

**Executive Board**  
**19 July 2022**

<b>Subject:</b>	Regulation of Investigatory Powers Policy
<b>Corporate Director(s)/Director(s):</b>	Clive Heaphy, Interim Corporate Director for Finance and Resources and Section 151 Officer Malcolm Townroe, Director for Legal and Governance and Monitoring Officer
<b>Portfolio Holder(s):</b>	Councillor Adele Williams, Portfolio Holder for Finance
<b>Report author and contact details:</b>	Naomi Matthews, Team Leader – Data Protection <a href="mailto:naomi.matthews@nottinghamcity.gov.uk">naomi.matthews@nottinghamcity.gov.uk</a> Alison Liversidge, Information Compliance Specialist <a href="mailto:alison.liversidge@nottinghamcity.gov.uk">alison.liversidge@nottinghamcity.gov.uk</a>
<b>Other colleagues who have provided input:</b>	
<b>Subject to call-in:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Key Decision:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>Criteria for Key Decision:</b> (a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision <b>and/or</b> (b) Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of expenditure:</b> <input type="checkbox"/> Revenue <input type="checkbox"/> Capital	
<b>Total value of the decision:</b> Nil	
<b>Wards affected:</b> All	
<b>Date of consultation with Portfolio Holder(s):</b>	
<b>Relevant Council Plan Key Outcome:</b>	
Clean and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input checked="" type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Healthy and Inclusive	<input type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Financial Stability	<input type="checkbox"/>
Serving People Well	<input checked="" type="checkbox"/>

**Summary of issues (including benefits to citizens/service users):**

The Regulation of Investigatory Powers Act 2000 (RIPA) and the Codes of Practice issued under section 71 of the Act regulate the way in which the Council conducts surveillance for the purposes of law enforcement. The Council is required to consider a report annually on the use of its RIPA powers, and review and approve its RIPA policies.

**Does this report contain any information that is exempt from publication?**

No

**Recommendation(s):**

1. To approve the updated Regulation of Investigatory Powers Act (RIPA) Policy and Guidance, which now incorporates the revised Online Research and Investigation Policy, attached as Appendix 1.

2. To note that the annual report in relation to the use of RIPA powers will be submitted to the Council's Audit Committee on an annual basis, as part of Information Assurance reporting.

3. To note that the RIPA Policy will be submitted to the Executive Board for review and approval on an annual basis, in line with the Home Office Code of Covert Surveillance Property Interference and the Code of Practice for Covert Human Intelligence Sources 2018.

4. To note the Council's Senior Responsible Officer and Authorising Officers in relation to RIPA procedures.

**1. Reasons for recommendations**

1.1 The Council is required to consider a report annually on the use of its RIPA powers, and review and approve its RIPA policies, to ensure compliance with the requirements of the associated legislation.

**2. Background**

2.1 The RIPA provides a statutory framework regulating the use of directed surveillance and the conduct of covert human intelligence sources (informants or undercover officers) by public authorities. RIPA requires that public authorities, including local authorities, use covert investigation techniques in a way that is necessary, proportionate and compatible with human rights. RIPA also provides for the appointment of a Chief Surveillance Commissioner to oversee the way in which public authorities carry out covert surveillance.

2.2 RIPA governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities. The Council uses powers under RIPA to support its core functions for the purpose of the prevention and detection of crime where an offence may be punishable by a custodial sentence of six months or more, or is related to the underage sale of alcohol and tobacco.

- 2.3 The two powers available to local authorities under RIPA are directed surveillance and covert human intelligence sources. RIPA sets out the procedures that the Council must follow if it wishes to use directed surveillance techniques in order to support core function activities (e.g., typically those undertaken by Trading Standards, Environmental Health and the Counter Fraud Team). The information obtained as a result of such operations can later be relied upon in court proceedings, providing that the requirements of the RIPA are complied with.
- 2.4 The Investigatory Powers Commissioner’s Office (IPCO) carries out inspections every three years. The Council’s next inspection is due any time from March 2023 onwards. At the last inspection in March 2020, the IPCO discharged the two previous recommendations and found that the current level of compliance meant that there was no need for a physical inspection at the time of the telephone inspection. It was noted that it is important to deal with directed surveillance applications in a consistent way and that additional training should be offered to staff who may utilise directed surveillance within their investigations. The IPCO have previously noted that annual and regular RIPA reports be submitted to elected members.
- 2.5 The updated Policy at Appendix 1 will provide guidance to all appropriate officers on how to make use of the powers. The Council may use these powers to investigate a varied range of offences, however, the powers are used rarely in practice as they are only used when no alternative to covert surveillance can be found. It should also be noted that the nature of criminal investigation has changed over the last few years due to increased use of social media by members of the public; therefore, this has prompted the need for a specific policy in relation to Online Research and Investigation, which forms an Appendix (1) to the wider RIPA Policy. The updated Policy recommended to members is compliant with the requirements of the RIPA and will be published on the Council’s website.
- 2.6 Detailed in the table below are five distinct roles within the Policy and the names of the persons whom currently hold those positions:

