

## POLICY REVIEW AND DEVELOPMENT PANEL REPORT

REPORT TO:	Corporate Performance Panel		
DATE:	05/04/22		
TITLE:	Regulation of Investigatory Powers Act (RIPA) Policy		
TYPE OF REPORT:	Policy development		
PORTFOLIO(S):			
REPORT AUTHOR:	Jamie Hay		
OPEN/EXEMPT	Open	WILL BE SUBJECT TO A FUTURE CABINET REPORT:	Yes

### **REPORT SUMMARY/COVER PAGE**

<p><b>PURPOSE OF REPORT/SUMMARY:</b></p> <p>We are governed by the Regulation of Investigatory Powers Act, Human Rights Act, Protection of Freedom Act, Data Protection Act/GDPR, and Investigatory Powers Act in respect of surveillance and other related activities.</p> <p>We are inspected on these matters (usually every 3 years) and have been recently inspected on Friday 17<sup>th</sup> December 2021 by IPCO (the Investigatory Powers Commissioner's Office)</p> <p>As such even if we do not necessarily use the powers available to us, we must ensure our policies and procedures are fit for purpose and robust to assist in remaining compliant with the legislation and furthermore to enable us to demonstrate this to IPCO.</p>
<p><b>KEY ISSUES:</b></p> <p>Some further areas for inclusion within the policy were highlighted by IPCO during the inspection, a consultation process has been undertaken with a professional trainer and policy development provider to produce a fresh RIPA policy, and Internet and Social Media Research Code of Practice, as well as a robust set of procedures and guidance materials to sit behind the policy (these procedures are in the process of being finalised as part of the consultation process).</p> <p>Our current policy does not include:</p> <ul style="list-style-type: none"> <li>• Surveillance outside of RIPA (Non-RIPA), this is usually where crime thresholds for RIPA purposes are not met.</li> <li>• Details in respect of the recording, retaining and destruction of materials (private information).</li> </ul> <p>Management Team have scrutinised this policy on 15/03/22 and relevant changes have been made as appropriate.</p> <p>This policy has been passed for comments by Personnel and Unison and there will be a general requirement for staff training following the adoption of the policy, as such training is to be provided to key members of staff identified as holding roles under this policy, as well as training to be delivered to staff members identified as having the potential to undertake activities referred to under this policy and its procedures (Unison have expressed a wish to attend this training to understand this complex area from a staffing perspective).</p> <p>There will be a need to reference this policy in other policies, including the Corporate Records &amp; Retention Policy, The Disciplinary procedures and the attached new Internet and Social Media Investigations and Research Code of Practice.</p> <p>An equality Impact Assessment on the Policy has also been undertaken and passed for</p>

review by a member of the Equality Team, highlighting no areas of concern.

Any policy changes would need to be approved through Corporate Performance Panel, Cabinet and full Council. As per section 5.2 of the policy the Council will report its use, or non-use of these powers to the Corporate Performance Panel in line with the guidance provided by IPCO to enable members to determine the effectiveness of the RIPA policy each year.

**OPTIONS CONSIDERED:**

- A) To continue with the current policy which has since become out of date and does not include details highlighted by the Inspector in respect of surveillance outside of RIPA or retention of data and materials.
- B) To approve the attached revised policy, which has been produced from scratch following the last IPCO inspection to reflect the comments of the inspector, and through consultation with a professional training and policy development provider.

Attached are the proposed draft RIPA Policy and Internet and Social Media Investigations / Research Code of Practice for scrutiny and comments. As well as the remaining timeframe below for consideration:

**12/04/22** – Procedures and Guidance materials that sit behind policy and Code of Practice to be in draft format

**13/04/22** – CPP meeting for RIPA Policy to be put forward for formal approval by Cabinet and Council

**10/05/22** – MT briefing paper of Procedures and Guidance for scrutiny and comments. Further work carried out as required following this date and to approve adoption of Internet and Social Media Investigations / Research Code of Practice

**21/06/22** – Cabinet meeting for approval of RIPA Policy

**14/07/22** – Council meeting for formally adopting the new RIPA Policy (and final versions of procedures and guidance to be produced)

**21/07/21** – New policy, Code of Practice, procedures and guidance materials to be made available on InSite. Council wide communication to be made to staff advising of their locations.

**RECOMMENDATIONS:**

Proposed RIPA Policy to be put forward for formal adoption via CPP, Cabinet and Council as per the time frame stated above. Minor changes to these policies thereafter, can be member delegated decision in discussion with legal or others. The Appendix A (which is still to be produced) will be a list of named officers, job titles and their role under RIPA which can be easily amended as required outside of formal approval processes relating to policy.

As per section 5.2 of the policy the Council will report its use, or non-use of these powers to the Corporate Performance Panel in line with the guidance provided by IPCO to enable members to determine the effectiveness of the RIPA policy each year.

**REASONS FOR RECOMMENDATIONS:**

To ensure compliance with current legislation, to replace the previous policy which has become out of date and does not provide sufficient or up to date information / details to officers or members of the public on the full requirements for RIPA and Non-RIPA.

## **REPORT DETAIL**

### **1. Introduction**

We are governed by the Regulation of Investigatory Powers Act, Human Rights Act, Protection of Freedom Act, Data Protection Act/GDPR, and Investigatory Powers Act in respect of surveillance and other related activities.

