

BROMSGROVE DISTRICT COUNCIL

**Audit, Standards and
Governance Committee
2023**

1st June

Annual Update Report on RIPA

Relevant Portfolio Holder	To be confirmed
Portfolio Holder Consulted	-
Relevant Head of Service	Claire Felton
Report Author	Job Title: Head of Legal, Democratic and Property Services Contact email:c.felton@bromsgroveandreddicth.gov.uk Contact Tel: 07809665536
Wards Affected	All
Ward Councillor(s) consulted	N/A
Relevant Strategic Purpose(s)	N/A
Non-Key Decision	

1. RECOMMENDATIONS

The Committee is asked to RESOLVE that:-

- 1.1 The Council's RIPA Policy (version 8.2) be endorsed; and**
- 1.2 The update on RIPA activity described in this report be noted.**

2. BACKGROUND

- 2.1 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.
- 2.2 The revised Code of Practice for Covert Surveillance and Property Interference, 2018, at 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. This report is published in compliance with that requirement.
- 2.3 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 restricted to criminal investigations;

- the Protection of Freedoms Act 2012 required local authorities to get approval from the Magistrates Court for any proposed surveillance; and
 - the threshold for the level of crime being investigated was raised to include only 'serious crime' (as defined).
- 2.4 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.
- 2.5 Any organisation which has 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 RIPA expert, who also provides training and advice on RIPA issues.
- 2.6 From the outset, the Council's use of RIPA powers was always low. There were a number of reasons for this: A rigid process has to be followed to establish that a proposed surveillance activity is both "necessary" and "proportionate"; a senior officer has to evaluate the proposal against a number of criteria and would then have to be referred to the Magistrates Court to be confirmed. If approved, there would have been major resource implications for any authorised surveillance to have been undertaken.
- 2.7 Since the changes introduced in 2012 as described in 2.3 above, the Council has not exercised its powers under RIPA. 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.
- 2.8 In light of the low level of RIPA activity, in 2018 rather than carrying out a physical inspection an inspector on behalf of the Surveillance Commissioner conducted a remote light touch review. This was followed in January 2022 by a video and desk-top based inspection.
- 2.9 The January 2022 inspection resulted in recommendations to alter the wording of three aspects of the policy to make it clearer and the necessary alterations were subsequently made to the policy by officers. Overall, the outcome was that the Council was operating a robust policy and the continuation of remote inspections in the future was endorsed.

- 2.10 The last occasion a RIPA update report was considered by the Committee was on 22nd July 2022. Officers can update Members that there have been no significant changes or developments since then. There have been no new authorisations of use of RIPA powers. Officers continue to keep the policy under review but there have been no legislative or other changes to update in the last 12 months.
- 2.11 In order to have the option of using RIPA powers in the future if required, the Council must keep the policy up to date and ensure officers are aware of how to use it and the processes to follow. Officers must also be careful to ensure that they follow the parts of the policy that cover other forms of surveillance that fall outside of the strict RIPA regime, and the guidance in the policy around use of social media.
- 2.12 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.

3. OPERATIONAL ISSUES

- 3.1 Nothing additional to add to the information above.

4. FINANCIAL IMPLICATIONS

- 4.1 None as a direct result of this report.

5. LEGAL IMPLICATIONS

- 5.1 The Council demonstrated compliance with its statutory obligations under RIPA to the satisfaction of the Surveillance Commissioner at the last inspection in January 2022, and continues to review and update its policy as required and provide training.
- 5.2 This report to Members complies with the Code of Practice requirement that Members should be updated annually on RIPA activity and endorse the policy, including any changes to it, for the coming year.

6. OTHER - IMPLICATIONS

Relevant Strategic Purpose

- 6.1 No direct link to the defined strategic purposes; maintaining the ability to use RIPA powers provides the Council with more options to take effective action to protect its citizens from fraud and criminal activity.

Climate Change Implications

- 6.2 None

Equalities and Diversity Implications

- 6.3 There are no direct implications arising out of this report.

7. RISK MANAGEMENT

- 7.1 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.

8. BACKGROUND PAPERS

Report to Audit, Standards and Governance Committee - Annual Update on RIPA – 22nd July 2022

The Council's RIPA Policy (version 8.2)

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9. REPORT SIGN OFF

Department	Name and Job Title	Date
Portfolio Holder	To be confirmed	
Lead Director / Head of Service	Claire Felton - Head of Legal, Democratic and Property Services	18 th May 2023
Financial Services	Peter Carpenter, Interim Director of Finance and Section 151 Officer	18 th May 2023
Legal Services	Claire Felton - Head of Legal, Democratic and Property Services	18 th May 2023
Policy Team (if equalities implications apply)	Not applicable	
Climate Change Team (if climate change implications apply)	Not applicable	