

AUDIT COMMITTEE	AGENDA ITEM No. 7
25 MARCH 2019	PUBLIC REPORT

Report of:	Fiona McMillan, Director of Law and Governance & Monitoring Officer	
Cabinet Member(s) responsible:	Cllr David Seaton, Cabinet Member for Resources	
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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> <ol style="list-style-type: none"> 1. <i>Receives and agrees the revised joint Peterborough and Cambridgeshire RIPA policy</i> 2. <i>Receives an update into the usage of RIPA powers by Peterborough City Council</i> 	

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)

2. PURPOSE AND REASON FOR REPORT

- 2.1 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 these powers
- a report detailing the usage of the powers
- The draft policy for both Peterborough City Council and Cambridgeshire County Council

- 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 Councils 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 Councils 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 Councils are able to undertake directed surveillance meaning that it must be for the purpose of a specific investigation or operation. The Councils are 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 Councils, 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.

4.4 The Councils 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 Councils have 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 Councils 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 Councils' 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 Peterborough City Council had a clearly written and robust policy alongside an easy access guide available to officers as well as a reporting structure in place. Peterborough City Council has a well regarded set of officers with strong experience and knowledge of RIPA matters. Following staffing changes, the structure and knowledge at Cambridgeshire County Council was no longer present. The adoption of an updated Peterborough policy and structure enables the necessary rigour and oversight to be put in place across both Councils.

4.7 At the last Audit Committee, a report was presented on the outcome of the inspection and subsequent report by the Investigatory Powers Commissioner's Officer (IPCO).

5. POLICY REVIEW

5.1 The proposed joint policy has been revised in light of the revised Codes of Practice and also in light of the comments of the Inspector. Aside from updating to reflect changes in job titles and the policy covering both councils, the key changes are highlighted in the below.

5.2 General Observation Activities (page 9)

This is a new section to provide some clarity for officers on when they may not need surveillance when they are undertaking their normal daily duties.

5.3 Authorising Covert Direct Surveillance (page 11)

This section has been updated to reflect what conditions need to be met to enable the surveillance to be authorised. Whilst the Codes of Practice have always emphasised the necessity and proportionality within any application, officers should also ensure that the application is fair and balanced.

It also reflects the need to ensure that any proposed activity is covered by the authorisation. For example it is made explicit that both static and mobile surveillance activities are authorised rather than simply authorising surveillance.

The section also makes clear that potential collateral intrusion is considered fully and how this will be minimised. It may also be necessary to obtain a new authorisation should there be any material changes during the operation.

5.4 When surveillance falls outside of RIPA (page 15)

Given the threshold test for when RIPA applies for a local authority, there will inevitably be surveillance activity which falls outside of the RIPA framework. As such we have included a section here for officers to be reminded that any activity which could be considered surveillance should be necessary and proportionate to what they hope to achieve. We expect officers to consider whether their activity does meet the RIPA Test and review with their manager to ensure that no application is required but also that the activity is appropriate.

5.5 CCTV (page 15)

The section has been updated to reflect the approach to be taken where the use of CCTV cameras is either directly controlled by the Police or operated by council officers on behalf of the Police. Council officers must be aware of what activity has been authorised and understand the limits or restrictions of what has been authorised.

5.6 Aerial Surveillance (page 15)

It should be stressed that neither council has such capability however it is recognised that it may be considered in the future and we should note its existence as a *potential* option and include this in our policy.

- 5.7 **Covert Human Intelligence Source (pages 17 to 21)**
The Inspector highlighted this an area where we need to improve the clarity of our policy. We have now included a very clear opening to ensure that any consideration of the use a CHIS is discussed with the SRO first. Given the higher risks attracted by the use of a CHIS, we have decided that the Chief Executive would be the authorising officer in these matters.
- The section includes the definition of a CHIS as well as examples for officers of when a CHIS authorisation may be required. It also includes greater detail on the necessity and proportionality aspects of any application.
- 5.8 **Use of a Juvenile as a CHIS (page 21)**
The use of a juvenile in such a way would attract a greater risk than an adult and therefore we have a seperate section for this specific type of application.
- 5.9 **The use of Social Media/internet in investigations (page 23 to 24)**
Although a growth area of often publicly accessible intelligence, we must ensure that our use of social media such as FaceBook or Twitter complies with the right of an individual to privacy. This section provides the framework for that work and also when this work may need a suitable authorisation. This section also covers access to information in a public setting as well as the use of covert accounts/identities by officers should be recorded to ensure that we have clear governance of such activity. This may apply when Trading Standards officers are investigating rogue traders and are making test purchases online.
- 5.10 **Acquisition of Communications Data (page 33)**
This has been updated to reflect the changes in the crime threshold from 1 November 2018 for service or traffic data which is restricted to serious crime. It should be noted that both councils would only require subscriber data which can be acquired for any criminal offence

6. SURVEILLANCE UNDERTAKEN

- 6.1 There have been no covert surveillance applications since last reported to this committee in March 2018. In addition, there have been no applications for communications data made by Peterborough City Council since 2013.

7. CONSULTATION

- 7.1 The policy has been reviewed by Director of Law and Governance with consultation of the authorising officers.

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.

The draft policy is agreed for use for both Councils and reviewed on annual basis.

9. REASON FOR THE RECOMMENDATION

- 9.1 It is recommended in the Codes of Practice that the committee continues to receive information on the use of RIPA and and also reviews the policy on an annual basis. In order to assist the committee in these duties, training will be provided after May 2019 to ensure that any new members of the committee receive training.

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

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