

USE OF REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

To: **AUDIT AND ACCOUNTS COMMITTEE**

Date: **28TH March 2019**

From: **Fiona McMillan, Director of Law and Governance & Monitoring Officer
LGSS**

1. PURPOSE

1.1 The purpose of this report is to provide the Committee with an overview of the following items:

- an understanding of RIPA which enables Committee members to have effective oversight of the use of these powers
- a report detailing the usage of the powers
- the inspection by the Investigatory Powers Commissioner's Office (IPCO) in November 2018 and the subsequent report received in January 2019.
- The draft joint policy for both Peterborough City Council and Cambridgeshire County Council

2. BACKGROUND

This report is for the Audit and Accounts Committee to consider under its Terms of Reference 2.7:

“To consider the Council's compliance with its own and published standards and controls”.

Responsibility for the oversight of RIPA previously sat with the Constitution and Ethics Committee. At its meeting of 28 February 2019, that committee agreed that oversight would be best served by the Audit and Accounts Committee, subject to full Council approval on 19 March 2019 which was achieved.

3. RECOMMENDATIONS

It is recommended that the Audit and Accounts Committee:

1. Receives a report into the usage of RIPA powers by Cambridgeshire County Council in the last 12 months.
2. Notes the outcome of the inspection of Cambridgeshire County

Council by the Investigatory Powers Commissioner's Office (IPCO).

3. Receives and agrees the revised joint Peterborough and Cambridgeshire RIPA policy.

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4.	KEY ISSUES
4.1	Local authorities exercise criminal investigation powers for a number of reasons from fly tipping to planning enforcement to sale of counterfeit goods. The Council may undertake covert surveillance to investigate such matters and that work will be regulated by RIPA. It also provides a statutory process for authorising such work.
4.2	RIPA seeks to ensure that any covert activity undertaken is necessary and proportionate because of the impact on an individual's right to a private life under Article 8 of the Human Rights Act. In undertaking such activity the Council is, in effect, suspending a person's right to privacy. RIPA seeks to ensure both the public interest and the human rights of individuals are balanced.
4.3	The Council is able to undertake directed surveillance meaning that it must be for the purpose of a specific investigation or operation. The Council is not permitted to undertake intrusive surveillance, i.e. surveillance in private premises or vehicles.
4.4.	Covert surveillance might mean the use of CCTV to monitor an individual's movement or their actions. Whilst the CCTV camera itself is overt, it is the use of that camera to track that individual's actions without that individual knowing which makes that act covert. The Council may also use underage volunteers to purchase tobacco or alcohol whilst being filmed. The viewing of CCTV footage <i>after</i> an incident does not constitute covert surveillance and therefore does not fall under RIPA.
4.5	RIPA also permits the Council, via the National Anti-Fraud Network (NAFN) to require the release of communications data where the appropriate circumstances exist. It can obtain information which identifies the subscriber to a mobile phone and to see a call history but it cannot gain access to the actual content of calls. In an investigation into a rogue trader, it could link the contact number to the person and others called. It cannot obtain access to electronic data protected by encryption or passwords, which would include emails.

4.6	The Council may also authorise the use of a Covert Human Intelligence Source (CHIS) to obtain information from individuals in a covert manner such as a Trading Standards officer using a pseudonym to carry out a test purchase online. It may also apply to the use of a member of the public to obtain private information about an individual. It should be noted that the Council has never authorised the use of a CHIS since the commencement of RIPA.
4.7	<p>In addition to RIPA, the Protection of Freedoms Act 2012 introduced two key important provisions for local authorities. The first is that in order for the Council to apply for approval, the offence being investigated must meet the <i>crime threshold</i>. This means that either the offence carries a maximum punishment of imprisonment of six months or more or it is an offence relating to the sale of tobacco or alcohol to underage individuals.</p> <p>The second key factor is the approval process. Any investigations must be properly authorised by one of the Council's Authorising Officers in accordance with its policies and procedures. In addition, the Council must also obtain judicial approval from a Justice of Peace i.e. district judge or Magistrate.</p>
5	IPCO INSPECTION
5.1	<p>The Investigatory Powers Commissioner's Office ("IPCO") provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities. As part of this oversight, it undertakes inspections to assess compliance, provide guidance and assurance that such powers are being used appropriately and in line with the legislation and codes of practice. It appointed Paul Gration to carry out an inspection of both councils in November 2018.</p> <p>Local authorities are inspected on a two to three year basis, with the last inspection of Peterborough City Council having been in 2015 and for Cambridgeshire County Council in 2016.</p>
5.2	As Fiona McMillan had become the senior responsible officer (SRO) for both Peterborough City Council and Cambridgeshire County Council shortly before the inspection, it was agreed that ICPO would undertake an inspection visit of both authorities at the same time.
5.3	At this point it was also agreed with the Chief Executive and SRO that Ben Stevenson (PCC) will act as central RIPA monitoring officer for both councils. Peterborough also has two experienced authorising officers who cover the main areas in which covert surveillance may play a role; the Prevention & Enforcement Service (e.g. fly tipping and the use of CCTV) and Regulatory Services (e.g. Trading Standards).
5.4	Officers agreed that each Council's policies would need to be updated to take into account the changes to the Codes of Practice issued in August 2018 and work commenced on updating each policy. Whilst this work was underway it was considered that, due to the joint approach across both councils for the relevant teams and officers, it would be beneficial to create one joint policy across both

