

Use of Regulation of Investigatory Powers Act 2000 (RIPA)

To: Audit and Accounts Committee

Date: 25th November 2021

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

Electoral Division: All

Purpose: To report on the Council's use of the powers contained within the Regulation of Investigatory Powers Act (RIPA) and to update the council's policy

Recommendations: a) Receive the updated RIPA policy

b). Note the use of powers contained within RIPA

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1. Purpose and reason for the report

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

- an understanding of RIPA which enables them to have effective oversight of the use of said powers
- a report detailing the usage of the powers
- the updated policy following the inspection and other considerations

1.2 This report is for the Audit and Accounts Committee to consider under its regulatory framework 2.10 (Section 3B7 of the County Council's Constitution): "To receive and approve proposals regarding the Council's exercise of powers covered by the Regulation of Investigatory Powers Act"

2. Background and Key Issues

2.1 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.

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.

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.

2.2 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.

- 2.3 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.
- 2.4 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.
- 2.5 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 in order for the Council to apply for approval, 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.

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.

- 2.6 The last IPCO inspection concluded that Cambridgeshire County Council had a clearly written and robust policy alongside an easy access guide available to officers as well as a reporting structure in place along with a well-regarded set of officers with strong experience and knowledge of RIPA matters. These officers and policy are also shared with Peterborough City Council.

3 Surveillance undertaken

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

4 Policy update

- 4.1 Prior to the inspection in 2021, the councils had identified a change needed for the policy to ensure clarity over investigation material retention and destruction. It also wished to update the policy to strengthen guidance for staff over the usage of social media in investigations. As an inspection was forthcoming these amendments were put on hold until they had been discussed with the inspector to ensure that the council's guidance was accurate, practical and in line with IPCO recommendations.

These changes are listed below with their relevant number from sections in the policy:

- 9.4 We feel that guidance on an operation which may include more than one CHIS being active would benefit officers.
- 9.6 We feel that additional guidance on security and welfare for a CHIS before, during and after an activity would benefit officers.
- 9.7 The inspection recommended that we include reference to the relevant sections of the CHIS Code of Practice regarding the use of a CHIS during online/social media investigations. We have included this and amended examples from the Codes of Practice to be more relevant to council officers
- 10.3 We have inserted a statement on ability to audit the use of social media sites where there is an allegation or concern that social media has been misused or accessed in an investigation without the appropriate authorisation. It also details that we may undertake spot checks to ensure we are compliant.
- 12. We have updated and strengthened the section on data protection and assurance to ensure we have appropriate guidance for staff to ensure that we are compliant.
- 12.2 We have inserted a specific statement on the publishing of CCTV or covert footage to the general public to help identify those involved in an offence to ensure that officers refer such decisions for proper considerations and to avoid any breaches of data protection.
- Appendix 1 – updated a job title.

5. Consultation

5.1 The report following the inspection was received by the following parties:

- Chief Executive; and
- Director of Law and Governance

6. Anticipated Outcomes or Impact

6.1 The Audit and Accounts Committee continues to be informed of the necessary and proportionate use of RIPA across the Authority through regular updates as required including whether there is a need to update the policy.

7. Reason for the recommendation

7.1 It is recommended that the committee continues to receive information on the use of RIPA.

8. Alternative Options considered

8.1 There are no alternative options considered at this time.

9. Background documents

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985:

Regulation of Investigatory Powers Act 2000

Protection of Freedoms Act 2012

10. Appendices

- Appendix A – Policy
- Appendix B – outcome of IPCO inspection dated 1 March 2021