

AUDIT COMMITTEE	AGENDA ITEM No. 13
11 February 2019	PUBLIC REPORT

Report of:	Fiona McMillan, Director of Law and Governance & Monitoring Officer	
Cabinet Member(s) responsible:	Councillor David Seaton, Cabinet Member for Resources	
Contact Officer(s):	Ben Stevenson, Data Protection Officer	Tel. 452387

USE OF REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

RECOMMENDATIONS	
FROM: Fiona McMillan, Director of Law and Governance & Monitoring Officer	Deadline date:
<p>It is recommended that the Audit Committee</p> <p>1. <i>Receives and notes the outcome of the inspection of Peterborough City Council by the Investigatory Powers Commissioner's Office (IPCO)</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 2018/2019.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to provide Members with an overview of the inspection by the Investigatory Powers Commissioner's Office (IPCO) in November 2018 and the subsequent report received in January 2019.

- 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

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.

Covert surveillance might mean the use of CCTV to monitor an individual's movements 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 one which is considered 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.

- 4.2 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.
- 4.3 The Council controls the governance of the RIPA process through the Director of Law and Governance & Monitoring Officer with reports to the Audit Committee and senior management.

5 IPCO Inspection

- 5.1 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.

Local authorities are inspected on a two to three year basis, with our last inspection having been in 2015.

- 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 of both authorities at the same time.

It has also been agreed that Ben Stevenson will act as central 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).

- 5.3 As part of the inspection, Mr Gration, the Inspector, met with officers from areas such as the Prevention & Enforcement Service, Planning, Trading Standards, Internal Audit and CCTV. This was an opportunity for those officers to understand any best practice which could be shared by Mr Gration as well as raising any issues and concerns they had.

- 5.4 We were aware that our policy would need to be updated to reflect a policy across both councils and also to take into account the changes to the Codes of Practice issued in August 2018. A draft policy was produced by October 2018. However aware of the impending inspection, we decided to take the opportunity to obtain the IPCO's view of the draft policy during the inspection.
- 5.5 The inspection report is a very positive one and it highlights:
- the compliant and fit for purpose structure we have in place to ensure compliance
 - recent training having been undertaken and the need to continue to promote awareness of RIPA to ensure compliance
 - our approach to informing Members of the use of the powers at each Audit Committee
 - in addition to the policy, we have an easy read guide which is available for officers
 - the excellent understanding of RIPA we have in place across the SRO, central monitoring officer and authorising officers
- 5.6 The inspection did highlight some areas to help improve our applications such as providing greater detail on how we have assessed any collateral intrusion during our activities and also ensuring that we do document any variation between what activity is proposed and what is authorised.
- 5.7 Mr. Gration also highlighted that whilst we had covered in great detail our approach to the use of social media in surveillance, he felt that we needed to consider the way in which we had oversight of such activities and how we can audit the use of social media during investigations.
- 5.8 Mr. Gration also recommended that we ensured that the section of the draft policy regarding a CHIS is reviewed for clarity and made easier for officers to understand exactly what a CHIS is and the process to follow.
- 5.9 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, we will have a well written, meaningful and compliant policy in place.

6. SURVEILLANCE UNDERTAKEN

- 6.1 There has been no surveillance undertaken by Peterborough City Council since the last report to Audit Committee.

7. CONSULTATION

- 7.1 The report following the inspection was received by the following parties:
- Chief Executive; and
 - Director of Law and Governance

8. ANTICIPATED OUTCOMES OR IMPACT

- 8.1 The Audit Committee continues to be informed of the necessary and proportionate use of RIPA across the Authority through regular updates. We will also be presenting an updated policy at the next meeting of this committee.

9. REASON FOR THE RECOMMENDATION

- 9.1 It is recommended that the committee continues to receive information on the use of RIPA and receives an updated draft policy based on the changes in the Code of Practice and the IPCO

inspection.

10. ALTERNATIVE OPTIONS CONSIDERED

10.1 There are no alternative options considered at this time.

11. BACKGROUND DOCUMENTS

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

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