

Report to: **COUNCIL**

Date: **6 November 2018**

Title: **Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Update**

Portfolio Area: **Support Services**

Wards Affected: **All**

Relevant Scrutiny Committee: N/A

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken:
(e.g. referral on of recommendation or implementation of substantive decision) **Immediately following this meeting**

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RECOMMENDATIONS

That the Council:

- 1. notes the IPCO report and recommendations attached at Appendix A;**
- 2. approves the updated policy attached at Appendix B;**
- 3. notes that there have been no RIPA Authorisations since the annual update to the Overview and Scrutiny Committee in November 2018 and makes any recommendations arising from this report; and**
- 4. notes the amendments to the RIPA Act 2000 effective from 1 November 2018.**

1. Executive summary

1.1. The purpose of this report is to:

- 1.1.1. review and approve the Council's RIPA policy.
- 1.1.2. update Members on the use of RIPA, and
- 1.1.3. report on training for Officers

- 1.2. The Regulation of Investigatory Powers Act 2000 (RIPA) was designed to regulate the use of investigatory powers, and its effect is that formal authorisation must be obtained before carrying out certain surveillance, monitoring and other evidence gathering activities. RIPA ensures that the right balance is achieved between public interest and individual human rights.
- 1.3. RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary, proportionate and is properly authorised. These procedures are set out in the RIPA Policy attached to this report (Appendix A) and they are designed to protect the Council against a claim of a breach of Article 8 of the Human Rights Act if correctly followed (right to respect for private and family life, home and correspondence).
- 1.4. The last report by the Investigatory Powers Commissioner's Office was produced by the Assistant Surveillance Commissioner His Honour Norman Jones QC on 7 September 2017 (Appendix A) following a 'paper review' of the Council's procedures and records. The report contained a number of recommendations set out at paragraph 30 of the report.
- 1.5. The Surveillance Commissioner's guidance requires an annual update on RIPA is brought to the Council's Overview & Scrutiny Committee; the last report was brought to that Committee at its last meeting on 6 November 2018.
- 1.6. The Council's Overview and Scrutiny Committee considered a version of this report at its meeting on 6 November 2018 and, following a detailed debate, proceeded to recommend approval to the Council of each of the four recommendations outlined above.

2. RIPA Policy

- 2.1. The Council's revised RIPA Policy is attached at Appendix B. It has been amended following the 2017 report to reflect the amendments recommended by the Inspector, and to also reflect further changes to the Authorising Officers
- 2.2. From the 1st November 2018 two changes are being made to the RIPA Act.

Change One.

Three statutory removals – involving reasons for which data can be retained or acquired;

Data can no longer be acquired or retained for;

S 22 (2) (e) - for the purpose of public health

S 22(2) (f) – for the purpose of assessing or collecting any tax, duty, levy or other impositions or contributions payable to a government department.

S22 (2) (j) – for the purposes of exercising functions relating to the regulations of financial services and markets or to financial stability.

Change Two

Where the statutory purpose is crime, there is a new serious crime threshold for the acquisition of service or traffic data. Subscriber data can still be acquired for any crime – where necessary and proportionate to do so.

Serious crime is described in the guidance and includes offences punishable by 12 months imprisonment or more – for example Fly-tipping.

3. RIPA activity

3.1. No RIPA authorisations have been applied for, or granted, since the report to Members in September 2017

3.2. The reasons are due a combination of factors, including the fact that for local authorities, the only statutory reason for a RIPA authorisation was for the purposes of preventing or detecting a criminal offence where that offence is punishable by a minimum term of at least 6 months imprisonment. In the past the OSC has also cited reduced resources, greater access to data-matching and overt, rather than covert law enforcement.

4. OSC report

Inspections by the OSC are scheduled every three years but recent changes mean that the Commissioner's inspectors can conduct this by a 'paper' review (as was the last inspection in August 2017) rather than a visit; the Commissioner can decide to repeat the paper review or make a planned visit for the next inspection due in 2020.

5. Training

5.1. The Senior Leadership Team (the Authorising Officers) together with the Monitoring Officer, and officers who would be responsible for carrying out any RIPA investigations, attended RIPA training in February 2017.

5.2. The relevant Officers will need to attend annual refresher and further training has been arranged for February 2019.

In addition the Deputy Monitoring Officer and RIPA Co-ordinating Officer are attending annual refresher training on November 28th 2018. . The training will include a review and update of;

- RIPA and Local Authorities
- Surveillance
- CHIS
- Communications Data
- Role of authorising officers

- Necessity and proportionality
- Judicial Approval
- Social Networks
- The Investigatory Powers Act 2016
- 2018 amendments to RIPA

6. Outcomes/outputs

- 6.1. The Council aims to achieve compliance with the RIPA requirements and where authorisations are granted, that these are authorised as necessary and proportionate and in accordance with Policy.
- 6.2. Regular reviews of Council Policy, monitoring and reporting of any RIPA activity will ensure that compliance is achieved.

7. Options available and consideration of risk

- 7.1. The Council is obliged under the Regulation of Investigatory Powers Act, a series of regulations and Home Office guidance, to have a RIPA Policy in place and ensure compliance with that Policy. Home Office guidance also requires that officers are trained in RIPA in the future event that the Policy needs to be applied and authorisations granted.
- 7.2. Failure to review the Policy and non-compliance with the Policy, exposes the Council to the risk that it breaches the Human Rights Act, and is unable to legally enforce against unlawful activity.

8. Proposed Way Forward

- 8.1. To consider the current Policy attached at Appendix B in line with the 2017 IPCO report.

9. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Council's duties for covert surveillance are set out in RIPA and these requirements are reflected in the Council's RIPA Policy at Appendix A. The Home Office guidance on covert surveillance recommends that Members should review the RIPA policy annually, and regularly consider reports on the use of RIPA. Reports on the use of RIPA will be brought to O&S if the Council grants any authorisations.
Financial	N	There are no direct financial implications to this

		report.
Risk	Y	Adoption of (and compliance with) a RIPA policy will minimise any risk to the Council of breaches of the Human Rights Act in any future investigations involving covert surveillance. Regular review of Policy and RIPA use, together with reporting to O&S will further mitigate that risk and ensure consistent application of the policy.
Comprehensive Impact Assessment Implications		
Equality and Diversity		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Safeguarding		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Community Safety, Crime and Disorder		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Health, Safety and Wellbeing		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Other implications		N/a

Supporting Information

Appendices:

Appendix A: IPCO Report November 2017 (exempt); and
Appendix B: Draft revised RIPA Policy

Background Papers:

Report to Overview & Scrutiny 5 September 2017