

## Regulation of Investigatory Powers Act 2000 [RIPA] Update 2019-20

<b>Corporate Priority:</b>	Excellent Services positively impacting on our communities.
<b>Relevant Ward Member(s):</b>	N/A
<b>Date of consultation with Ward Member(s):</b>	N/A
<b>Exempt Information:</b>	No

### 1 Summary

- 1.1 To provide an update to members in relation to the Council's use of powers under the Regulation of Investigatory Powers Act 2000 (RIPA) from April 2019 to March 2020.
- 1.2 To provide an update on the RIPA Inspection.

### 2 RECOMMENDATIONS

**That Committee:**

- 2.1 Notes the update for the period April 2019 to March 2020;**
- 2.2 Notes the outcome of the RIPA inspection**

### 3 Reason for Recommendations

- 3.1 To provide an annual update in order to comply with the RIPA Policy and governance best practice.

## **4 Background**

- 4.1 RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities.
- 4.2 Local Authorities are limited to using three covert techniques for the purpose of preventing or detecting crime or preventing disorder. Use of these techniques has to be authorised internally by a trained authorising officers and can only be used where it is considered necessary, proportionate and as a last resort, when other overt techniques have proved to be unsuccessful. The three techniques are:
  - 4.2.1 Directed covert surveillance;
  - 4.2.2 The use of Covert Human Intelligence Source (CHIS) i.e. undercover officers and public informants;
  - 4.2.3 Access to communications data i.e. mobile telephone or internet subscriber checks but not the content of any communication.
- 4.3 Since 1<sup>st</sup> November 2012, any RIPA authorisations or renewals must also have judicial approval from a Justice of the Peace. This is done at the Nottingham Magistrates' Court.
- 4.4 An annual report is presented to the Audit and Standards Committee.

## **5 Main Considerations**

- 5.1 Under RIPA local authorities have the power to authorise directed surveillance (usually covert cameras or covert observations by officers) and the use of Covert Human Intelligence Sources (CHIS) (essentially undercover officers conducting surveillance) if the authorisation is necessary for the prevention and detection of crime or preventing disorder and if the surveillance is proportionate to the aims it seeks to achieve.
- 5.2 In respect of directed surveillance, save for a small number of licensing offences, any crime or disorder being prevented or detected using RIPA must be a criminal offence which attracts a minimum of 6 months in custody, the so called "serious crime" threshold.
- 5.3 The authorisations under RIPA can only be given by Directors and/or the Chief Executive, and the entire process is overseen by the Monitoring Officer as the Senior Responsible Officer for RIPA (SRO).
- 5.4 **Inspections:**
  - 5.4.1 The Council's RIPA process is subject to intense scrutiny and the Council is routinely (approximately every 3 years) inspected by the Investigatory Powers Commissioner's Office (IPCO) to ensure that its RIPA processes, procedures, policies and practices are sound.
  - 5.4.2 The Council was subject to a telephone based inspection in April 2020 with the Council's Monitoring Officer who was appointed as the Senior Responsible Officer (SRO) for the purposes of RIPA.
  - 5.4.3 The IPCO Investigator confirmed the following:

- a) the information provided by the SRO demonstrated a level of compliance that removed the requirement for a physical inspection;
- b) The single recommendation emanating from the 2016 inspection had been discharged;
- c) The RIPA policy had been duly updated having been put before Members in October 2019;
- d) It is to be applauded that whilst the Council has not exercised its RIPA powers since 2010, there is a robust training regime, with the latest training being undertaken in June 2019 by an external provider with further training schedule for June 2020;
- e) The creation of a new regulatory team will require training to ensure officers are equipped to consider the impact of RIPA and IPA particularly in respect of the use of the internet;
- f) Early contact with the National Anti-Fraud Network (NFAN) will assist in acquiring communications data;
- g) Levels of knowledge should be maintained throughout the Council and staff should know who to approach for guidance;
- h) The integrity of the Council's process and procedures should be maintained to ensure high standards of compliance which was evidence by the update to the Council's Records Retention policy which had been updated to include RIPA and IPA.

## **5.5 Internal Inspections:**

- 5.5.1 In addition to the external telephone based inspection by the IPCO, there are annual audits of RIPA usage for enforcement.
- 5.5.2 Enforcement action can be progressed using open source information and the requirement to use covert techniques is rare.
- 5.5.3 Whilst the Council's use of RIPA powers has declined over the years, there are offences which the Council investigate, for example fly-tipping offences which do cross the serious crime threshold and officers can still use the RIPA powers in certain circumstances for such investigations where it is necessary and proportionate to do so.
- 5.5.4 The Council has not needed to rely on RIPA at any time during 2019/20 and will continue to apply this sensible approach when dealing with enforcement matters. Even where the Council's current RIPA usage is low, it is still essential that the Council keep the RIPA processes and procedures under close scrutiny.
- 5.5.5 The Council will continue to be subject to inspection in relation to its use of the powers by the IPCO and as such the Council's policy, processes, training and review of RIPA usage must continue to ensure our processes remain fit for purpose.

## **5.6 Training:**

- 5.6.1 As part of the Council's RIPA policy, and to ensure authorising officers and investigating officers remain up to date and knowledgeable in respect of RIPA powers, officers will receive annual training in relation to RIPA.
- 5.6.2 In June 2019 authorising officers received RIPA training from an external trainer followed by further training for enforcement officers in October 2020. The training was a useful

update and provided some interesting discussion around the use of surveillance in investigations and the necessity for RIPA authorisations when surveillance is carried out.

- 5.6.3 A further review of the staff that require RIPA training will be undertaken in 2021 with a view to providing further training before the end of the year.
- 5.6.4 It is important that RIPA awareness is maintained throughout the organisation even if authorisations are not being obtained. The Monitoring Officer as Senior Responsible Officer will continue to monitor, review and report on RIPA usage in line with the legislation and the Council's policy.

## **6 Options Considered**

- 6.1 None – the policy requires an annual update to Members and this ensures good governance

## **7 Consultation**

- 7.1 There is no requirement for the Council to undertake consultation as part of this update.

## **8 Next Steps – Implementation and Communication**

- 8.1 Ongoing reviews of the training needs for the Council

## **9 Financial Implications**

- 9.1 There are no financial implications identified from this report

**Financial Implications reviewed by: Director for Corporate Services**

## **10 Legal and Governance Implications**

- 10.1 RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities.
- 10.2 All legal implications have been addressed within the body of the report.
- 10.3 The RIPA Policy provides that annual update reports will be received by the Audit and Standards Committee.

**Legal Implications reviewed by: Monitoring Officer**

## **11 Equality and Safeguarding Implications**

- 11.1 There are no equality or safeguarding implications arising from this update.
- 11.2 Equality and safeguarding considerations will be made prior to any enforcement which may involve surveillance

## 12 Community Safety Implications

12.1 There are no community safety implications identified from this update.

## 13 Environmental and Climate Change Implications

13.1 There are no environmental and/or climate implications arising from this update.

## 14 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact	Risk
1	Failure to comply with the policy	Low	Marginal	Risk of Challenge

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High				
	4 Significant				
	3 Low		1		
	2 Very Low				
	1 Almost impossible				

Risk No	Mitigation
1	Regular Communications and training to ensure staff are aware of their responsibilities

## 15 Background Papers

15.1 IPCO Report

## 16 Appendices

16.1 None

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