

EXECUTIVE BOARD - 16 APRIL 2019

Subject:	Updated Regulation of Investigatory Powers (RIPA) Policy		
Corporate Director(s)/Director(s):	Malcolm Townroe Director of Legal and Governance Services		
Portfolio Holder(s):	Councillor Graham Chapman, Portfolio Holder for Finance, Resources and Commercial Services		
Report author and contact details:	Naomi Matthews – RIPA Co-ordinating Officer and Data Protection Officer Naomi.matthews@nottinghamcity.gov.uk Telephone: 0115 8764415		
Subject to call-in:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Key Decision:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Criteria for Key Decision:	(a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Type of expenditure:	N/A		
Total value of the decision:	Not a financial decision – Policy Adoption		
Wards affected:	All		
Date of consultation with Portfolio Holder(s):	29 March 2019		
Relevant Council Plan Key Theme:	Strategic Regeneration and Development <input type="checkbox"/> Schools <input type="checkbox"/> Planning and Housing <input type="checkbox"/> Community Services <input type="checkbox"/> Energy, Sustainability and Customer <input type="checkbox"/> Jobs, Growth and Transport <input type="checkbox"/> Adults, Health and Community Sector <input type="checkbox"/> Children, Early Intervention and Early Years <input type="checkbox"/> Leisure and Culture <input type="checkbox"/> Resources and Neighbourhood Regeneration <input checked="" type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):	<p>To review and update the Council's Policies in relation to the Regulation of Investigatory Powers Act (RIPA) 2000 pursuant to recommendation made to the City Council by the Office of Surveillance Commissioners.</p>		
Exempt information:	<p>The background paper to this report is exempt from publication under paragraphs 3 and 7 of Schedule 12A to the Local Government Act 1972 because it contains information relating to the finance or business affairs of the Council and in addition it provides information in relation to the Council's strategy for the prevention, investigation, detection and prosecution of crimes. Having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because it is likely to reveal actions that the Council is required to take to improve its strategy and processes for the investigation of crime, which may then jeopardise current or future investigations through such disclosure.</p>		
Recommendation(s):	<p>1 To review and endorse the updated Regulation of Investigatory Powers Policy and Guidance</p>		

	which now incorporates the revised Online Research and Investigation Policy, as attached at Appendix 1, for adoption by the City Council.
2	To endorse the RIPA training and awareness raising activity for elected members and council officers as set out in paragraph 2.5.
3	To delegate authority to the Director of Legal and Governance in consultation with the relevant Portfolio Holder to amend the policy when necessary and in accordance with any future legislative changes or statutory guidance.
4	To include future updates in relation to the compliance against the RIPA Policy within a wider annual assurance report on information and security to the Council's Audit Committee.
5	To submit general reviews of the Policy to the Council's Overview and Scrutiny Committee in line with the Home Office Code of Covert Surveillance Property Interference and the Code of Practice for Covert Human Intelligent Sources.
6	To note and endorse the current Council's Senior Responsible Officer (SRO) and Authorising Officers in relation to RIPA procedures and as set out in paragraph 2.7.

1 REASONS FOR RECOMMENDATIONS

1.1 The submission of the updated Policy is pursuant to previous recommendations made to the City Council by the Office of Surveillance Commissioners as part of an inspection report. The recommendation in relation to councillors involves 'upgrading' to a level of formality, which will bring to the attention of councillors to the seriousness of RIPA issues. The Home Office Code of Covert Surveillance Property Interference, at paragraph 4.47, and the Code of Practice for CHIS, 3.30 recommends that elected members, whilst not involved in making decisions or specific authorisations for the local authority to use its powers under Part II of the Act, should review the use of the legislation and provide approval to its policies.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

2.1 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.

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 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 three powers available to local authorities under RIPA: the acquisition and disclosure of communications data; 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 or acquire communications data 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.

