

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

AUDIT COMMITTEE

31 January 2023

Report of the Assistant Director of Finance (Audit)

Regulation of Investigatory Powers Act (RIPA)

1. Purpose

- 1.1 To provide Members with an update on the use of Council's statutory powers provided for under the Regulation of Investigatory Powers Act (RIPA) 2000 as amended by the Investigatory Powers Act (IPA) 2016.

2. Information and Analysis

- 2.1 In discharge of this Committee's responsibilities for ongoing monitoring of activity in this area, Audit Services were requested to produce regular monitoring reports on activity for review by Members and to provide an assurance on the effective operation of the Council's Policy relating to the Act.
- 2.2 The Council's Audit Committee last received a RIPA update report from Assistant Director of Finance – Audit, in July 2022. This provided members with details of non-RIPA applications made for the 6 month period to 31 June 2022.
- 2.3 This latest report covers the period from 01 July 2022 to 31 December 2022 and sets out details of applications made.
- 2.4 RIPA and the IPA contain powers for various bodies to carry out covert surveillance, requests for communications data and other covert activities. Limited covert powers under RIPA are available to local authorities and can be used in appropriate circumstances in accordance

with the requirements of the legislation to support the delivery of their functions. The Investigatory Powers Commissioner's Office (IPCO) oversees the use of covert powers under RIPA by local authorities.

- 2.5 The Council can only undertake RIPA activity if the proposed operation is approved by one of the authorising officers. The authorising officer must also be satisfied that the proposed directed surveillance is proportionate to what is sought to be achieved. Communications Data requests are subsequently approved by the Council's Single Point of Contact (SPOC) at the National Anti-Fraud Network (NAFN). This process provides safeguards to establish a high level of confidence that all data obtained under the powers overseen by IPCO, is obtained lawfully.

Access to Communications Data

- 2.6 The Assistant Director of Finance – Audit acts as the Senior Responsible Officer (SRO) for approvals of RIPA and Communications Data (CD) requests on behalf of the Council. One application was made in this period in respect of access to communications data (CD). This request was submitted by Trading Standards and was a follow up amendment of the request previously reported to Audit Committee. The amendment was to assist with a live investigation that they were leading. The SRO considered that the request was deemed necessary, planned enquiries were proportionate and for a legitimate purpose. The purpose of the request was to support a live Trading Standards investigation around counterfeit tobacco operations. The request was also assessed and approved by the SPOC at NAFN.

Authorisation of Directed Surveillance

- 2.7 No applications have been received in this period in relation to directed surveillance.

Non- RIPA requests

- 2.8 Two non-RIPA requests have been received for authorisation in this period. These relate to two separate internal investigations that required access to Derbyshire County Council email accounts to establish facts. Whilst the requests did not fall within RIPA, the same considerations and clearly defined search criteria were applied. The approvals considered that the requests were deemed necessary, planned enquiries were proportionate, and for a legitimate purpose. They were reviewed in conjunction with the Director of Legal and Democratic Services.

Policy Refresh and Training

- 2.9 The RIPA update report received by Audit Committee in July 2022 noted that the Council's RIPA policy was overdue for refresh and that work on this was scheduled for 2022/23. This was to follow the release of updated Codes of Practice about use of overt investigatory powers and application of RIPA legislation, by the UK Government Home Office.
- 2.10 The revised Codes were originally due to be released by the Home Office Spring 2022, but there was a delay to approval, debate by Houses of Parliament and subsequent publication. In line with the last report to members about RIPA, the IPCO was contacted to enquire about expected timing for release of the new Codes. The IPCO were, themselves, awaiting updates and could not confirm timing. Following IPCO advice, further monthly checks on the Home Office website have been made to see if updated Codes had been published, so that our Policies could be updated.
- 2.11 The monthly check in January 2023 identified that the revised Codes were published on the Home Office webpages on 13 December 2023. Work has now started to update the Council Policy and guidance about RIPA to reflect the recent changes. It is anticipated that the policy refresh will be completed in the coming weeks and that internal stakeholders will be consulted on any proposed changes.
- 2.12 Once internal consultation is completed, the final draft will then be brought to a subsequent Audit Committee for consideration. This will be followed by training for appropriate officers, and further awareness work to remind officers about RIPA.

3. Consultation

- 3.1 Arrangements will be made for internal consultation with relevant stakeholders. No external or formal consultation is required, as the Policy will be designed to reflect compliance with legislative requirements.

4. Alternative Options Considered

- 4.1 Audit Committee could choose not to consider the report content and recommendations.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

- 6.1 File held electronically by the Assistant Director of Finance (Audit).

7. Appendices

- 7.1 Appendix 1 – Implications.

8. Recommendation(s)

That the Audit Committee note that:

- a) In the period 01 July 2022 to 31 December 2022 one application relating to Communications data was made under the Council's powers relating to RIPA.
- b) Two requests for access to internal emails were approved to support internal investigations: these fall outside the scope of RIPA but were assessed in the spirit of the guidance and in accordance with current Council policy.
- c) A review of the Council's RIPA Policy is in progress, following recent publication of revised Home Office guidance.
- d) Training and awareness activity will be programmed following the RIPA Policy refresh.

9. Reasons for Recommendation(s)

- 9.1 It is prudent and responsible practice for the Audit Committee to be kept informed of the powers exercised and actions taken under Council duties arising from RIPA.
- 9.2 The IPCO recommends that members received updates at least twice a year to notify them whether any powers have been used or not.

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Appendix 1

Implications

Financial

1.1 None

Legal

2.1 The Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 regulate the use of a range of investigative powers by a variety of public authorities. Specific guidance is set out in the following Codes of Practice:

- Investigatory Powers Act 2016 - Codes of Practice
- Covert surveillance code of practice (as updated 2022)
- Code of practice for investigation of protected electronic information
- Covert Human Intelligence Sources Code of practice 2022
- Interception of Communications code of practice 2022.

2.2 Collectively, this legislation and guidance provides a statutory framework for the authorisation and conduct of certain types of covert surveillance. Its aim is to provide a balance between preserving a person's right to privacy and enabling enforcement agencies to gather evidence for effective enforcement action. Local authorities can only use these powers for the prevention and detection of crime and their use is subject to review by the independent Investigatory Powers Commissioner's Office.

Human Resources

3.1 Consultation will take place with relevant internal stakeholders about proposed updates to the policy. Appropriate internal training and awareness will follow.

Information Technology

4.1 None

Equalities Impact

5.1 None

Corporate objectives and priorities for change

6.1 The Council is committed to ensuring good governance and compliance with applicable laws and regulations.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None