

Report to Cabinet

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

Date: 9 January 2025

Author: Legal Services Manager

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 2023 to 31 March 2024 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 December 2023 in relation to RIPA usage for 2022/23. At this time Cabinet were also advised that the Council's RIPA policy remained fit for purpose and required no updating. In line with the policy a further review has been

undertaken and other than updating the roles of Officers following a restructure, the policy remains fit for purpose.

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 Public Protection 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 Deputy Chief Executive as the Senior Responsible Officer (SRO) with assistance from the RIPA Co-ordinating Officer, who is now the Legal Services Manager.
- 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 2023/24.**
- 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 attend annual RIPA update training provided by external trainers. An in-person training seminar was delivered by the Council's Principle Legal Officer for Litigation and Licensing to all Council officers who may utilise RIPA powers in July 2023. Targeted refresher training was last delivered to the Council's Authorising Officers in November 2023. Due to the restructure a further training session will be delivered once all Director's are in post at the beginning of 2025, to ensure all Authorising Officers are aware 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 reported to Cabinet was conducted in June 2023 which involved a written, desk top exercise inspection as opposed to the Inspector physically visiting the Council. The inspection entailed answering a number of questions set by to IPCO covering our RIPA usage, governance, procedures, policy and training, in order to assure the IPCO that the Council is maintain good levels of compliance.
- 1.7 No formal recommendations were made as a result of the inspection. The Inspector was assured by the Council's ongoing compliance with RIPA. Although there has been no use of RIPA powers by the Council since 2015, the inspection shows the importance of maintaining the necessary internal governance and oversight of the Council's obligations under RIPA.
- 1.8 The Council will be due it's next inspection in 2026 and it is expected that this will again involve a paper-based exercise, where details of the Council's RIPA usage, governance, procedures, policy, and training will be considered.
- 1.9 The Council is also a member of the Nottinghamshire and Derbyshire District RIPA working group which 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.
- 1.10 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.
- 1.11 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.

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 Inspection in June 2023 highlights 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 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:

Date:

On behalf of the Chief Financial Officer

Approved by:

Date:

On behalf of the Monitoring Officer