

<b>AUDIT COMMITTEE</b>	AGENDA ITEM No. 7
<b>22 MARCH 2021</b>	<b>PUBLIC REPORT</b>

Report of:	Fiona McMillan, Director of Law and Governance & Monitoring Officer	
Contact Officer(s):	Ben Stevenson, Data Protection Officer/Head of Information Governance	Tel. 01733 452387

<b>USE OF REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)</b>
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<b>RECOMMENDATIONS</b>	
<b>FROM:</b> Fiona McMillan, Director of Law and Governance & Monitoring Officer	<b>Deadline date:</b>
<p>It is recommended that the Audit Committee</p> <ol style="list-style-type: none"> <li>1. <i>Notes the outcome of the inspection of Peterborough City Council by the Investigatory Powers Commissioner's Office (IPCO)</i></li> <li>2. <i>Notes the use of powers within the Regulation of Investigatory Powers Act (RIPA)</i></li> </ol>	

**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 said powers
- a report detailing the usage of the powers
- the inspection by the Investigatory Powers Commissioner's Office (IPCO) in February 2021 and the subsequent feedback received on 2 March 2021.

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?	<b>NO</b>	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 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 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 last IPCO inspection concluded that 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 along with a well-regarded set of officers with strong experience and knowledge of RIPA matters. These officers and policy are also shared with Cambridgeshire County Council.

## **5 IPCO INSPECTION**

- 5.1 The Investigatory Powers Commissioner's Officer (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. Both councils were last inspected in 2018. The outcome of that inspection was reported to this committee and the recommendations to update the councils' policy was noted, and actioned.

- 5.2 The councils were notified of an inspection by IPCO in January 2021.

It has become apparent to IPCO that in recent years, that for a variety of reasons, which include reduced resources, greater access to data-matching and the use of overt rather than covert law enforcement activity, authorities like ours have granted far fewer RIPA authorisations.

IPCO are in the process of reviewing their approach to inspections but in the short term and given the pandemic, they have adopted a more flexible approach by using video calling.

- 5.4 Prior to the inspection, the council 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.

- 5.5 As a result of the inspection, feedback was provided and again is very positive. The feedback highlighted:

- The one recommendation from the 2018 inspection has been discharged and no further recommendations have been made following the 2021 inspection
- Elected Members are informed of the council's usage of powers in line with the Codes of Practice
- The council was alive to the possibility of social media research being undertaken and its training material assist staff in ensuring this research does not move into surveillance territory without authorisation in place
- The inspector commented how pleasing it was to see the array of training materials including simple to understand videos for staff and highlighted this as demonstrating good practice
- There are clearly defined processes on the handling of evidence/material gathered as well as the destruction of such material in line with the retention schedule for the services concerned
- The policy should be updated again to include reference to the appropriate sections of the CHIS Code of Practice in relation to social media

5.6 Having highlighted the need for the addition of sections from the CHIS Code of Practice, the ability of the council to monitor the use of social media through policy and audits of access was discussed. Whilst the council has the ability to undertake reviews of individual officer's internet usage history in some situations, this must also be proportionate and necessary. Officers will reflect on how best to ensure appropriate controls are in place but also key to this is ensuring that officers understand when and how they should use social media to investigate.

5.7 A reviewed policy will be brought back to this committee during the coming year which will address the above points.

## **6. SURVEILLANCE UNDERTAKEN**

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

## **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 as required. We will also be presenting an updated policy in due course.

## **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

## **12. APPENDICES**

12.1 Appendix A – Letter from IPCO