO	Catherine Whitehead	16 th January 2023
Chief Finance Officer (S.151 Officer)	Martin Henry	17 th January 2023
Other Director/SME	Sarah Reed	Emailed 17 th January 2023
Communications Lead/Head of Communications	TBC	Emailed 17 th January 2023

List of Appendices

Appendix A: Cabinet Report

Appendix B: Regulation of Investigatory Powers Act 2000 (RIPA) Policy

1. Purpose of Report

- 1.1 This report provides an overview to the Audit and Governance Committee of the Council's application of RIPA, the role and responsibilities of the Committee and others in the management of RIPA and of training undertaken and scheduled following the last inspection.

2. Executive Summary

- 2.1 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.
- 2.2 In May 2022 the Council underwent an inspection from the IPCO (Investigatory Powers Commissioners Office). The results of that inspection were reported to Cabinet (Appendix A) and Cabinet designated the Audit and Governance Committee as the responsible statutory committee to oversee the operation of RIPA policies.
- 2.3 This report sets out a summary of RIPA and provides details of the key roles and responsibilities involved in the oversight of RIPA including:
- Audit and Governance Committee;
 - Senior Responsible Officer; and
 - Authorising Officers
- together with details of training undertaken and proposed.

3 Recommendations

- 3.1 It is recommended that the Audit and Governance Committee:
- a) Endorse the roles and responsibilities of the various Officers and of the Committee.
 - b) Endorse the training scheduled and undertaken.
 - c) Approves receiving an annual report to ensure appropriate oversight of the Council's use of the RIPA provisions.

4. Reason for Recommendations

- 4.1 Reasons for Recommendations:
- To ensure that Committee Members have a good understanding of the various roles and responsibilities that are required to facilitate effective oversight of the RIPA regime in order to ensure that any covert surveillance is carried out in compliance with the Council's RIPA policy and the law.
 - As part of the Committee's oversight of the Council's use of RIPA to monitor and ensure that appropriate and regular training is undertaken and that Officers are updated on any changes to the law.
 - To ensure that the Committee receives an annual report to facilitate effective oversight of the Council's use of RIPA.

5. Report Background

Summary of RIPA Provisions

- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 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.
- 2.10 Only Directed Surveillance may be authorised under the 2000 Act for the use of local authorities. 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).

- 2.11 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.
- 2.12 The grounds on which local authorities can rely to authorise directed surveillance are narrower than those available to the police or security services. 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.
- 2.13 The Protection of Freedoms Act 2012 amended S.28 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.).
- 2.14 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.

Roles and Responsibilities

- 2.15 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.
- 2.16 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.
- 2.17 The Magistrates Court are responsible for considering the applications approved by the Authorising Officers and determining the request to undertake surveillance.
- 2.18 The Council's Audit and Governance Committee have the following responsibilities:
- Consider and approve relevant changes to policy and ne policies;
 - Receive reports on training; and
 - Receive inspection reports.

RIPA Activity in 2022

- 2.19 During 2022 no covert surveillance regulated by RIPA was undertake by Council Officers in the investigation of offences. A survey was circulated to all Officers involved in

undertaking investigations and a nil response was returned indicating that there had been no use of the RIPA provisions.

- 2.20 The Council's centrally held Record / Log recording any RIPA activity undertaken has been updated to record the position.

RIPA Inspection

- 2.21 In May 2022 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:

Your Council was recently the subject of a remote inspection by one of my Inspectors, Mr Paul Gration. '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 Gration has had sight of the organisation's surveillance policy and has shared a number of observations'

- 2.22 Following the inspection a report was considered by Cabinet on 13 September 2022 (attached Appendix A) detailing the findings of the inspection and recommending various changes to the policy. These changes have been implemented and approved by Cabinet.

Training

- 2.23 In the first quarter of 2022/23 11 Trading Standards Officers received RIPA Refresher Training delivered by a third party training provider.
- 2.24 Since the Cabinet report in September 2022, three further training events have been held. All of the events were half day events, two of which were delivered face to face and the third virtually. They were all delivered by an external training provider to provide a comprehensive understanding of the RIPA provisions and to allow operational officers to ask questions. 63 Officers, predominantly from Regulatory Services, attended the events.
- 2.25 A further officer training event is scheduled to be held on the 13 February 2023 in order to ensure that all officers have had the opportunity to attend a training session. A further 16 officers are scheduled to attend this training session. Authorising Officers are also to receive face to face training by the training provider on the 13 February 2023 to ensure that they understand their role and how to consider applications to undertake covert surveillance / approve the use of a CHIS.
- 2.26 Going forward annual training will be delivered to all operational officers undertaking or who may potentially undertake covert surveillance. Authorising Officers will also receive annual refresher training.

Action Plan

2.27 The Council's Legal Team is developing an Action Plan to further develop resources and the support available to officers to assist them in their potential use of RIPA. A list of the current actions to be undertaken by the Legal Team is set out below:

- I. Create a RIPA intranet page to include:
 - Links to the RIPA Policy, Home Office Forms and Home Office Codes of Practice.
 - Access to a non-RIPA form together with guidance and examples of when it would be used.
 - List of all Authorising Officers and their contact details.
 - List of key points of contact within legal and their roles, including the general e-mail address for seeking legal advice/sending instructions to and where to send applications and cancellations for addition to the Registers.

- II. Send out a further survey to understand where areas may wish to use the RIPA provisions to further understand:
 - Anticipated usage of directed surveillance, non-RIPA surveillance and surveillance with the use of a CHIS.
 - Areas for training and development.
 - Further details of the types of surveillance being undertaken for example locating physical cameras or the use of social media usage.

- III. Review and update Policies and guidance, loading onto the RIPA Intranet page, including:
 - Primary RIPA Policy.
 - Social Media policy.

- IV. Promote and communicate widely across the Council the support available to officers including:
 - Intranet page.
 - Policies and guidance.
 - Encourage engagement with legal officers at an early stage in investigations to ensure lawfulness of surveillance.
 - Training.

- V. Continue to update and maintain the Central Record/Log to include the use of the non-RIPA form and the management and review of products of surveillance.

- VI. Plan and organise annual training for operational officers and Authorising Officers.

3 Issues and Choices

3.1 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.

- 3.2 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.
- 3.3 The Council has designated the Audit and Governance Committee as the responsible committee to oversee the operation of RIPA policies. The Senior Responsible Officer will report annually to the Committee to provide assurance as to the Council's approach to and implementation of the RIPA regime.

7 Implications (including financial implications)

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 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.

7.3 Risk

- 7.3.1 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.

7.4 Consultation

- 7.4.1 Consultation is not required in relation to the RIPA Surveillance Policy.

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

7.7 Community Impact

7.7.1 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.

8 Background Papers

9.1 Copies of the training slides are available to Members upon request.