

Report to: **Audit Committee**

Date: **4 February 2021**

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

Portfolio Area: **Support Services**

Wards Affected: **All**

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

Date next steps can be taken:

Author: **Neil Hawke** Role: **Head of Strategy and Projects**

Contact: **01803 861323** [neil.hawke@swdevon.gov.uk](mailto:neil.hawke@swdevon.gov.uk)

---

**Recommendations:** That the Committee

1. Welcomes the report of the Investigatory Power Commissioners Office (Appendix A)
2. Acknowledges that there have been no RIPA Authorisations since the last report to Members (2018)

**1. Executive summary**

- 1.1 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
- 1.2 This report provides an update on RIPA activity within the previous 12 months and the outcome of a recent inspection by the Investigatory Powers Commissioner's Office, including the Councils action plan for addressing the findings.

**2. Background**

- 2.1 RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary, proportionate and is properly authorised. The Council is required to have a policy and procedures in place that are designed to protect the Council against a claim of a breach of Article 8 of the Human Rights Act (right to respect for private

and family life, home and correspondence) if correctly followed.

- 2.2 No RIPA authorisations have been applied for, or granted, since the last report to Members in 2018.
- 2.3 The reason for no authorisations are due to a combination of factors, including the fact that for local authorities, the only statutory reason for a RIPA authorisation is for the purpose of preventing or detecting a criminal offence where that offence is punishable by a minimum term of at least 6 months imprisonment. Another reason for no RIPA activity being undertaken is a greater access to data-matching as a means to detect crime and overt, rather than covert law enforcement (such as placing of monitoring equipment that is highly visible and in plain view).
- 2.4 The Office of the Surveillance Commissioner undertakes an Inspection of the Council every three years in order to identify if we have the correct procedures, policies and governance in place in respect of RIPA authorisations. An inspection was undertaken on 17<sup>th</sup> September 2020.

### **3. Outcomes/outputs**

- 3.1 The Council participated in a telephone-based inspection with an Investigatory Powers Commissioner Inspector on 17<sup>th</sup> September 2020.
- 3.2 The Commissioner concluded that:
  - a. The Council is well placed with regard to the required safeguards in respect of Data Handling
  - b. That our current RIPA policy (Appendix B to this report) makes clear how RIPA activity would be managed within the Council
  - c. That the information provided during the telephone inspection demonstrated a level of compliance that removed the need for more in-depth inspection.
- 3.3 The Commissioner did make some recommendations that minor amendments are made to the Council policy to reflect recent changes to powers and some administrative corrections to the document. These are not material changes and therefore the revised policy does not need Council approval.
- 3.4 The Commissioner also made an observation with regard to the role of Senior Responsible Officer. Currently the SRO function rests with the Chief Executive. It is felt that this role should sit more comfortably with the Director Governance and Assurance in order for the Chief Executive to take an independent monitoring role of RIPA activity.

### **4. Options available and consideration of risk**

- 4.1 The Council is obliged under the Regulation of Investigatory Powers Act to have a RIPA Policy in place and to 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.

- 4.2 A number of senior officers within the Council received training in 2018 although refresher training will be commissioned within the next 12 months.
- 4.3 The Investigatory Powers Commissioner requires that an update on RIPA activity, even where there has been none, is required to be reported to Members.
- 4.4 The Senior Leadership Team have considered the recommendation regarding the Senior Responsible Officer role and conclude that it agrees with this function being carried out by the Director Governance and Assurance.

## 5. Proposed Way Forward

- 5.1 The proposed way forward is for the Audit Committee to note the recommendations of the Investigatory Powers Commissioner as set out in Appendix A.
- 5.2 Officers will implement the minor changes to the current policy (Appendix B) required by the Commissioner.
- 5.3 A further report on RIPA activity will be considered by this committee in 2022.

## 6. 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 Policy. The Policy ensures the Council complies with the requirements of the Regulation of Investigatory Powers Act 2020 and in doing so that the Council acts in such a way that does not breach an individual's human rights.   |
| Financial implications to include reference to value for money | N                         | There are no 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. |
| Supporting Corporate Strategy                                  | Y                         | Council – Efficient and Effective Services   |

|   |   |  |
|---|---|--|
| Climate Change - Carbon / Biodiversity Impact       | N | None   |
| <b>Comprehensive Impact Assessment Implications</b> |   |  |
| Equality and Diversity                              | N | No direct implications to this report but these issues are considered in each individual application and RIPA authorisation            |
| Safeguarding  | N | 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                | N | There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation  |
| Health, Safety and Wellbeing                        | N | There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation  |
| Other implications                                  | N | None   |

### **Supporting Information**

#### **Appendices:**

Appendix A – Investigatory Powers Commissioner Report

Appendix B – Current RIPA Policy

#### **Background Papers:**

### **Approval and clearance of report**

| <b>Process checklist</b>                    | <b>Completed</b> |
|---|------------------|
| Portfolio Holder briefed/sign off           | <b>Yes/No</b>    |
| SLT Rep briefed/sign off                    | <b>Yes/No</b>    |
| Relevant Heads of Practice sign off (draft) | <b>Yes/No</b>    |
| Data protection issues considered           | <b>Yes/No</b>    |
| Accessibility checked                       | <b>Yes/No</b>    |