

Update to RIPA Policy and Annual Report

Meeting	Governance and Audit Committee
Date	27 July 2022
Report Author	Estelle Culligan, Director of Law and Democracy
Portfolio Holder	Cllr Ash Ashbee
Status	For Decision
Classification:	Unrestricted
Ward:	All

Executive Summary:

A report to update the Committee about amendments to the Policy on the Regulation of Investigatory powers Act (RIPA) and to report on activity this year.

Recommendation(s):

The Committee is recommended to:

- 1 Adopt the amended Policy at Appendix 1
- 2 Note the letter from IPCO, the recommendations and actions
- 3 Note the report of activity during the year

Corporate Implications

Financial and Value for Money

There are no financial implications to the report. The report is about an update to Policy and to inform members about the recent inspection visit from IPCO.

Legal

The Council has powers under the Regulation of Investigatory powers Act 2000 (RIPA) to undertake covert surveillance within enforcement if necessary. Powers under the Act are overseen by the Investigatory Powers Commissioners Office (IPCO).

Risk Management

The Council is subject to regular inspections by IPCO and must maintain an up to date policy and procedures for managing RIPA, even if the Council's use of the available powers is minimal.

Corporate

The Council must have in place an up to date policy and procedures in order to comply with the regulations, good governance and its duties under the Act. The Policy is one of a number of policies and procedures that the council has in place which demonstrates its compliance with the legislation.

Equality Act 2010 & Public Sector Equality Duty

There are no equalities implications

Corporate Priorities

This report relates to the following corporate priorities: -

- *Communities*

1.0 Introduction and Background

1.1 The Council has powers under the Regulation of Investigatory Powers Act 2000 (RIPA) to undertake certain types of directed surveillance for the purposes of enforcement.

1.2 Directed surveillance is defined in section 26(2) RIPA as follows:

“surveillance is directed for the purposes of this Part if it is covert but not intrusive and is undertaken—

- (a) for the purposes of a specific investigation or a specific operation;
- (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance.”

1.3 Local authorities can only undertake directed surveillance under RIPA that is not intrusive (eg involves entry onto property etc)

1.4 Local authorities can also use a “Covert Human Intelligence Source” (“CHIS”) under RIPA. These are defined in section 26(8) RIPA as follows:

“For the purposes of this Part a person is a covert human intelligence source if—

- (a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);

- (b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- (c) he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.”

1.5 Members should note that it is the Council’s Policy not to exercise the available powers under RIPA unless absolutely necessary. Most of the Council’s surveillance is overt (open) as opposed to covert (hidden). However, there have been occasions in the last few years where authorisations have been given for directed surveillance. The use of a CHIS is even more rare and would only be applicable in the case, for example, for carrying out test purchases.

1.6 Members should also note that authorisations are subject to application and approval by the magistrates’ court and are strictly time limited. Extensions to approvals are also subject to the magistrates’ approval.

2.0 The Current Situation

2.1 The Policy was last updated in 2018. The regulatory body - the Investigatory Powers Commissioner (IPCO) - visited the Council in April 2022. This was a first in person inspection since before the pandemic. The Commissioner reviewed the Council’s draft updated Policy and procedures and made various recommendations. The draft Policy is at Annex 1.

2.2 The recommendations in the follow up letter and actions that the Council has taken/will take are as follows:

Recommendation	Action taken/proposes	Date
To adopt the draft Policy	Report and draft policy presented to G&A Committee for adoption	27/7/22
To identify the Senior Responsible Officer, authorising officers and the RIPA Gatekeeper following the departure of a number of key staff	It is recommended that the Interim Monitoring Officer becomes the Senior Responsible Officer (SRO) and that the Chief Executive and all Directors are authorising officers (AOs). Mr Eden Geddes, Enforcement and Multi Task Force Agency Manager, has	July 2022

	<p>been acting as RIPA Gatekeeper for some time and has agreed to continue in this role. The Gatekeeper role manages and oversees the RIPA processes and liaises with the Senior Responsible Officer and Authorising Officers</p>	
<p>That all key personnel, including the SRO and AOs, require refresher training to ensure that they are up to date with the processes contained within the amended policy and the content of the latest Codes of Practice. I also recommend focusing on the key element of how Council staff make use of the internet and social media during investigations.</p>	<p>Relevant Training to be identified and organised by the SRO in conjunction with the RIPA Gatekeeper and HR</p>	<p>By Autumn 2022</p>
<p>To re-establish the Central Record of authorisations, which will now be retained within the Legal Services Team under the control of the SRO. All RIPA material, that is the Central Record of authorisations, applications, authorisations, reviews and cancellations, and</p>	<p>Central Record of authorisations has already been established within legal Services and will be maintained in accordance with the Council's document retention policy.</p> <p>The retention policy will be reviewed to make sure it complies with the requirement in the commissioner's letter.</p>	<p>June 2022 and ongoing. The central record will be the responsibility of the SRO, assisted by the Legal Services Administrator and in conjunction with the RIPA Gatekeeper</p> <p>All centrally held records and the retention policy to be reviewed by Autumn 2022</p>

<p>any material obtained as a result of surveillance or CHIS activity, is subject to the Data Safeguards chapters contained within both the Surveillance and CHIS Codes of Practice. These safeguards apply to the handling, retention, review and deletion (RRD) of RIPA material and require that you take active steps to ensure all material is held in accordance with your document retention policy.</p>		
<p>To ensure that documentation is completed correctly - for example, on the authorisation forms to provide as full information as possible and not simply to repeat template wording, including. The commissioner's suggestions recommended including photographs etc and to full evidence of proper consideration to the impact of each deployment and the rights of the people it was aimed at detecting, or those affected</p>	<p>Training to be provided to those people completing the authorisation forms and guidance will also be given by the Gatekeeper who will review all requests for authorisations.</p> <p>The review by the SRO and the legal team - who will be responsible for applying to the magistrates' court for authorisation, will also be a secondary check on the quality of the documentation</p>	<p>July 2022 and ongoing</p>

through collateral intrusion.		
Surveillance must always cease when it is no longer justifiable, which requires ongoing assessment rather than the arbitrary observation of a deadline.	Training and guidance will be provided to staff completing the forms by the RIPA Gatekeeper and the SRO/legal team	July 2022 and ongoing

2.3 A copy of the Commissioner's letter is included at Annex 2 for members' information.

2.4 Members are also asked to note that in the year 2021 - 22, the Council has not undertaken any investigations which have been subject to RIPA approvals.

3.0 Options

3.1 The committee is asked to approve the adoption of the draft updated Policy, to note the report of RIPA activity in the last year and finally to note the recommendations and actions arising out of the Commissioner's visit.

3.2 There is no alternative option, unless members wish to recommend additional actions and/or changes to the Policy.

4.0 Next Steps

4.1 If the Policy is approved, it will be updated and published on the intranet, together with the revised details of the SRO, authorising officers and RIPA Gatekeeper. Training will be organised as soon as possible for all relevant staff. The SRO will take forward all outstanding actions.

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Reporting to: Chris Blundell, Acting Deputy Chief Executive

Annex List

Annex 1: Revised RIPA Policy July 2022

Annex 2: Letter from the Commissioner (IPCO) dated 8 April 2022

Corporate Consultation

Finance: Matt Sanham, Head of Finance

Legal: N/A