

Executive Board – 18 July 2023

Subject:	Regulation of Investigatory Powers (RIPA) Policy
Corporate Director(s)/Director(s):	Ross Brown, Corporate Director, Finance and Resources and Section 151 Officer, Malcolm Townroe, Director of Legal and Governance and Monitoring Officer.
Portfolio Holder(s):	Councillor Audra Wynter, Portfolio Holder for Finance and HR
Report author and contact details:	Naomi Matthews, Team Leader Information Compliance and Data Protection Officer Alison Liversidge, Information Compliance Specialist 0115 8763952
Other colleagues who have provided input:	Beth Brown, Head of Legal and Governance 0115 8762196
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Criteria for Key Decision:	
(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	
and/or	
(b) Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input type="checkbox"/> No	
Type of expenditure: <input type="checkbox"/> Revenue <input type="checkbox"/> Capital If Capital, provide the date considered by Capital Board	
Total value of the decision: Nil	
Wards affected: All	
Date of consultation with Portfolio Holder(s):	
Relevant Council Plan Key Outcome:	
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):	
<p>The Regulation of Investigatory Powers Act 2000 (RIPA) and the Codes of Practice issued under section 71 of that Act regulate the way in which the Council conducts surveillance for the purposes of law enforcement.</p> <p>The Council are required annually to consider a report on the Council's use of its RIPA powers and review and approve the Council's RIPA policies.</p>	
Does this report contain any information that is exempt from publication?	
No	

Recommendation(s):
1. To approve the Regulation of Investigatory Powers Policy and Guidance which incorporates the Online Research and Investigation Policy, as attached at Appendix 1
2. To note that the annual report in relation to the use of RIPA powers will be reported to the City Council's Audit Committee on an annual basis as part of the Information Assurance Update
3. To note that the RIPA Policy will be submitted to Executive Board for review and approval on an annual basis in line with the Home Office Code of Covert Surveillance Property Interference 2018 and the Code of Practice for CHIS 2022;
4. To note the Council's Senior Responsible Officer (SRO) and Authorising Officers in relation to RIPA procedures.

1. Reasons for recommendations

1.1 To ensure compliance with the Regulation of Investigatory Powers Act 2000.

2. Background (including outcomes of consultation)

The Regulation of Investigatory Powers Act 2000 ("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. The Act requires public authorities, including local authorities, to 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.

RIPA governs the the use of covert surveillance by local authorities. The Council uses powers under RIPA to support its core functions for the purpose of 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.

The two powers available to local authorities under RIPA: are directed surveillance and covert human intelligence sources ("CHIS"). The Act 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 RIPA is complied with.

The Investigatory Powers Commissioners Office (IPCO) inspects every three years. The Council's next inspection by IPCO is due now. At the last inspection in March 2020, 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. IPCO have previously noted that annual and regular RIPA reports be submitted to elected members.

The updated Policy at Appendix 1 will provide guidance to all appropriate officers on how to make use of the powers. The City 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 to the wider RIPA policy. The updated Policy recommended to Members is compliant with the requirements of RIPA and when approved will be published on the Council's website.

Detailed in the table below are five distinct roles within the Policy and the names of the persons whom currently hold those positions:

Role	Role description	Post Holder (s)
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 authority's use of Part I and II powers.	Malcolm Townroe (Director of Legal and Governance and Monitoring Officer)
Authorising Officer (s)	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 in accordance with RIPA.	The Council currently has five Authorising Officers: <ul style="list-style-type: none"> • Mel Barrett (Chief Executive and Head of Paid Service) • Ita O'Donovan (Corporate Director for Communities, Environment and Resident Services) • Colin Wilderspin (Interim Director of Communities) • James Douglas (Head of Community Protection) • Paul Millward (Head of Resilience)
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 None, the Council are required by law to maintain an up to date policy and ensure that surveillance is being carried out in accordance with RIPA and associated guidance.

4. Consideration of Risk

There is a risk that Nottingham City Council will be failing to comply with its statutory duty under RIPA 2000 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 (including implications and value for money/VAT)

- 5.1 The purpose of this report is to ensure that the NCC RIPA policy and revised 2023 Online Research and Investigation Policy is updated for review by the Executive Board.
- 5.2 Failure to update and observe the RIPA policy could potentially constitute a data breach leading to possible financial risk to the Council.
- 5.3 The revised report guidance should be implemented and adhered to in order to mitigate this financial risk.

Tania Cayton Pérez-Senior Commercial Business Partner-May 2023

6. Legal colleague comments

Failure to observe the Regulation of Investigatory Powers Act 2000 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 Regulation of Investigatory Powers Act 2000.

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.

Naomi Matthews 17/05/2023

7. Other relevant comments

NA

8. Crime and Disorder Implications (If Applicable)

- 8.1 The RIPA 2000 policy and social media guidance supports criminal prosecutions by ensuring that lawful surveillance takes place which may help to reduce crime and disorder.

9. Equality Impact Assessment (EIA)

- 9.1 Has the equality impact of the proposals in this report been assessed?
An EIA was completed in 2019.
Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because previous assessment with the EIA team demonstrated no need for EIA due to there being no relevant implications identified by this policy.

Yes

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Data Protection Impact Assessment (DPIA)

- 9.2 A DPIA is not required because there are no data protection impacts associated with the adoption of this policy.

10. Carbon Impact Assessment (CIA)

- 10.1 Has the carbon impact of the proposals in this report been assessed?

No

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

Yes

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

N/A

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

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

Covert Human Intelligence Sources – Revised Code of Conduct – December 2022