	<p>councils. A draft joint policy was created by October 2018. Once notified of the impending IPCO inspection the SRO discussed the level of joint working and structures across both council with the IPCO and it was agreed that a joint inspection would be appropriate in the circumstances. The SRO also decided to take the opportunity to obtain the IPCO's view of the draft joint policy during the inspection. The inspector considered each council's own policies alongside the proposed joint policy. He found that Peterborough City Council had a clearly written and robust policy alongside an easy access guide available to officers as well as a reporting structure in place. He also found that Peterborough City Council has a well-regarded set of officers with strong experience and knowledge of RIPA matters. Following staffing changes, the corresponding structure and knowledge at Cambridgeshire County Council was no longer present and the policy needed updating. The inspector concluded that the adoption of an updated joint version of the Peterborough policy and structure to be used across both Councils would enable the necessary rigour and oversight to be put in place at both Councils.</p>
5.5	<p>The inspection report was very positive and it highlighted:</p> <ul style="list-style-type: none"> • the RIPA compliant and fit for purpose structure both councils have in place to ensure compliance • recent training had been undertaken across both councils and each were aware of the need to continue to promote awareness of RIPA to ensure compliance • both councils correct approach to informing Members of the use of the powers at each Audit Committee (formerly Constitution & Ethics Committee at CCC) • in addition to the policy, PCC's an easy to read user guide which is available for officers was commended • the excellent understanding of RIPA by the SRO, central monitoring officer and authorising officers in place across both councils
5.6	<p>The inspection did highlight some areas to help improve applications at both councils such as providing greater detail on how each council assessed any collateral intrusion during its activities and also ensuring that officers documented any variation between what activity is proposed and what is authorised.</p>
5.7	<p>Mr. Gration also highlighted that whilst the policy covered in great detail the approach to the use of social media in surveillance, he felt that it also needed to consider the way in which both councils had oversight of such activities and how the use of social media can be audited during investigations.</p>
5.8	<p>Mr. Gration also recommended that officers ensured that the section of the draft policy regarding a CHIS was reviewed for clarity and made easier for officers to understand exactly what a CHIS is and the process to be followed. This is particularly important given that neither council has ever required the use of a CHIS.</p>
5.9	<p>These issues formed the basis of the report's single recommendation which is to review the draft policy based on those issues highlighted. The Inspector believed that with these small changes, the councils will have a well written, meaningful and compliant policy in place.</p>

6.	POLICY REVIEW
6.1	The proposed joint policy has been revised in light of the revised Codes of Practice and also in light of the comments of the Inspector. Aside from updating to reflect changes in job titles and the policy covering both councils, the key changes are highlighted below.
6.2	<p>General Observation Activities (page 9)</p> <p>This is a new section to provide some clarity for officers on when they may not need surveillance when they are undertaking their normal daily duties.</p>
6.3	<p>Authorising Covert Direct Surveillance (page 11)</p> <p>This section has been updated to reflect what conditions need to be met to enable the surveillance to be authorised. Whilst the Codes of Practice have always emphasised the necessity and proportionality within any application, officers should also ensure that the application is fair and balanced.</p> <p>It also reflects the need to ensure that any proposed activity is covered by the authorisation. For example it is made explicit that both static and mobile surveillance activities are authorised rather than simply authorising surveillance.</p> <p>The section also makes clear that potential collateral intrusion is considered fully and how this will be minimised. It may also be necessary to obtain a new authorisation should there be any material changes during the operation.</p>
6.4	<p>When surveillance falls outside of RIPA (page 15)</p> <p>Given the threshold test for when RIPA applies for a local authority, there will inevitably be surveillance activity which falls outside of the RIPA framework. A section has been included a section for officers to be reminded that any activity which could be considered surveillance should be necessary and proportionate to what they hope to achieve. Officers are expected to consider whether their activity does meet the RIPA Test and review with their manager to ensure that no application is required but also that the activity is appropriate.</p>
6.5	<p>CCTV (page 15)</p> <p>The section has been updated to reflect the approach to be taken where the use of CCTV cameras is either directly controlled by the Police or operated by council officers on behalf of the Police. Council officers must be aware of what activity has been authorised and understand the limits or restrictions of what has been authorised.</p>
6.6	<p>Aerial Surveillance (page 15)</p> <p>It should be stressed that neither council has such capability however it is recognised that it may be considered in the future and its existence should be noted as a <i>potential</i> option and included in the policy.</p>

