



Audit and Standards Committee

19 November 2019

Report of:	Director for Governance and Regulatory Services
Cabinet Member	Portfolio Holder for Corporate Governance, Access and Engagement

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) POLICY & UPDATE

1.0 Summary:

- 1.1 To present an updated Regulation of Investigatory Powers Act 2000 (RIPA) Policy for approval.
- 1.2 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 2018 to March 2019.

2.0 Recommendations

- 2.1 **To note the update for the period April 2018 to March 2019**
- 2.2 **To approve the policy for implementation with immediate effect**

3.0 Report Detail

- 3.1 RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities. Local Authorities are limited to using three covert techniques for the purpose of preventing or detecting crime or preventing disorder.
- 3.2 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:
 - Directed covert surveillance;
 - The use of Covert Human Intelligence Source (CHIS) i.e. undercover officers and public informants;
 - Access to communications data i.e. mobile telephone or internet subscriber checks but not the content of any communication.
- 3.3 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. 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. The authorisations under RIPA can only be given by Directors or the Chief Executive, and the entire process is overseen by the Director of Organisational Development and Democratic Services as the Senior Responsible Officer for RIPA (SRO) with assistance from the RIPA Co-ordinating Officer, the Service Manager for Legal Services. Since 1 st 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.

Inspections & Internal Audit:

- 3.4 The Council’s RIPA process is subject to intense scrutiny and the Council is routinely (approximately every 3 years) inspected by the OSC to ensure that its RIPA processes, procedures, policies and practices are sound. The Council was inspected by an Inspector from the OSC on 06th August 2019. The Inspector concluded that Melton Borough Council showed a marked progress in relation to its RIPA procedures. All recommendations had been implemented, the Policy and Guidance was excellent and training had been provided for relevant staff. The Inspector went on to say this was commendable because during the same period no actual use of covert powers had been made but the Council was well equipped should the need arise.
- 3.5 In addition to the external inspection by the OSC, the RIPA Co-ordinating officer also carries out annual audits of RIPA usage.
- 3.6 Enforcement action can be progressed using open source information and the requirement to use covert techniques is rare. The Council has not needed to rely on RIPA at any time during 2018/2019 and will continue to apply this sensible approach when dealing with enforcement matters. However, for any future use of RIPA we will be required to follow the proposed amended Policy and will report to the Audit and Standards Committee on an annual basis.
- 3.7 Whilst the Council’s use of RIPA powers has declined, 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.
- 3.8 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. The Council will continue to be subject to inspection in relation to its use of the powers by the OSC and as such the Council’s policy, processes, training and review of RIPA usage must continue to ensure our processes remain fit for purpose.

Policy:

- 3.9 A review of the Councils RIPA Policy has been completed and is presented to the Committee for comment (Appendix A).

Training:

- 3.10 As part of the Council’s RIPA policy, and to ensure authorising officers and

investigating officers keep up to date and knowledgeable in respect of RIPA powers, officers receive annual training in relation to RIPA. In June 2019 authorising officers received RIPA training from an external trainer. 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 through the use of social media, for example repeated surveillance of open source sites such as Facebook, where no privacy settings are applied. Whilst one look on an individual's Facebook page as part of an investigation would not be classed as surveillance, repeated checks of the site to establish information about an individual in relation to an investigation is likely to require authorisation under RIPA.

- 3.11 A review of staff that require RIPA training will also be undertaken with a view to further training being rolled out before the end of the year.

Social Media & RIPA:

- 3.12 The use of social media as part of investigations is something that the OSC have highlighted as an area of concern. Whilst using the internet as a one off, as part of information gathering on an individual will not necessarily amount to surveillance, as explained above, repeated use of the internet and social media sites to gather information about an individual in relation to a particular issue, may amount to surveillance. In addition, if the individual is unaware that the information is being accessed repeatedly as part of an investigation or otherwise, the surveillance is likely to be covert.