<b>Role</b>	<b>Role Description</b>	<b>Post Holder(s)</b>
Applicants	The applicant is usually the investigating officer who applies for authorisation to carry out covert surveillance	This can be any authorised investigating officer
Senior Responsible Officer (SRO)	Required by the IPCO, with oversight of the Council’s use of Part I and II powers	Malcolm Townroe (Director for Legal and Governance and Monitoring Officer)
Authorising Officers	Must be a senior officer (of at least the level of Head of Service or equivalent) authorised by the Council, who will consider all applications for authorisation to carry out	The Council currently has five Authorising Officers: <ul style="list-style-type: none"> <li>• Mel Barrett (Chief Executive and Head of Paid Service)</li> <li>• Frank Jordon (Corporate Director for Resident Services)</li> </ul>

	covert surveillance in accordance with the RIPA	<ul style="list-style-type: none"> <li>• Andrew Errington (Director for Community Protection)</li> <li>• James Douglas (Head of Operations for Community Protection)</li> <li>• Paul Millward (Head of Scrutiny and Resilience)</li> </ul>
Co-ordinating Officer	Responsibility for the day-to-day RIPA management and administrative processes observed in obtaining an authorisation and advice thereon	Naomi Matthews (Data Protection Officer and Senior Solicitor)

### 3. Other options considered in making recommendations

- 3.1 To do nothing: the Council is required by law to maintain an up-to-date RIPA Policy and ensure that surveillance is being carried out in accordance with the RIPA requirements and associated guidance.

### 4. Consideration of Risk

- 4.1 There is a risk that the Council will be failing to comply with its statutory duty under the RIPA to ensure that the policy is updated and approved by the Council each year if this report does not go to Executive Board in a timely manner.

### 5. Finance colleague comments

- 5.1 The purpose of this report is to ensure that the RIPA policy and revised Online Research and Investigation Policy (including social media) is updated for review by the Executive Board. Failure to update and observe the RIPA could potentially constitute a data breach, leading to possible financial risk to the Council. The revised report guidance should be implemented and adhered to in order to mitigate this financial risk.

Comments provided by Tania Clayton Pérez, Senior Commercial Business Partner, on 30 June 2022.

### 6. Legal colleague comments

- 6.1 Failure to observe the RIPA could potentially constitute a breach of data protection and human rights legislation, and could therefore result in significant reputational and/or financial damage to the Council. Compliance with this policy and guidance document will help avoid legal challenges to evidence gathered during the course of investigations under the Human Rights Act 1998 and the RIPA. Compliance will furthermore assist the Council is working, with its partners, towards the reduction of crime and disorder by ensuring evidence gathered by the use of covert surveillance has been acquired legally

and that the correct procedures have been followed, including authorisation by a justice of the peace or magistrate.

Comments provided by Beth Brown, Head of Legal and Governance, on 10 June 2022.

## **7. Crime and Disorder Implications**

7.1 The RIPA Policy and social media guidance supports criminal prosecutions by ensuring that lawful surveillance takes place to help reduce crime and disorder.

## **8. Equality Impact Assessment (EIA)**

8.1 The equality impact of the proposals in this report have been assessed and an EIA was completed in 2019 and resubmitted in 2022. An EIA is attached as Appendix 2, and due regard will be given to any implications identified in it.

## **9. Data Protection Impact Assessment (DPIA)**

9.1 A DPIA is not required because there are no data protection implications associated with the adoption of this policy.

## **10. Carbon Impact Assessment (CIA)**

10.1 A CIA is not required because there is no carbon impact associated with the adoption of the RIPA Policy.

## **11. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

11.1 Letter from the Office of Surveillance Commissioners, 2 April 2020

## **12. Published documents referred to in this report**

12.1 Covert Surveillance and Property Interference – Revised Code of Conduct, August 2018

12.2 Covert Human Intelligence Sources – Revised Code of Conduct, August 2018