

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

18 July 2019

REGULATION OF INVESTIGATORY POWERS ACT 2000

Relevant Portfolio Holder	Councillor Geoff Denaro
Portfolio Holder consulted	Yes
Relevant Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Wards affected	All Wards
Ward Councillor consulted	N/A
Non-Key Decision	

1. SUMMARY

- 1.1 The Council, along with other public bodies, has powers under the Regulation of Investigatory Powers Act 2000 [“RIPA”] to carry out covert surveillance in certain circumstances.
- 1.2 The Council has recently undergone a review of its RIPA policy and activity by the Investigatory Powers Commissioner’s Office.
- 1.3 This report is to update members on the outcome of that review and to comply with the requirement set out at 1.3 below. It is proposed that a report of this nature be presented annually to the Committee.

2. RECOMMENDATIONS

The Committee is asked to RESOLVE that

2.1 the Council’s RIPA Policy as reviewed, be endorsed; and

2.2 the update on RIPA activity be noted.

NOTE Members are requested to read and review the Council’s policy electronically. There will be a hard copy available on the evening of the committee meeting and beforehand in the Members’ room.

3. KEY ISSUES

Financial Implications

- 3.1 The Policy is lengthy and costly to print, so a small number of printed copies will be made available in the Members’ Room.

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- 3.2 There will be a cost to providing the training that has been recommended by the Commissioner.

Legal Implications

- 3.2 The Regulation of Investigatory Powers Act 2000 [“RIPA”] gave local authorities powers to conduct covert surveillance under certain circumstances. The Act also regulates the use ‘Covert Human Intelligence Sources’ [“CHIS”] and obtaining certain Communications Data.
- 3.3 Local Authority powers are at the lower end of the scale and changes in legislation since the Act was originally introduced, have resulted in further restrictions on their use:
- the use of surveillance was restricted to criminal investigations and in 2012;
 - the Protection of Freedoms Act 2012 introduced a requirement for local authorities to obtain approval from the Magistrates Court for any proposed surveillance activity;
 - A threshold for the level of crime being investigated was raised to include only ‘serious crime’ (as defined).
- 3.4 The regime is overseen by the Investigatory Powers Commissioner’s Office, and includes inspections of organisations by an Inspector appointed by the Commissioner, usually about every three years.
- 3.5 The revised Code of Practice for Covert Surveillance and Property Interference 2018 (paragraph 4.47) advised that elected members should at least on an annual basis review the RIPA policy and the authority’s use of the Act.
- 3.6 Any organisation which had investigatory powers under RIPA is required to have in place a Policy governing all aspects of the regime, including the need for updating and officer training, regardless of whether the powers are exercised. The Council’s Policy is regularly updated to comply with any changes in the legislation, guidance and codes of practice which apply to the regime. Changes are notified to the Council by an external trainer and RIPA expert, who also provides training and advice on RIPA issues.

Service / Operational Implications

- 3.7 From the outset, the Council’s use of RIPA powers was always low. There are a number of reasons for this: A rigid process has to be followed to establish that a proposed surveillance activity is both “necessary” and

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“proportionate”; a senior officer has to evaluate the proposal against a number of criteria and would now have to be referred to the Magistrates Court to be confirmed. Then there would have been major resource implications for any authorised surveillance to have been undertaken.

3.8 Since the changes introduced in 2012 as described in 3.3 above, the Council has not exercised its powers under RIPA at all. The Surveillance Commissioner has noted that in recent years authorities like ours have granted far fewer RIPA authorisations and some have granted none at all in the last three years. The reasons include the legislative changes and also reduced resources, greater access to data-matching and overt, rather than covert law enforcement,

3.9 At the time of the Council’s last physical inspection, in 2015, RIPA powers had not been exercised by the Council since 2012. This year, a further three years on, during which no RIPA activity had been undertaken, the Surveillance Commissioner notified the Council in January that he was taking a more flexible approach to inspections and would decide on the basis of a pre-assessment questionnaire, whether a physical inspection was required.

3.10 On the basis of the responses to the questionnaire, the Commissioner advised that a physical inspection would not be required. However, there were a number of points of feedback that he made, as follows:

1) Acknowledgement that whilst RIPA awareness training has been undertaken and is refreshed with staff on an annual basis, there is a clear need to have training delivered forthwith to those staff within the Trading Standards services, and in order that those who are most likely to engage RIPA powers remain “match fit”.

Trading Standards are enforced by Worcestershire Regulatory Services. The Head of WRS has been advised of this recommendation for him to organise.

2) The revised Code of Practice for Covert Surveillance and Property Interference 2018 (paragraph 4.47) advised that elected members should at least on an annual basis review the RIPA policy and the authority’s use of the Act: Hence this report.

3) A reminder of the importance of regular, ongoing internal oversight of the actual or potential use of these powers, which should be managed through your Senior Responsible Officer. The Inspector advised that officers need to maintain their levels of training lest, however remote a possibility it may appear, the powers need to be used.

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The Senior Responsible Officer [SRO] is Jayne Pickering, Director of Finance and Resources, who holds meeting every six months to review any RIPA issues, consider any training or other issues relating to RIPA. These meetings used to take place quarterly, but due to the lack of RIPA activity, the SRO decided that twice a year would be sufficient. The Inspector has been advised of this and has not raised a concern.

- 4) The Inspector also drew attention to the increasing usefulness and accessibility of social media, which can offer initial investigative leads and assist with your enforcement or other responsibilities, but it behoves you to ensure that such resources as these are used in a controlled, auditable, and well understood manner.

The Council is extremely vigilant in reminding officers of the risks attached to checking social media and possible inadvertently straying into “surveillance” territory because the Council is regarded as “the State” when it comes to looking at people’s social media platforms to glean information about them for investigatory purposes. This is included in annual data-protection refresher training for all staff and is also included periodically in the staff newsletter.

- 3.11 It is not possible for the Council to ‘opt out’ of the RIPA regime, which means that although we have not used these powers for years, we are still required by the Commissioner to keep our officers briefed on it, aware of its potential use and crucially, trained in the completion of applications and their approval.
- 3.12 The Council is a member of the National Anti-Fraud Network [NAFN], which is hosted by Thameside MBC and which provides data and intelligence services under the RIPA regime to public sector organisations in relation to fraud investigations. Over 90% of local authorities are members of NAFN. Membership enables the Council to avail of its expertise, without having to have our own staff for the purpose.

Customer / Equalities and Diversity Implications

- 3.13 There are no direct implications arising out of this report, providing information to elected members and seeking their approval of the Council’s RIPA policies and procedures.

4. RISK MANAGEMENT

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The Council is required to comply with the statutory provisions and guidance governing the RIPA regime and any recommendation made by the Inspector. on behalf of the Commissioner.

Officers need to be aware of the RIPA powers so that there is no risk of surveillance or CHIS activity being undertaken without the correct approvals being in place.

5. APPENDICES

None

6. BACKGROUND PAPERS

The Council's RIPA Policy

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