

Report to Cabinet

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

Date: 8 December 2022

Author: Senior Legal Officer

Wards Affected

All wards

Purpose

The purpose of this report is to:

Update Members as to the Council's use of powers under RIPA from 1 April 2021 to 31 March 2022 in line with the Council's RIPA Policy.

Key Decision

This is not a key decision.

Recommendation(s)

THAT Cabinet:

- 1) Notes the content of this report**

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 December 2021 in relation to RIPA usage for 2020/21. At this time Cabinet approved some minor amendments to the RIPA policy reflecting the changes in the role of Senior Responsible Officer (SRO) and RIPA Co-ordinator following phase 2 and 3 restructures. The Council's RIPA policy remains fit for purpose and does not require further updating at this time.

There is also a requirement under the policy that internal reporting to members is done throughout the year to update on RIPA usage. The

Council's RIPA Co-ordinating officer provides updates when necessary throughout the year to the Portfolio Holder for Local Pride and Community Engagement in relation to the Council's RIPA usage.

- 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 six months in custody, the so-called "serious crime" threshold. Since 1 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 authorisations under RIPA can only be given by 'Authorising Officers' who for the Council are Directors or the Chief Executive. The entire process is now overseen by the Head of Governance and Customer Services as the SRO with assistance from the RIPA Co-ordinating Officer, who is now the Senior Legal Officer for Litigation and Licensing.
- 1.4 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 2021/22.**
- 1.5 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. Legal officers recently attended RIPA training provided by external trainers. RIPA training was delivered to all Council officers who may utilise RIPA powers in September 2022. The training consisted of an in person seminar delivered by the Council's Senior Legal Officer for Litigation and Licensing, which was recorded and is available on the intranet to allow those officers who were unable to attend to have access to the training and to ensure knowledge is maintained. Targeted training was also delivered to the Council's Authorising Officers in October 2022 to refresh their knowledge in respect of the authorisation process and criteria to consider.
- 1.6 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 involved a paper based exercise as opposed to the Inspector physically visiting the Council. The outcome was 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. Some informal recommendations were made and related to amendments to the policy. These amendments 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. Cabinet approved these amendments in October 2020.

- 1.7 The Inspector also acknowledged that there had been no use of RIPA powers by the Council since 2015, but was reassured that the Council was still taking its responsibilities under RIPA seriously. The Inspector was complimentary about the level of knowledge in relation to RIPA around the organisation, particularly around the use of social media as an investigative tool and the RIPA risks associated with this.
- 1.8 It was reported to Cabinet in the audit for 2020/2021 in December 2021 that there was one informal recommendation from the 2020 inspection which had 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 the Council have never had cause to collect communications data and although we do not see this position changing, the Council is registered and is a member with NAFN, primarily for the use of the NR3 register regarding the revocation and refusal of hackney carriage and private hire driver's licenses, should it ever become necessary to utilise it.
- 1.9 As the last inspection was in 2020 the Council is therefore due an inspection by the IPCO sometime next year. It is expected the next inspection will again involve a paper-based exercise, where details of the Council's policy, training and register of authorisations will be sent to the IPC for consideration as well as a remote meeting with the Council's RIPA co-ordinator.
- 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. Although in the past this has been a stand-alone group, over the past couple of years it has joined with the Nottinghamshire Information Officers Group as the majority of the members were the same. This group meets at least every three months and is another mechanism by which the Council ensures that compliance with RIPA is maintained and knowledge is kept up to date. Meetings continue to be held remotely and whilst this Council historically chaired the meeting, the chair now rotates between member authorities. There is also 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 It is still essential, whatever the level of RIPA usage, that the Council keeps 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 IPCO and as such the Council's policy, processes, training and review of RIPA usage must continue, to ensure our processes remain fit for purpose.
- 1.12 It is important that information about RIPA and covert surveillance is disseminated to staff to maintain awareness between training sessions, and the RIPA co-ordinating officer will continue to update officers and Members with any key developments in this area.

2 Proposal

- 2.1 It is proposed that Members note the detail in this report in relation to the Council's use of RIPA.

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.

4 Financial Implications

- 4.1 There are no additional financial implications arising from this report. The cost of training and other related RIPA activity are expected to be met from existing budgets.

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/Environmental Sustainability Implications

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

8 Appendices

8.1 None

9 Background Papers

9.1 None

10 Reasons for Recommendations

10.1 To update Members in line with the Councils RIPA policy

Statutory Officer approval

Approved by:

Date:

On behalf of the Chief Financial Officer

Approved by:

Date:

On behalf of the Monitoring Officer