

TO: **EXECUTIVE**
26 January 2021

REGULATION OF INVESTIGATORY POWERS ACT 2000 – COUNCIL POLICY
(Executive Director of Delivery)

1 PURPOSE OF REPORT

- 1.1 To set out the obligations on the Council with respect to the Regulation of Investigatory Powers Act 2000. (RIPA)
- 1.2 To seek approval of the Executive for the updated RIPA policy.
- 1.3 To receive an update on the latest audit conducted by the Investigatory Powers Commissioners Office

2 RECOMMENDATIONS

That the Executive agrees that:

- (a) The updated policy as set out at Appendix A to this report be approved;**
- (b) That Members are briefed on the content, purpose and application of the RIPA;**
- (c) That the post-holders identified in the Policy be designated as ‘Authorising Officers’ as set out.**

3 REASONS FOR RECOMMENDATIONS

- 3.1 The Council is required by the statutory codes of practice issued under the Regulation of investigatory Powers Act 2002 to have an approved policy for the control and application of RIPA provision across the functions of the Council.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The only alternative is not to take adopt the updated Policy.

5 BACKGROUND

- 5.1 The purpose of the surveillance powers under RIPA is often misunderstood by the media and consequently the public. Covert directed surveillance has always been an intrinsic part of certain types of investigation. There are times when the only way vital evidence can be secured is through this route or through accessing either communications data or the use of Covert Human Intelligence Sources (CHIS).
- 5.2 Article 8 of the European Convention on Human Rights sets out the principle of the ‘right to privacy. Following the enactment of the Human Right Act (HRA) 1998 this right has been an embedded in UK law. This applies to personal affairs which includes those relating to their business. The ‘right to privacy’ is a ‘qualified right’ i.e. in certain circumstances that right may be breached in a wider public interest. The purpose of RIPA is to provide a framework under which specified public bodies may carry out

Unrestricted

directed surveillance in a highly controlled and regulated manner. Without this statutory exemption the use of surveillance could give rise to a claim for breach of the HRA.

- 5.3 Certain powers under the Act are restricted to certain government agencies. Local authorities as specified public bodies do have access to a number of powers appertaining to Direct Surveillance, communications data (not to be confused with communications interference) and the use of Covert Human Intelligence Sources (CHIS). Surveillance powers can only be accessed by local authorities for the purpose of 'prevention and detection of crime and the prevention of disorder' and are subject to both internal oversight through specifically trained authorising officers and then ultimately judicial oversight by the Magistrates Court. Communications data can only be accessed through a single point of contact (SPOC) who in the case of local authorities is the National Anti-Fraud Network (NAFN) who are subject to a strict inspection regime.
- 5.4 Underpinning the primary and secondary legislation is a series of statutory 'codes of practice' that deal with matters of process as well as providing more detailed explanation as to the application of the two fundamental tests that lie at the heart of any directed surveillance authorisation, namely 'necessity' and 'proportionality'. These are fundamental concepts that need to be understood by those overseeing the application of the Act and those whose roles may cross into the realms of surveillance.
- 5.5 At a national level there is a statutory inspection body in the form of the Investigatory Powers Commissioners Office who require annual returns from public authorities as well as providing for an inspection regime of public bodies including local authorities. Bracknell Forest Council's most recent inspection was conducted in December 2019. At local level, scrutiny and oversight rests with the designated 'Senior Responsible Officer' who is currently the Executive Director for Delivery. The SRO provides day to day oversight and in turn is accountable to the Council for oversight of surveillance activity.
Bracknell Forest Borough Council and RIPA
- 5.6 In addition to carrying out inspections and audits the Investigatory Powers Commissioners Office also issues comprehensive guidance to public bodies including local authorities on the interpretation of matters ascertaining to surveillance. One area highlighted by IPCO both in guidance and in targeted in inspections relates to monitoring of social media accounts.
- 5.7 Given the concerns around social media a number of briefings were held in the spring of 2019 for senior managers including CMT. This was then followed up by the development of a short course delivered through the Council's e-learning package which was made available to all staff who may need an understanding of RIPA and the social media issues. This course has been completed by 128 staff to date. A recommendation in this report is to brief Members on the content, purpose and application of the RIPA in their role as community leaders.
- 5.8 Staff whose work may require a much greater understanding of RIPA (primarily those within the Public Protection Service) are required to undertake structured training in order that they can carry out assessments to determine whether or not they need to make an application for either a surveillance authorisation or communications data application. Authorising Officers are required to undertake training before authorising any applications and to have refresher / update training at least every three years.

- 5.9 It has been agreed with the IPCO, that where surveillance powers are used by staff from the Public Protection Service, that they would be reported on a West Berkshire Council return as the staff, although acting for all three councils in the partnership, are employed by West Berkshire. Examples of where surveillance has been used by the Public Protection Service include in relation to investigations into car dealers, sale of counterfeit goods on-line and the on-line offering of unlicensed waste services. Communication data (primarily subscriber and billing data) is used from time to time to support fraud and unfair trading investigations into matters such as doorstep crime.
- 5.10 Bracknell Forest Borough Council has not issued any authorisations for surveillance since the formation of the Public Protection shared service but nevertheless must have a policy in place and maintain oversight of all risks within the authority hence the work around social media.

The 2019 IPCO Audit

- 5.11 The Council was audited by IPCO in December 2019. Ahead of that audit IPCO were presented with a draft of the updated policy that is before the Executive today. In short the audit found that:
- The work undertaken by the Council to raise awareness of the social media surveillance issues was 'reassuring';
 - The draft RIPA policy was 'accurate, succinct and easy to digest'.
 - The message on the importance of regular oversight through the SRO should be re-enforced along with the need for regular training;

Some minor amendments were suggested and these have been incorporated into the draft policy before the Executive today. Authorising Officer training due to be conducted earlier this year had to be cancelled due to Covid. It is now taking place in February 2021. Throughout this time the Council has had adequate cover through the Public Protection Manager.

Bracknell Forest Borough Council – Proposed RIPA Policy

- 5.12 The Council last considered its RIPA policy in 2014. The draft policy before the Executive today is a fundamental update of the previous policy taking account of all current codes of practice, IPCO guidance and the feedback from the December 2019 IPCO audit findings. Fundamentally the document is a framework for how surveillance will be managed within the Council and who is responsible for oversight of the various aspects. The proposed policy is at Appendix A to this report.
- 5.13 It is a detailed document but the key aspects deal with:
- The need for authorisations
 - The necessity and proportionality tests
 - The authorisation process including review, cancellation and reporting
 - The role of the SRO and internal oversight
 - Identification of Authorising Officers

Significantly there is also a whole new section at Appendix C that deals with the issue of social media.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The legal obligations and required processes and checks and balances appertaining to the above recommendations are set out in this report and the Policy at Appendix (A) to this Report.

Borough Treasurer

- 6.2 There are no new financial implications in this report.

Equalities Impact Assessment

- 6.3 An equalities screening has been undertaken and confirmed a full assessment was not required

Strategic Risk Management Issues

- 6.4 The Council is required to have a RIPA policy. Without this policy there is the possibility of RIPA being used by Council employees without the appropriate awareness and safeguards being adhered to.

Contacts for further information

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