- 3.13 If covert surveillance is taking place of an individual, and the investigation relates to a crime which passes the serious crime threshold then a RIPA authorisation should be obtained. If the covert surveillance is in relation to an issue which does not pass the serious crime threshold, for example debt recovery, the protection of a RIPA authorisation cannot be obtained. In those circumstances, consideration needs to be given as to whether it is necessary and proportionate to essentially interfere with an individual's right to privacy for the purposes of debt recovery. Article 8 of the Human Rights Act 1998 – a person's right to respect for their private and family life, home and correspondence, is a qualified right which a local authority can "interfere" with if it is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The threshold for such interference is high, essentially an authorisation under RIPA demonstrates that the interference with an individual's human rights satisfies the terms of the qualification, so it is necessary, and in relation to local authorities, the only ground on which an authorisation can be given is that it is necessary for the prevention and detection of crime. A RIPA authorisation therefore essentially deems the interference with the right lawful. Without such an authorisation, any activity which interferes with an individual's human rights may not be considered to be lawful. As such, local authorities need to be cautious about using the internet or social media sites in this way. The OSC have made it clear that even though the sites may be open source and the individuals may not have certain privacy settings in place, that does not mean they are consenting to surveillance being carried out on them.

- 3.14 A RIPA authorisation therefore essentially deems the interference with the right

lawful. Without such an authorisation, any activity which interferes with an individual's human rights may not be considered to be lawful. As such, local authorities need to be cautious about using the internet or social media sites in this way. The OSC have made it clear that even though the sites may be open source and the individuals may not have certain privacy settings in place, that does not mean they are consenting to surveillance being carried out on them.

3.15 Another way in which social media may be used as an investigative tool is if for example, a Council officer, as part of an investigation created a Facebook page pretending to be an individual in order to establish a relationship with a perpetrator for the purposes of gathering information relating to an offence. Such activity is known as using a covert human intelligence source (CHIS). Authorisation for use of a CHIS can be given under RIPA. The results of the audit revealed that no such activity is being undertaken within the Council. Again, those departments who may wish to use such an investigative technique are fully aware of the RIPA powers and are also advised to seek legal advice before undertaking such activity.

3.16 It is important that RIPA awareness is maintained throughout the organisation even if authorisations are not being obtained. The Senior Responsible Officer and RIPA Co-ordinator will continue to monitor, review and report on RIPA usage in line with the legislation and the Council's policy.

4.0 Consultation and Feedback

4.1 Internal Audit, the Portfolio Holder, T3 and SLT have been consulted

4.2 There is no requirement for the Council to undertake consultation as part of this policy review.

5.0 Next Steps

5.1 The policy will be made available on MIKE and the internet

5.2 All staff will be notified of the new policy

6.0 Financial Implications

6.1 There are no financial implications identified from this report

7.0 Legal and Governance Implications:

7.1 RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities.

7.2 Review of the policy and guidance will ensure compliance with RIPA legislation.

8.0 Equality and Safeguarding Implications:

8.1 An EIA will be completed prior to implementation

9.0 Community Safety Implications:

9.1 There are no community safety implications identified from this report providing the policy is adhered to.

10.0 Other Implications

10.1 None identified

11.0 Risk & Mitigation:

11.1 Identify what the risk is and how you will mitigate this risk.]

11.2

L I K E L I H O O D	A	Very High				
	B	High				
	C	Significant				
	D	Low		2		
	E	Very Low				
	F	Almost Impossible				
			Negligible 1	Marginal 2	Critical 3	Catastrophic 4

IMPACT

Risk No	Risk Description
1	Failure to have an up-to-date policy leaves the Council at risk of challenge

Background Papers:

1. OSC Report – 06 August 2013

Appendices

Appendix 1 – Proposed Policy


Report Timeline:

Date

Equalities Check & Challenge	N/A
SLT Sign off	N/A
Previously Considered by Cabinet	N/A
Director Approval	8/11/2019
Chief Finance Officer Sign Off	31/10/2019
Monitoring Officer Sign Off	8/11/2019

Report Author & Job Title

Kieran Stockley – Legal & Governance Manager

: 01664 502502