2.4 The Investigatory Powers Commissioners Office (IPCO) inspects every three years. The Office of Surveillance Commissioner (OSC) formerly undertook the inspections. The Council’s next inspection by IPCO is due anytime from April 2019 onwards. At the last inspection in April 2016, the OSC noted that Council officials had made considerable improvement and progress, but stated that in order to maintain the upward progress two specific recommendations were made to the Council as follows:

- (a) Raise RIPA awareness particularly in Council departments where officers at lower levels or within non- regulatory departments have little recourse to RIPA to achieve the same high level of awareness. This is important as it ensures that unauthorised surveillance does not inadvertently arise;
- (b) Ensure annual and regular RIPA reports be submitted to elected members. The recommendation in relation to councillors involves ‘upgrading’ to a level of formality, which will bring to the attention of councillors to the seriousness of RIPA issues. The Home Office Code of Covert Surveillance Property Interference, at paragraph 4.47, and the Code of Practice for CHIS, 3.30 recommends that elected members, whilst not involved in making decisions or specific authorisations for the local authority to use its powers under Part II of the Act, should review the use of the legislation and provide approval to its policies.
- (c) While not a recommendation, the OSC did draw attention to the use made by the Police of the Council’s CCTV equipment and suggested that the arrangement could benefit from some additional clarity around the authorisations in place.

2.5 The recommendations of the OSC, as set out in 1.4 above do not present undue difficulty as:

- (a) The RIPA Co-ordinating Officer, the SRO and all Authorising Officers are all up to date with their mandatory RIPA training. The Council has widened out the availability of training and workshops to include all Officers with responsibility for, or who have contact with CCTV directed surveillance. RIPA/DPA training has been delivered to Neighbourhood Development Officers in connection with their responsibilities around movable cameras. Furthermore, the Council is developing an online RIPA training module which will be available to all employees within the Council and which will be live as from June 2019. The availability of this training will be the subject of corporate messages to all employees shown on plasma screens around the Loxley House building. This online module will enable access by a wider audience and the Co-ordinating Officer will

continue to utilise any opportunity to identify additional officers for RIPA training, in order to safeguard against inadvertent surveillance activities when she delivers the wider face to face training on RIPA and Data Protections matters;

(b) RIPA compliance will be included within a wider annual assurance report on information and security to the Council's Audit Committee and reviews generally of the Policy will be submitted to the Council's Overview and Scrutiny Committee in line with the Home Office Code of Covert Surveillance Property Interference and the Code of Practice for CHIS;

(c) Arrangements are in place for an Authorising Officer to have closer oversight of the police use of the Council's CCTV.

2.6 The proposed 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 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.

2.7 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	The Council currently has four Authorising Officers: <ul style="list-style-type: none"> - Ian Curryer (Chief Executive and Head of Paid Service) - Andrew Errington (Director

	with RIPA.	of Community Protection) - Dave Walker (Head of Safer Housing and Anti-Social Behaviour) - Paul Millward (Head of Scrutiny and 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 Solicitor Advocate

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 Do nothing, this option is rejected as it would mean Nottingham City Council is either in breach of or not acting in accordance with the Investigatory Powers Act 2000.

4 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 4.1 There are no financial implications by updating this policy

Phil Gretton – Strategic Finance Business Partner 29 March 2019

5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 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.
- 5.2 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.
- 5.3 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.

Malcolm Townroe – Director of Legal & Governance – 28 March 2019

6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

- 6.1 Not applicable.

7 SOCIAL VALUE CONSIDERATIONS

- 7.1 This report does not involve the commissioning of public services and therefore the section is not applicable to this report.

8 REGARD TO THE NHS CONSTITUTION

- 8.1 There are no implications on the NHS Constitution.

9 EQUALITY IMPACT ASSESSMENT (EIA)

- 9.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because: No. it does not involve change of policy, services or functions and some aspects for information only.

Yes

Attached as Appendix 4, and due regard will be given to any implications identified in it.

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

- 10.1 Letter from the Office of Surveillance Commissioners – dated 9 May 2016 and Inspection Report dated April 2016

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

- 11.1 Covert Surveillance and Property Interference - Revised Code of Conduct – August 2018
- 11.2 Covert Human Intelligence Sources – Revised Code of Conduct – August 2018