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| AUDIT COMMITTEE | AGENDA ITEM No. 9 |
| 12 FEBRUARY 2018 | PUBLIC REPORT |

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| Report of: | Fiona McMillan Interim Director of Law and Governance | |
| Cabinet Member(s) responsible: | Councillor David Seaton, Cabinet Member for Resources | |
| Contact Officer(s): | Ben Stevenson, Compliance Manager (Governance) | Tel. 452387 |

USE OF REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

| RECOMMENDATIONS | |
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| FROM: Fiona McMillan, Interim Director of Law and Governance | Deadline date: |
| <p>It is recommended that the Audit Committee</p> <p>1. <i>Audit Committee is asked to receive and consider the use of RIPA as detailed in this report and to receive a further update on that use in a future report</i></p> | |

1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Audit Committee as a scheduled report on the Council's use of the powers contained within the Regulation of Investigatory Powers Act (RIPA) in accordance with the established Work Programme 2017/2018.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to provide Members with an understanding of RIPA and when these powers may be used, the governance and oversight the use of such powers require. The report also provides Members with an overview of those occasions where RIPA has been used.
- 2.2 This report is for the Audit Committee to consider under its Terms of Reference No. 2.2.1.13

To monitor Council policies on "raising concerns at work" and the anti-fraud and anti-corruption strategy and the Council's complaints process.

3. TIMESCALES

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|---|-----------|----------------------------------|--|
| Is this a Major Policy Item/Statutory Plan? | NO | If yes, date for Cabinet meeting | |
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4. BACKGROUND AND 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.

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.

- 4.2 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.

- 4.3 RIPA also permits the Council, via the National Anti-Fraud Network (NAFN) to require the release 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.

- 4.4 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.

- 4.5 In addition to RIPA, the Protection of Freedoms Act 2012 introduced two key important provisions for local authorities such as Peterborough City 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.

- 4.6 The Council controls the governance of the RIPA process through the Director of Legal and Governance with reports to the Audit Committee and senior management.

5. SURVEILLANCE UNDERTAKEN

There has been one application in this financial year as detailed below, which commenced on 6 December 2017, which is the first use of the powers since February 2015.

| Date approval | Type of Surveillance | Reason | Outcomes |
|---|----------------------|-------------|--|
| Council approval: 28 November 2017 Magistrates approval: 4 December 2017 | Covert | Fly tipping | Covert cameras were placed in a known flytipping hotspot for a period of six weeks commencing from 6 December. This location had experienced high volumes of fly tipping over the last 12 months however unfortunately cameras were not successful in capturing evidence on this occasion. However whilst visiting the the location, officers did find evidence in a nearby location which they are acting on. |

6. CONSULTATION

6.1 Consultation has taken place with the following parties:

- Cabinet Member for Waste and Street Scene
- Director of Legal and Governance; and
- Assistant Director of Communities and Safety.

7. ANTICIPATED OUTCOMES OR IMPACT

7.1 The Audit Committee continues to be informed of the necessary and proportionate use of RIPA across the Authority through regular updates. It is also anticipated that changes to policy, processes and the impact of any guidance will be presented to the committee to ensure that it remains fully appraised on RIPA.

The council's policy was last formally reviewed by Members in 2015 and will be reviewed again by this committee later this year. It is reviewed annually in the interim by officers in order to ensure it is up to date and if changes are considered necessary then it is returned to the committee. This will happen during the coming year.

8. REASON FOR THE RECOMMENDATION

8.1 Given the authority's responsible and low use of these powers, it is recommended that the committee continues to receive information on the use of RIPA only when those processes

have been used and receives a reviewed policy this coming year.

9. ALTERNATIVE OPTIONS CONSIDERED

9.1 There are no alternative options considered at this time.

10. BACKGROUND DOCUMENTS

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

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