

**CABINET  
7 SEPTEMBER 2021**

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**REGULATION OF INVESTIGATORY POWERS**

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**Responsible Cabinet Member – Councillor Scott Durham,  
Resources Portfolio**

**Responsible Director – Elizabeth Davison, Group Director of Operations**

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**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 March 2021.

**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.

**Recommendation**

5. It is recommended that Members:-
  - (a) Note the developments that have taken place since March 2021.
  - (b) Receive further reports on the Council’s use of RIPA and IPA and other associated issues.

**Reasons**

6. 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.

**Elizabeth Davison**  
**Group Director of Operations**

### Background Papers

- (i) IPCO Quarterly Newsletter 30 June 2021
- (ii) Covert Human Intelligence Sources (Criminal Conduct) Act 2021

Amy Wennington: Extension 5466

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
Council Plan	The appropriate use of RIPA and IPA can help in supporting the Council's community safety and crime reduction objectives.
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 Authorisation Forms

7. These forms had not been updated by the Home Office for some time. The old forms predated the Protection of Freedoms Act and referenced earlier Codes of Practice that have since been revised. When we were inspected by the Investigatory Powers Commissioner's Office in 2020 it was suggested that we could update the forms ourselves, rather than await any Home Office updates. This has now been done and the updated forms are available on the intranet.

#### Covert Human Intelligence Sources (Criminal Conduct) Act 2021

8. The Covert Human Intelligence Sources (Criminal Conduct) Act 2021 received Royal Assent in March 2021. It provides express legal power for intelligence agencies, law enforcement agencies and some public bodies to authorise covert human intelligence sources to participate in conduct which would otherwise constitute a criminal offence. For clarity, local government is not listed within the Act as an authority capable of authorising criminal conduct.

#### Using social media as a surveillance tool

9. In the Investigatory Powers Commissioner's most recent newsletter, particular attention was drawn to the topic of social media surveillance in the context of child protection matters.
10. Sir Brian Leveson confirmed that use of open-source material or other internet searching can, in principle, constitute covert surveillance under RIPA. However, for local authorities in England and Wales, the only statutory purpose for surveillance under RIPA is the prevention or detection of crime or prevention of disorder.
11. When social workers monitor social media and exercise child protection powers, it is doubtful that this is for the detection or prevention of crime, but rather for the purposes of the local authority's child protection functions, with material acquired being used in civil, not criminal, proceedings.
12. As RIPA authorisations can only be used for the prevention or detection of crime, in most cases of child protection inspired enquiries, the RIPA framework of authorisations is not available to a local authority. As such, social media surveillance for these local authority investigations is likely to fall outside of the RIPA authorisation process.
13. Although social media surveillance is not unlawful (in and of itself), it would be classed as unlawful if it interfered with an individual's right to respect for private and family life, home and correspondence (Article 8 Rights, ECHR) if that interference is not justified and subject to an appropriate legal regime.

14. The Investigatory Powers Commissioner therefore strongly recommends local authorities develop “non-RIPA” processes to ensure social media surveillance in non-criminal cases does not breach Article 8.

### **Authorisation Form for Surveillance Outside of RIPA**

15. We have created an application form to cover surveillance that falls outside of RIPA, such as that described in paragraphs 9 to 14 above. For clarity however, this form does not only apply to child protection matters. 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.
16. This means that if a matter relates to any ordinary function, RIPA does not apply. An example of an ordinary function would be a staffing/employment related issue. Accordingly, any surveillance activity in these circumstances 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. The form we have created enables the Council to demonstrate compliance with that Act.
17. This form is not available on the intranet as this is a highly technical area. Specific legal advice must be obtained from the Assistant Director, Law and Governance if it is considered that surveillance being contemplated relates to an ordinary function. If it is agreed with Legal Services that such surveillance is permissible then the relevant form to be completed for audit and record keeping purposes will be provided for completion, after that discussion with the Assistant Director, Law and Governance has taken place.

### **Training**

18. It is planned that refresher RIPA training will take place for relevant staff throughout September and October 2021. An update will be provided on this in the next scheduled Cabinet Report.

### **Bi-Annual Report**

#### **Directed Surveillance Authorisations**

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

#### **Communications Data Authorisations**

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