

Report on the authority's process, application and use of powers within the Regulation of Investigatory Powers Act (RIPA)

To: Audit and Accounts Committee

Meeting Date: 26 May 2023

From: Ben Stevenson, Data Protection Officer

Outcome: The Audit Committee receives an update on the use of powers and a revised council policy

Recommendation: It is recommended that the Committee continues to receive information on the use of RIPA and receives an updated policy annually based on the changes in the Code of Practice, processes or inspections.

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1. Background

- 1.1. 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.
- 1.2. 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 are 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.
- 1.3. 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.
- 1.4. 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 *after* an incident does not constitute covert surveillance and therefore does not fall under RIPA.
- 1.5. RIPA also permits the Council, via the National Anti-Fraud Network (NAFN) to require the release of communications data where the appropriate circumstances exist. We can obtain information which identifies the subscriber to a mobile phone and to see a call history, but we cannot gain access to the actual content of calls. In an investigation into a rogue trader, we could link the contact number to the person and others called. We cannot obtain access to electronic data protected by encryption or passwords, which would include emails.
- 1.6. 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 tasking 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.
- 1.7. In addition to RIPA, the Protection of Freedoms Act 2012 introduced two key important provisions for local authorities such as Cambridgeshire County Council. The first is that the offence being investigated must meet the *crime threshold*. 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.

- 1.8. 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 our policies and procedures. In addition, the council must also obtain judicial approval from a Justice of Peace i.e. district judge or Magistrate.

2. Main Issues

- 2.1. Cambridgeshire County Council and Peterborough City Council share a policy, authorising officers, easy access guides and training material.
- 2.2. Given recent organisational changes, and to update as appropriate, we have reviewed the policy, attached as Appendix 1. This was reviewed by Linda Walker, as Cambridgeshire County Council's interim Director of Legal & Governance, and presented to the Chief Executive and corporate leadership team. Peter Gell (Assistant Director, Regulatory Services) and Rob Hill (Assistant Director Communities & Safety) as the Councils' shared authorising officers also reviewed the revised policy.
- 2.3. Key changes are highlighted however a summary of the changes are:
 - Reflection that the statutory Code of Practice has been separated into three codes in relation to covert surveillance, CHIS and communications data, plus ensuring the reference to any sections of codes is correctly numbered
 - Identification of Senior Responsible Officers and in the ability of the Chief Executive to act in their absence
 - Clear definition of an authorising officer as being (a) head of service or above and (b) named in the policy
 - Additional guidance on when activity falls outside of the scope of RIPA
 - Examples of when the use of CCTV systems is subject to RIPA and when it may not be
 - Example regarding the use of "drones"
 - Reflect that use of a juvenile or vulnerable adult as a CHIS must be reported to IPCO
- 2.4. We are currently investigating a tiered approach to training with an online option suitable for most with some more specific face to face training (delivered by an external provider) for others. As key users of the powers, Regulatory Services officers had two sets of face to face training in 2021.
- 2.5. We do also have a number of simple awareness videos available for staff to consider whether they need to think about actions they are taking:

[General Awareness](#)

Social Media and RIPA

2.6. We previously issued these to all directorates in 2021 and offered to discuss any concerns arising. Given organisational changes, we will be reissuing these prior to April 2023, along with a survey to help identify who may require training, guidance or support.

2.7. The Investigatory Powers Commissioner's Officer (IPCO) provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities. As part of this oversight, they undertake 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.

2.8. Local authorities are inspected on a two to three year basis with our last inspection in 2021. The outcome of that inspection was reported to this committee and the recommendations to update the councils' policy was noted, and actioned.

2.9. There has been no use of covert surveillance in the last 12 months.

3. Appendices

3.1 Appendix 1 – revised Regulation of Investigation Powers Act Policy

4. Source documents

4.1 Regulation of Investigatory Powers Act 2000
Protection of Freedoms Act 2012