6.7	Covert Human Intelligence Source (pages 17 to 21) <p>The Inspector highlighted this an area where the clarity of the draft policy could be improved. A very clear opening has been included to ensure that any consideration of the use a CHIS is discussed with the SRO first. Given the higher risks attracted by the use of a CHIS, it was considered that the Chief Executive should be the authorising officer in these matters.</p> <p>The section includes the definition of a CHIS as well as examples for officers of when a CHIS authorisation may be required. It also includes greater detail on the necessity and proportionality aspects of any application.</p>										
6.8	Use of a Juvenile as a CHIS (page 21) <p>The use of a juvenile in such a way would attract a greater risk than an adult and therefore there is a separate section for this specific type of application.</p>										
6.9	The use of Social Media/Internet in investigations (page 23 to 24) <p>Although a growth area in intelligence as it is often publicly accessible, the councils must ensure that use of social media such as Facebook or Twitter complies with the right of an individual to privacy. This section provides the framework for that work and when this work may need a suitable authorisation. This section also covers access to information in a public setting as well as the use of covert accounts/identities by officers should be recorded to ensure that there is clear governance of such activity. This may apply when Trading Standards officers are investigating rogue traders and are making test purchases online.</p>										
6.10	Acquisition of Communications Data (page 33) <p>This has been updated to reflect the changes in the crime threshold from 1 November 2018 for service or traffic data which is restricted to serious crime. It should be noted that both councils would only require subscriber data which can be acquired for any criminal offence.</p>										
7.	SURVEILLANCE UNDERTAKEN										
7.1	<p>There has been one covert surveillance application in 2018 for Cambridgeshire County Council as detailed below:</p> <table border="1"> <thead> <tr> <th>Date approval</th><th>Type of Surveillance</th><th>Reason</th><th>Outcomes</th></tr> </thead> <tbody> <tr> <td>Council approval: 5 September 2018</td><td>Covert</td><td>Sale of illegal tobacco investigation</td><td>Officers undertook surveillance of the property on two occasions however it was determined that the initial intelligence was proven to be</td></tr> </tbody> </table>			Date approval	Type of Surveillance	Reason	Outcomes	Council approval: 5 September 2018	Covert	Sale of illegal tobacco investigation	Officers undertook surveillance of the property on two occasions however it was determined that the initial intelligence was proven to be
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	Magistrates approval: 17 September 2018			not correct and the surveillance was ended.															
	In addition, four applications for communications data were made:																		
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8.	CONSULTATION																		
8.1	<p>The report following the inspection was received by the following parties:</p> <ul style="list-style-type: none">• Chief Executive; and• Director of Law and Governance/SRO <p>The policy has been reviewed by Director of Law and Governance with consultation of the authorising officers.</p>																		
9.	ANTICIPATED OUTCOMES OR IMPACT																		
9.1	<p>The Audit and Accounts Committee will be informed of the necessary and proportionate use of RIPA across the Authority through regular updates.</p> <p>The draft policy is agreed for use for both Councils and reviewed on annual basis.</p>																		

10.	REASON FOR THE RECOMMENDATION	
10.1	It is recommended in the Codes of Practice that the Committee continues to receive information on the use of RIPA and reviews the policy on an annual basis. In order to assist the committee in these duties, training will be provided prior to the committee's 11 June 2019 meeting.	
11.	ALTERNATIVE OPTIONS CONSIDERED	
11.1	There are no alternative options considered at this time.	
Source Documents		Location
Regulation of Investigatory Powers Act 2000		Contact
Protection of Freedoms Act 2012		ben.stevenson@peterborough.gov.uk