

OVERVIEW AND SCRUTINY
DATE 9 March 2023

***PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: REGULATION OF INVESTIGATORY POWERS ACT ('RIPA')
ANNUAL REVIEW**

REPORT OF: LEGAL REGULATORY TEAM MANAGER & DEPUTY MONITORING OFFICER

EXECUTIVE MEMBER: COUNCILLOR ELIZABETH DENNIS-HARBURG

COUNCIL PRIORITY: PEOPLE FIRST / SUSTAINABILITY

1. EXECUTIVE SUMMARY

This Report updates on the Council's current use of RIPA and reports on the annual policy review. It also highlights a potential change required to the Policy, in relation to communications data as set out in recommendation 2.2 and section 8 of the report.

2. RECOMMENDATIONS

- 2.1. That the content of the report be noted by Committee.
- 2.2. That the Committee recommend to Cabinet that the RIPA Policy be amended in light of the Police, Crime Sentencing and Courts Act 2022, as set out in section 8.5.

3. REASONS FOR RECOMMENDATIONS

To comply with best practice guidance and the Committee's terms of reference.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. None

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key Executive decision that Cabinet would be required to take and was therefore referred to in the Forward Plan on 23 January 2023.

7. BACKGROUND

- 7.1. RIPA regulates the use of certain surveillance powers by public authorities, including: –
 - Directed Surveillance (covert surveillance conducted as part of a specific investigation likely to result in obtaining private information about an individual), –
 - Use of Covert Human Intelligence Sources (CHIS), and
 - Access to communications data (e.g. details of subscribers to telephone numbers or email accounts)
- 7.2. The Council is a very rare user of these powers. However, it is important that it has sufficient oversight of its activities to ensure that any considered use is compliant with the subject's human rights.
- 7.3. The Council is required to have arrangements and a RIPA Policy in place. The current one was last approved by Cabinet in June 2020 (updated together with the Social Media in Investigations Policy), although reviewed annually in 2021 and lastly in January 2022 by the Committee – albeit no changes were recommended.
- 7.4. External Inspections are carried out from time-to-time by the Investigatory Powers Commissioner's Office ('IPCO'), so it is important that all documentation is properly completed and (where relevant) authorised to confirm that it is carried out on a lawful basis. The last inspection was held in April 2020. It will be due for a further review on or around 2023 dependent on the IPCO's inspection scheduling requirements. At the point of writing the report, no further inspection date has been arranged by the IPCO.
- 7.5. Members should note the Council has not used surveillance powers or accessed communications data for some time, lastly noted in **2011**.
- 7.6. The Shared Anti-Fraud Service ('SAFs') does, however, utilise such powers and these are regulated through Herts County Council's processes and attends our officer Corporate Enforcement meetings. Where relevant an officer(s) of Nafn (National Anti-Fraud Network) attends our quarterly corporate enforcement forum meetings and keep our enforcement officers and authorising officers up to date. Training is also provided via that forum by Nafn, in 2020, and by internal officer in 2021. Legal Officers also received training in 2021 and further training is in the process of being arranged for 2023.
- 7.7. Members will also note that in accordance with good practice guidelines Members receive quarterly updates on the use of any powers via the Member Information Service.
- 7.8. In terms of Communications data, the IPA provided an updated framework for lawful acquisition of Communications Data, to include the who, where, what, when and how a Local Authority can obtain communications and Communications Data (Entity and Events Data)
- 7.9. All such applications *must be processed through the Nafn* as the Single Point of Contact (SPoC), who will consider the application prior to submitting this for approval to the Office for Communications Data Authorisations (OCDA). All applications must be approved before Communications Data is acquired. The Investigatory Powers Commissioner oversees the use of the powers. All applications submitted to NAFN are completed via their online portal. The form is available for completion within that workflow system and reflects the current Home Office application form. Nafn does not accept application forms

outside of the workflow system and any application queries go via the Nafn RIPA SPoC. This means there is an experienced person qualify controls and checks any applications considered / made by North Herts Council.

8. RELEVANT CONSIDERATIONS

- 8.1. There are no ongoing authorisations.
- 8.2. The Home Office publishes national Codes of Practice on the use of RIPA powers by public authorities. These help public authorities assess and understand whether and in what circumstances it is appropriate to use covert techniques. The codes also provide guidance on what procedures need to be followed in each case. The Council must have regard to the relevant Code of Practice whenever exercising powers covered by RIPA. The Investigatory Powers Commissioner (IPC) conducts regular inspections of all public authorities to ensure compliance with RIPA, and the Codes of Practice.
- 8.3. Sections 37 to 44 of the Police, crime, Sentencing and Courts Act 2022 (PCSCA) came into force on 8 November 2022. This provides public authorities with a further power to extract (Communications) Data held on electronic devices.
- 8.4. An extraction that has failed to comply with the requirements must be reported to the IPC's office as a relevant error. *However, Members should note the control mechanisms in place as set out in 7.9 above.*
- 8.5. The proposed amendment to the Policy is to section 5 – to insert the following wording:

5.1. Sections 37 to 44 of the Police, Crime, Sentencing & Courts Act 2022 (PCSCA) came into force on 8 November 2022. This provides public authorities with a further power to extract data held on electronic devices.

5.2. Before action is taken, there must be a reasonable belief that information stored on the device will be relevant for one of three scenarios and satisfaction that the extraction of the information is necessary and proportionate to achieve the purpose.

5.3. The three scenarios provided under s37(2) are for the purpose of:

(a) preventing, detecting, investigating or prosecuting crime;

(b) helping to locate a missing person; or

(c) protecting a child or an at-risk adult from neglect or physical, mental or emotional harm.

5.4. To ensure any extraction of stored communication under s.37 remains lawful, it is essential that the criteria and procedures set out within the PCSCA and the association Code of Practice are fulfilled.

5.5. *A failure to follow these procedures correctly could result in a s.3 IPA offence (unlawful interception) being committed.*

- 8.6. A copy of the Policy with the proposed amendment is appended

9. LEGAL IMPLICATIONS

- 9.1. 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. 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. Full details of the RIPA requirements and compliance are set out in the Policy, with relevant documents and guidance document available to relevant officers via the intranet should they consider it necessary to use these powers.
- 9.2. The Overview and Scrutiny Committee's Terms of Reference in the Council's Constitution at paragraph 6.2.7(r) states that it shall be entitled to consider reports relating to the authority's use of the Regulation of Investigatory Powers Act (2000) (RIPA).

10. FINANCIAL IMPLICATIONS

- 10.1. There are no financial implications arising from this Report

11. RISK IMPLICATIONS

- 11.1. It is important that the Council continues to operate in accordance with RIPA to ensure that it is able to effectively manage its reputational risk whilst also exercising its legitimate evidence gathering powers in connection with enforcement activity.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

14.1. There are no known Environmental impacts or requirements that apply to this report.

15. HUMAN RESOURCE IMPLICATIONS

15.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans.

16. APPENDICES

16.1 App A RIPA Policy with proposed amendments.

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

18.1 [Extraction of Information from electronic devices: code of practice \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)