

**OVERVIEW AND SCRUTINY
22 JANUARY 2019**

PUBLIC DOCUMENT

TITLE OF REPORT: REGULATION OF INVESTIGATORY POWERS ACT UPDATE AND ANNUAL REVIEW

REPORT OF: LEGAL REGULATORY TEAM MANAGER

1. EXECUTIVE SUMMARY

- 1.1 This Report updates on the Council's current use of RIPA and reports on the annual policy review.

2. RECOMMENDATIONS

That Overview and Scrutiny Committee:

- 2.1 note the content of the report; and.
- 2.2 recommend to Cabinet the adoption of the RIPA Policy as amended (Appendix A).

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 None

6. FORWARD PLAN

- 6.1 Even though this is not a key decision, it was referred to in the Forward Plan on 12 December 2018.

7. BACKGROUND

- 7.1 Members are referred to previous Reports of the Corporate Legal Manager. Members will recall that the Codes of Practice state that elected Members should review the local authority's use of RIPA.
- 7.2 The Council's current RIPA Policy was approved by Cabinet on 27 September 2016 and updated under delegated authority on 31 July 2018 to reflect the Senior Management restructure¹. The RIPA Policy must be reviewed annually.
- 7.3 Training is being arranged for new relevant Authorising Officers and the Designated Person for Communications Data.

8. RELEVANT CONSIDERATIONS

Annual Review

- 8.1 The last full review of the policy was undertaken in 2016. Since that review the Home Office has issued new Codes of Practice in August 2018, namely the Covert Surveillance and Covert Human Intelligence Sources Codes of Practice, and the Code of Practice for Investigation of Protected Electronic Information.
- 8.2 Since the last full review in 2016, the Home Office issued new Codes of Practice in August 2018, namely the Covert Surveillance and Covert Human Intelligence Sources Codes of Practice, and the Code of Practice for Investigation of Protected Electronic Information.
- 8.3 The Home Office also published a revised Code of Practice on Covert Surveillance and Property Interference at the same time, which addressed the position with regards to Social Media Sites.
- 8.4 The Annual Review refers to these updated Codes of Practice, ensuring that the Council's policy is compliant with the current legislative landscape.
- 8.5 Other than those changes relating to the above, the most notable amendments to the Policy are:
- Extended consideration of overt surveillance, taking into account Home Office Guidance (page 6)
 - OSC Guidance note on handling of CHIS's (page 8)
 - Reference to the National Anti-Fraud Network Single Point of Contact service (page 15)

¹ <https://www.north-herts.gov.uk/sites/northherts-cms/files/Employee%20Gifts%20and%20Hospitality%20and%20RIPA%20Policies%20-%20Minor%20Amendments%20-%2031.07.18.pdf>

- Excerpt from the new Home Office Revised Code of Practice on Covert Surveillance and Property Interference regarding Social Networking Sites (pages 21 – 22)

8.6 Another recent development is the introduction of the Investigatory Powers Tribunal Rules 2018, which came into force on 31 December 2018. These rules set out procedures and practices to be adopted by the Investigatory Powers Tribunal including procedures for a new right of appeal. It is not feasible to reproduce the rules in their entirety within the Policy, they can however be accessed here (<http://www.legislation.gov.uk/ukSI/2018/1334/introduction/made>)

8.7 The Office of Surveillance Commissioners was abolished on 1 September 2017 and its powers taken over by the Investigatory Powers Commissioner's Office (the "IPCO"). The updated policy therefore makes reference to the correct body throughout.

Council's Use of RIPA

8.8 Members may recall that it was considered that the quarterly report to Overview and Scrutiny Committee should continue even though RIPA is not currently being used, as this provides a useful mechanism to ensure that the issue of RIPA remains in the consciousness of Members (and Officers).

8.9 There have been no further RIPA authorisations since the last Report to the Committee. There are currently no ongoing RIPA authorisations.

9. LEGAL IMPLICATIONS

9.1 The Overview and Scrutiny Committee's Terms of Reference and 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).

9.2 The Overview and Scrutiny Committee are asked to consider this report and make a recommendation to Cabinet in line with its Terms of Reference. It is Cabinet's responsibility to adopt the RIPA Policy.

9.3 Paragraph 5.6.1 of the Council's Constitution states that Cabinet may, by resolution, prepare and agree to implement policies and strategies other than those reserved to Council.

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” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

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

15. APPENDICES

- 15.1 Appendix A – RIPA Policy ‘clean’ version.
- 15.2 Appendix B – RIPA Policy *showing tracked changes*.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 None other than the documents referred to above.