

Report to Cabinet

Subject: Regulation of Investigatory Powers Act 2000 (RIPA) Annual Audit and update

Date: 13 December 2021

Author: Head of Governance and Customer Services

Wards Affected

All wards

Purpose

To update Members as to the Council's use of powers under RIPA from 1st April 2020 to 31st March 2021 in line with the Council's RIPA policy and to seek approval of minor amendments to the Council's RIPA policy to reflect changes in roles following restructure.

Key Decision

This is not a key decision.

Recommendation(s)

THAT Cabinet:

- 1) Notes the content of this report.**
- 2) Approves the amendments to the Council's Regulation of Investigatory Powers Policy document at Appendix 1.**

1 Background

1.1 Under the Council's RIPA policy, Members are required to consider and review the Council's use of RIPA powers and its policy and guidance at least once a year. Cabinet last received a report in October 2020 in relation to RIPA usage for 2019/20. At this time, following an inspection of the Council's RIPA processes, policy and procedure in April 2020, by the Investigatory Powers Commissioner's Office (IPCO), Cabinet approved some amendments to the Council's RIPA policy document. These

amendments were following informal recommendations from the IPCO report and reflected a statutory change in the length of time juvenile covert human intelligence sources could be authorised for, as well as clarifying the policy in respect of retention of product obtained under a RIPA authorisation.

- 1.2 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 and tobacco 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 now overseen by the Head of Governance and Customer Services as the Senior Responsible Officer for RIPA (SRO) with assistance from the RIPA Co-ordinating Officer, who is now the Senior Legal Officer for Litigation and Licensing. Since 1st 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.
- 1.3 The Council’s RIPA processes and procedures come under regular scrutiny. Each year, the RIPA co-ordinating officer or SRO, undertakes an audit of RIPA usage. **There have been no authorisations given for directed surveillance or the use of covert human intelligence sources in the year 2020/21.**
- 1.4 In addition to monitoring RIPA usage, the SRO is required, in line with the Council’s policy, to ensure refresher training on RIPA is available to officers on an annual basis. The last RIPA training was delivered to officers in March 2019. Training during 2020/21 was not conducted due to Covid-19 restrictions, and overall capacity issues, however, officers are intending to deliver RIPA training early in the new year for authorising officers and investigating officers who may utilise RIPA powers. Legal officers have recently attended RIPA training provided by external trainers. This training will be cascaded to relevant officers as part of the training package in the new year.
- 1.5 In addition to the internal annual audit, annual policy review and reports to Cabinet, the Council is also subject to external inspection by the Investigatory Powers Commissioner’s Office (IPCO). These inspections are undertaken roughly every 3 years. The last inspection was conducted in April 2020 and the outcome reported to Cabinet in October 2020. The inspection was positive and the Council were commended for their

compliance. No formal recommendations resulted from the 2020 inspection, however some informal recommendations were made and related to amendments to the policy highlighted in paragraph 1.1 above.

- 1.6 There was one informal recommendation from the 2020 report which has not yet been formally actioned. The Inspector urged the Council to register with the National Anti-Fraud network (NAFN) for the purposes of obtaining communications data. Communications data includes data from the DVLA, Equifax and a number of other financial/fraud check organisations. Historically, when the Council investigated benefit fraud, registration with NAFN was maintained, however, this ceased some time ago. Communications data has never previously been required by the Council as part of its regulatory and investigatory work, however further investigation into this suggestion by the Inspector still needs to be undertaken by officers. There is no urgent need to enter into this registration at the present time.
- 1.10 The Nottinghamshire and Derbyshire District RIPA working group provides the opportunity to share best practice in relation to RIPA usage and share training opportunities and knowledge. The group meets at least twice a year and is another mechanism by which the Council ensures that compliance with RIPA is maintained and knowledge is kept up to date. Meetings have been held remotely in 2020 and whilst this Council historically chaired the meeting, the chair now rotates between member authorities. There is now a share point website that has been created by the group to share agendas, minutes and useful precedent documents such as draft policies in respect of RIPA.
- 1.11 Whilst some amendments were made to the RIPA policy in 2020, having reviewed the policy again, there are no significant amendments proposed to the policy this year. Minor amendments have however been made to reflect the changes in the role of SRO and RIPA Co-ordinator following phase 2 and 3 restructures. These changes are shown as tracked changes in appendix 1.

2 Proposal

- 2.1 It is proposed that Members note the detail in this report in relation to the Council's use of RIPA, and the review of the Council's RIPA policy.
- 2.2 It is proposed that Members approve the minor changes to the policy document to reflect changes in staffing roles.

3 Alternative Options

- 3.1 Members could determine not to receive annual updates in relation to RIPA, however this would be contrary to the Council's policy position. The Inspector made clear in 2020 that even though authorities may not be

utilising RIPA powers, appropriate arrangements must be in place to monitor usage and awareness of RIPA must be maintained.

- 3.2 Members could propose alternative amendments to the policy document, however the document has been reviewed and other than changes to staffing roles the policy remains fit for purpose.

4 Financial Implications

- 4.1 There are no financial implications arising from this report.

5 Legal Implications

- 5.1 Where the Council wishes to carry out covert surveillance in relation to an investigation, compliance with RIPA ensures that any such surveillance is properly authorised and full consideration is given to its necessity and proportionality. Where covert surveillance is conducted under a RIPA authorisation, this provides a potential defence to any claim that the surveillance amounted to a breach of the individual's right to privacy under the Human Rights Act 1998. Whilst RIPA authorisations are limited to specific circumstances for local authorities, local authorities must still maintain appropriate processes and procedures to demonstrate compliance with RIPA, this includes ensuring that an appropriate policy document is maintained.

6 Equalities Implications

- 6.1 There are no equalities implications arising directly out of this report.

7 Carbon Reduction/Sustainability Implications

- 7.1 There are no carbon reduction/sustainability implications arising out of this report.

8 Appendices

- 8.1 Appendix 1 – Regulation of Investigatory Powers Act Policy (with tracked changes)

9 Background Papers

- 9.1 None

10 Reasons for Recommendations

- 10.1 To update Members in line with the Councils RIPA policy

10.2 To ensure the RIPA policy document remains up to date.

Statutory Officer approval

Approved by:

Chief Financial Officer

Date:

30 November

Drafted by the Monitoring Officer