We are inspected on these matters (usually every 3 years) and have been recently inspected on Friday 17<sup>th</sup> December 2021 by IPCO (the Investigatory Powers Commissioner's Office)

As such even if we do not necessarily use the powers available to us, we must ensure our policies and procedures are fit for purpose and robust to assist in remaining compliant with the legislation and furthermore to enable us to demonstrate this to IPCO.

Following the inspection undertaken by IPCO on 17 December 2021 a consultation process was undertaken in order to conduct a full review of our current policy and procedures in order to ensure that the policy remained compliant with the governing legislation, the relevant information required by officers in order to conduct their activities in compliance with legislation and relevant information to the general public on how we conduct these activities and how they can seek redress where appropriate.

### **2. Proposal**

Management Team were provided details of the IPCO inspection from 17<sup>th</sup> December 2021 and were consulted with to determine a full list of requirements/needs to be included within the policy and/or procedures, this process highlighted the following recommendations:

- A RIPA and Non-RIPA policy that can be adopted with relative ease
- The policy (which can be referred to/used in evidence in a court of law) is relatively bland, with a robust set of operating procedures (that can be restricted documents, and contain investigative technique (sensitive materials) that would not need to be open facing and/or available to the general public) sit behind that bland policy
- The operating procedures are to cover:
  - a) RIPA and Non-RIPA
  - b) Roles & Responsibilities
  - c) Definitions of surveillance (directed and Non-directed), Covert Human Intelligence Sources (CHIS), relevant and serious errors as per the Home Office Codes of Practice
  - d) Examples of RIPA and Examples of Non-RIPA activities
  - e) Directed Surveillance
  - f) CHIS
  - g) Body Worn Videos, Trail Cams
  - h) The Acquisition of communications data under the Investigatory Powers Act (i.e. what we are entitled to apply for and how we request it)
  - i) Test purchases
  - j) Documentation (all relevant RIPA / Non – RIPA forms, Risk Assessments, Judicial Authority Forms and guidance of how these are completed)

- k) Inclusion of Records, Retention and Disposal information (as per the Inspector's data assurance letter which highlights six action points)
- l) Internet (including use of Social Media) Code of Practice
- m) Digital Evidence Procedures
- n) Inclusion of any other areas highlighted by the Inspection undertaken on Friday 17<sup>th</sup> December 2021
- o) The guidance and materials to also include templates for:
  - Central Record of Authorisations
  - Schedule of Equipment

Attached is a copy of the inspector's findings which also need to be included in the revised policy.

- In particular the findings highlight the need for guidance on sanctioning non-RIPA covert activities where crime thresholds have not been met for RIPA authorization
- The Policy needs to formally state as per paragraph 4.47 of the Home Office Covert Surveillance and Property Interference Code of Practice that Elected Members are provided with an annual report sufficient to enable them to determine that the Council's policy remains fit for purpose, together with regular reports on RIPA activity (or inactivity) – **this was last presented to Audit Committee on 22/11/21 but in future will be presented to Corporate Performance Panel.**

As such this new policy is presented on the basis of those proposals alongside the consultation process to ensure that the policy is brought up to date and is fit for purpose.

### **3. Issues for the Panel to Consider**

The key questions to be addressed is that this policy has been subjected to due process and has been produced in a diligent manner to ensure compliance with the legislation that governs these activities and that it gives appropriate information to officers with roles and responsibilities within the policy, officers who may undertake such activities and the general public to inform them on how these activities are governed and the controls that have been implemented to ensure compliance with legislation and information about redress where appropriate.

Other information to consider within this policy is that it relates to the Council and its LATCs (Local Authority Trading Companies). There is further information in respect of other third parties contained within the policy.

In the event of non-compliance with legislation, the policy provides processes to be followed in respect of the notification of errors.

No equality matters have been highlighted within this policy review.

Training needs are to be identified following the conclusion of the procedures and guidance materials being produced.

### **4. Corporate Priorities**

This policy sets out how the Council will carry out surveillance activities in a controlled manner to ensure compliance with its governing legislation (as set out within the policy). These activities are likely to be considered on a more frequent basis, particularly in light of the recent waste crime initiative.

## **5. Financial Implications**

The policy, procedures and guidance consultation for this policy was £2,000.00 and there will be a requirement to provide training following the implementation of this new policy to officers with roles and responsibilities identified within the policy, members of staff who are identified as having the potential to undertake activities identified within the policy.

## **6. Any other Implications/Risks**

**There are risks in respect of Human Rights Act contraventions, Data breaches**

## **7. Equal Opportunity Considerations**

An equality impact assessment has been carried out and no matters have arisen.

## **8. Environmental Considerations**

None.

## **9. Consultation**

As referred to previously within this report the policy has been produced in consultation with a professional trainer / policy developer.

## **10. Conclusion**

To put forward the RIPA Policy for formal adoption via Cabinet and Council as per the time frame stated above. To accept that minor changes thereafter, can be member delegated decision in discussion with legal or others.

To add a CPP work item for reporting of the use, or non-use of these powers to CPP in line with the guidance provided by IPCO to enable members to determine the effectiveness of the RIPA policy each year.

## **11. Background Papers**

- IPCO Desktop Inspection Report
- IPCO Data Assurance letter to Local Authorities
- Equality Impact Assessment
- RIPA Policy
- Internet Social Media Investigations Code of Practice