

**CABINET
9 MARCH 2021**

REGULATION OF INVESTIGATORY POWERS

**Responsible Cabinet Member - Councillor Charles Johnson
Resources Portfolio**

Responsible Director - Paul Wildsmith, Managing Director

SUMMARY REPORT

Purpose of the Report

1. The purpose of this report is to inform and update Members about issues relevant to the use of the Regulation of Investigatory Powers Act 2000 and developments that have taken place since the last report to Cabinet in October 2020. Members are also asked to approve a revised RIPA Policy.

Summary

2. The Regulation of Investigatory Powers Act 2000 ("RIPA") enables local authorities to carry out certain types of surveillance activity, as long as specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in court proceedings providing RIPA is complied with.
3. The Investigatory Powers Act 2016 ("IPA") is the main legislation governing the acquisition of communications data. The information obtained as a result of these acquisitions can also be relied upon in court proceedings providing IPA is complied with.
4. This report updates members on issues relevant to this area of work and gives details of RIPA directed surveillance applications and IPA communications data applications that have been authorised since the last report to Cabinet.
5. As a result of the Inspection by the Investigatory Powers Commissioner's Office that took place in August 2020 (reported in October's Cabinet Report) and also to pick up on forthcoming changes to senior management, the RIPA Policy has now been amended and updated. A copy is attached at **Appendix 1**.

Recommendation

6. It is recommended that Members:-
 - (a) Note the developments that have taken place since October 2020.
 - (b) Approve the RIPA Policy attached at Appendix 1, with re new Policy to come into force from 1 June 2021.

- (c) Receive further reports on the Council's use of RIPA and IPA and other associated issues.

Reasons

7. The recommendations are supported by the following reasons:-
 - (a) In order to ensure that the Council complies with the legal obligations under RIPA, IPA and national guidance.
 - (b) To help in giving transparency about the use of RIPA and IPA in this Council.
 - (c) To update the RIPA policy and procedures to reflect both legislative, operational and structural changes.

Paul Wildsmith
Managing Director

Background Papers

Home Office, Covert Surveillance and Property Interference, Revised Code of Practice, August 2018

Home Office, Covert Human Intelligence Sources, Revised Code of Practice, August 2018

Luke Swinhoe: Extension 5490

S17 Crime and Disorder	The appropriate use of and oversight of RIPA and IPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime.
Health and Wellbeing	There are no specific implications for Health and Wellbeing
Carbon Impact and Climate Change	There are no issues which this report needs to address
Diversity	The policy treats all groups equally.
Wards Affected	All wards
Groups Affected	All groups equally
Budget and Policy Framework	This does not represent a change to the Council's budget and policy framework.
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	The appropriate use of powers is a legislative requirement.
Efficiency	Clarity about the lawful use of RIPA and IPA will help in the efficient use of the powers.
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

MAIN REPORT

Information and Analysis

RIPA Policy

8. The current version of the RIPA Policy was approved by Cabinet on 5 February 2019 and, following the inspection by the Investigatory Powers Commissioner's Office in August 2020, it now requires further amendment.
9. In line with the Inspector's comments, we have therefore:
 - (i) Provided clarification about what is meant by "collateral intrusion" by adding a definition of this into the relevant section;
 - (ii) Deleted the reference to urgent actions;
 - (iii) Added more detail about retention, review and delegation;
 - (iv) Reviewed the information within the Policy concerning social media and surveillance;
 - (v) Updated the section on lawful business practice;
 - (vi) Reviewed the section covering "non RIPA" surveillance;
 - (vii) Included the Director of Children and Adult Services as an Authorising Officer; and
 - (viii) Included guidance about what is done with the product (i.e. photos, recordings, logs) of any surveillance exercise.
10. In addition, the RIPA policy has also been amended to reflect staff retirements and changes to the senior management. It is proposed that the Group Director of Operations will discharge the role of the Senior Responsible Officer and the authorising officers will be the Chief Executive, the Group Director of Operations, the Group Director of Services and the Director of Children and Adult Services. The RIPA Co ordinating Officer will continue to be the Assistant Director, Law and Governance. It is proposed that the updated RIPA policy comes into force on the 1 June 2021, when the new senior management structure goes live.

RIPA Authorisation Forms

11. These have not been updated by the Home Office for some time. The forms predate the Protection of Freedoms Act and reference earlier Codes of Practice that have since been revised. It was suggested by the Inspector in August 2020 that we could update our forms ourselves, rather than await any Home Office updates. It is our intention to do this later in 2021 and we shall update you on our progress with this in the next Cabinet Report.

Authorisation Forms for Surveillance Outside of RIPA

12. Once the RIPA Authorisation Forms have been updated, it is also our intention to create a similar set of updated forms to cover surveillance that falls outside of RIPA. This is because there is case law that suggests that RIPA only applies to circumstances when the local authority is carrying out a core function. Core functions are the specific public functions undertaken by the local authority, for instance a regulatory function.
13. This means that if a matter relates to an ordinary function, RIPA does not apply. Accordingly, any surveillance activity will be undertaken outside of RIPA and therefore without the statutory protection afforded by RIPA compliance. In such circumstances, the activity will only be lawful if it can be shown that the requirements of the Human Rights Act 1998 have been complied with. These forms will enable the Council to demonstrate that compliance with the HRA. Again, we shall update you on our progress with this in the next Cabinet Report.

Bi-Annual Report

Directed Surveillance Authorisations

14. There have been no authorisations granted since the last Cabinet Report.

Communications Data Authorisations

15. There have been no authorisations granted since the last Cabinet Report.