

AUDIT COMMITTEE	AGENDA ITEM No. 6
21 SEPTEMBER 2015	PUBLIC REPORT

Cabinet Member responsible:	Cllr David Seaton, Cabinet Member for Resources	
Committee Member responsible:	Cllr Kim Aitken, Vice Chair, Audit Committee	
Contact Officer(s):	Kim Sawyer, Director of Governance Ben Stevenson, Compliance Manager (Governance)	☎ 452 361 ☎ 452 387

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) REPORT

RECOMMENDATIONS	
FROM : Kim Sawyer, Director of Governance	Deadline date : N/A
1. Audit Committee is asked to (a) receive, consider and endorse this report on the use of RIPA for the period since 1 March 2015; (b) note the recommendations of the OSC inspection and agree a further report to Audit Committee regarding actions against the recommendations.	

1. ORIGIN OF REPORT

- 1.1. This report is submitted to the Committee as a scheduled report on the Council's use of the RIPA powers in accordance with the established Work Programme 2015 / 2016.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to provide Members with an understanding of RIPA and an also overview of the Council's use of RIPA powers in the period since 1 March 2015.
- 2.2 This report is to be considered in accordance with its Terms of Reference 2.2.1.14 - To monitor Council policies on "raising concern at work" and the anti-fraud and anti-corruption strategy and the Council's complaints process.

3. BACKGROUND

- 3.1 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 the Regulation of Investigatory Powers Act. The Council is only able to undertake directed surveillance, meaning that it must be for the purpose of a specific investigation or operation.
- 3.2 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.

- 3.3 RIPA also permits the Council, via the National Anti-Fraud Network (NAFN) to require telecommunications and postal companies to 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.
- 3.4 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. The Council must obtain judicial approval for the use of such powers. It should be noted that the Council has never authorised the use of a CHIS since the commencement of RIPA.
- 3.5 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.

4. **APPROVING INVESTIGATIONS**

- 4.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a statutory process for authorising directed covert surveillance and the use of a 'covert human intelligence source' (CHIS) e.g. undercover agents. The Council is not permitted to undertake intrusive surveillance, i.e. surveillance in private premises or vehicles.
- 4.2 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 factor is that whilst the Council may authorise an application, we must also obtain judicial approval from a Justice of Peace.
- 4.3 Any investigations must be properly authorised by one of the Council's Authorising Officers in accordance with our policies and procedures. The powers contained within the Act can only be used for the purpose of preventing or detecting crime or preventing disorder where the threshold test is met.
- 4.4 The Council controls the governance of the RIPA process through the Director of Governance who reports to CMT and Audit Committee.

5. **SURVEILLANCE UNDERTAKEN**

- 5.1 There have been no applications in the period of 1 March to 10 June 2015 either relating to covert surveillance or to communications data.

- 5.2 It should be noted in making the report to the committee of March 2015, we reported that there had been one application made in February 2015. It was not possible to report on the outcome of that application at the time of writing the report due to the fact that the operation had not commenced. The outcome is now updated as below.

Date of authorisation	Type of Covert Surveillance	Reason	Outcome
11 February 2015	Covert	Test purchasing of age restricted products namely tobacco	Five premises were visited and tobacco products were sold to underage individuals at two premises. The Council will take the appropriate action against those concerned.

There have been no further applications to use RIPA powers since this date.

6. INSPECTION

- 6.1 His Honour Norman Jones QC, Assistant Surveillance Commissioner, undertook an inspection of the Council's approach to RIPA on 9 June 2015. The Council has to undergo an inspection by the Office of the Surveillance Commissioner (OSC) on a three yearly basis.

- 6.2 As a result of the inspection, we received a report which commended much of our approach to RIPA as well as the knowledge demonstrated by Director of Governance, Compliance Manager and Head of Regulatory Services. The report recommended:

- updating our policy and procedures,
- raising awareness of RIPA throughout the council
- reducing the number of authorising officers in line with the volume of applications we make
- establishing a regular training programme

We have already begun to work on these changes to our documentation and processes to ensure we further instil and maintain best practice across the Council. It is proposed to bring a report to the next meeting of the Audit Committee to advise on progress against these recommendations.

- 6.3 On 10 June 2015, 20 council officers underwent training from an experienced external training provider to ensure that we continue to act in accordance with RIPA in both its application and approval process. We will seek to deliver annual internal refresher training to officers who may consider the using these powers to ensure that best practice is embedded in enforcement work.

7. CONSULTATION

- 7.1 Consultation has taken place between the following parties:
- Director of Governance; and
 - Chief Internal Auditor.

8. ANTICIPATED OUTCOMES

- 8.1 That 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 apprised on RIPA.

9. REASONS FOR RECOMMENDATIONS

- 9.1 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.

10. ALTERNATIVE OPTIONS CONSIDERED

- 10.1 There are no alternative options as this is a statutory requirement.

11. IMPLICATIONS

- 11.1 There are no implications arising from this report which are not already addressed in the report. The Council has already established a positive profile and has been congratulated on its adherence to the legislation by the Office of Surveillance Commissioners.

12. BACKGROUND DOCUMENTS

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

- 12.1 Covert Surveillance and Property Interference Revised Code of Practice