

OVERVIEW AND SCRUTINY
DATE 29 January 2024

***PART 1 – PUBLIC DOCUMENT**

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

REPORT OF: SERVICE DIRECTOR: LEGAL & MONITORING OFFICER [**SENIOR RESPONSIBLE OFFICER FOR RIPA**]

EXECUTIVE MEMBER: COUNCILLOR ELIZABETH DENNIS

COUNCIL PRIORITY: PEOPLE FIRST / SUSTAINABILITY

1. EXECUTIVE SUMMARY

This Report provides an update on the Council's current use of RIPA and reports on the annual policy review. It also highlights the outcome of the Investigatory Powers Commissioner's Office (IPCOs) inspection and assurance. No Policy changes are recommended as part of this review.

2. RECOMMENDATIONS

- 2.1. That the content of the report, and the IPCO's assurance letter Appendix A, be noted by Committee.

3. REASONS FOR RECOMMENDATIONS

- 3.1 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. The Leader of Council as the relevant Executive Member, was consulted on the report. Whilst there has been no other consultation, the Council underwent a paper/ Policy questions based Inspection by the Investigatory Powers Commissioner's Office (IPCO) in August 2023. As part of that inspection/ audit response, the Council's Policies and procedures were considered and no issues or action raised.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

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 inspected generally every 3 years by the IPCO. This inspection was due in 2023, and was to be carried out either as a physical or paper based inspection, dependent on assessed risk and response to questions raised. The Inspector sought information and evidence regarding the annual review of the RIPA policy, compliance, audits, training, record keeping, monitoring, CCTV system and communications data applications. Based on that assessment, the IPCO provided an outcome letter of assurance of compliance and following that no further inspection was required. The assurance letter is appended at A.
- 7.3 Members should note that the internal Officers of the Council have not applied to use surveillance powers (directed surveillance or CHIS) since 2011 (which was prior to legislative changes/ restrictions being introduced). All applications for Directed Surveillance must be authorised by the Magistrates Court, which would follow internal consideration of the application forms.
- 7.4 The Shared Anti-Fraud Service ('SAFs') does, however, utilise such powers and these are regulated through Herts County Council's processes. SAFs officers do attend North Herts Council's internal quarterly officer Corporate Enforcement meetings, and they also promote the use of and apply for Communications Data (see below).
- 7.5 In terms of Communications Data, the legislation (Investigatory Powers Act) was updated in 2021 and there is a 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). All such applications must be processed through the National Anti-fraud Network (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 them and the RIPA SPoC. This means that if the Council chooses to make an application for Communications Data, there is an experienced person who quality controls and checks any applications considered / made by North Herts Council, prior to the application being made. *Members should note that SAFS have*

made two applications as part of their investigations, for Communications Data this year on behalf of North Herts Council. One enquiry related to an allegation of housing application fraud and the second to an allegation about council tax fraud.

- 7.6 Regardless of whether the internal officers use these powers regularly or not, 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. The Council is required to have arrangements and a RIPA Policy in place. The current one was last approved by Cabinet in March 2023, following the review by Overview & Scrutiny that same month. It was also slightly updated to include the new Service Director: Housing & Environmental Health's details in August 2023.
- 7.7 This Overview & Scrutiny review follows external training in June 2023 and the IPCO inspection, as indicated, in August 2023. External training was offered to all enforcement officers/ relevant Service Directors, through external experts – ActNow; Internal officer training was also provided by the report author, as SRO, to the new Service Director: Housing & Environmental Health (who is an Authorising Officer as part of that role) in October 2023.
- 7.8 In terms of other monitoring, 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.
- 7.9 Member should note that 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. RELEVANT CONSIDERATIONS

- 8.1. There are no ongoing authorisations.
- 8.2. Since the last report in March 2023, the Council has been inspected by the IPCO, and no recommendations, other than to effectively continue with current practice. Therefore no recommendations have been included in this report to amend the Policy or procedures further at this stage.

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. There are anticipated amendments to legislation during 2024, with the introduction of the Investigatory Powers (Amendment) Bill in November 2023 ([CLICK HERE](#)). It had its second reading in the House of Lords on 20 November and was discussed at committee stage on 11 and 13 December. The proposed amendments relate to obtaining communications data, use of internet connection records, less regulatory requirements for retention and examination of bulk personal datasets and new notification requirements on certain telecommunications operators. A number of objections were aired by various groups and tech companies following the announcement that a bill would be introduced (in the Kings Speech) and therefore it remains to be seen what powers will be extended following the debates (and any impact on Local Authorities).
- 9.3. 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. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.
- 11.2. 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 Appendix A Letter from IPCO.

17. CONTACT OFFICERS

Author
Jeanette Thompson, Service Director Legal and Community.
jeanette.thompson@north-herts.gov.uk; ext. 4370

18. BACKGROUND PAPERS

18.1 RIPA Policy March 2023 (minor Service Director change 14.8.23).