

Arun District Council

REPORT TO:	Audit & Governance Committee – 19 February 2024
SUBJECT:	Use of Regulation of Investigatory Powers Act (RIPA) Annual Report 2023
LEAD OFFICER:	Daniel Bainbridge, Group Head of Law & Governance
LEAD MEMBER:	Councillor James Walsh
WARDS:	All
CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION: The correct governance and operational decision-making in relation to the use of this legislation supports the effective delivery of all services and priorities.	
DIRECTORATE POLICY CONTEXT: Responsibility for the oversight of the RIPA process sits within the Group Head of Law & Governance in the Organisational Excellent directorate.	
FINANCIAL SUMMARY: There are no financial implications associated with this report.	

1. PURPOSE OF REPORT

- 1.1 To report to the Committee on the Council's use of regulatory powers under the Regulation of Investigatory Powers Act 2000 ('RIPA') in 2023/24.

2. RECOMMENDATIONS

It is recommended that the Audit & Governance Committee considers and notes the Council's use of and compliance with RIPA.

3. EXECUTIVE SUMMARY

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities.
- 3.2 The Council has the ability to use powers under RIPA to support its core functions for the purpose of the prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more. There are three processes available to local authorities under RIPA: the acquisition and disclosure of communications data; directed surveillance; and covert human intelligence sources ('CHIS').
- 3.3 The Act sets out the procedures that the Council must follow if it wishes to use directed surveillance techniques or acquire communications data in order to support core function activities. The information obtained as a result of such operations can later be relied upon in court proceedings provided the Act is complied with.

3.4 The Home Office Code for Covert Surveillance and Property Interference recommends that elected Members, whilst not involved in making decisions or specific authorisations for the local authority to use its powers under the Act, should review the Council's use of the legislation and provide approval to its policies.

4. DETAIL

4.1 RIPA governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities. The Council can only use powers under RIPA to support its core functions for the purpose of prevention and detection of crime.

4.2 There are different thresholds that need to be met before any surveillance can be undertaken. In the case of Directed Surveillance or the use of Covert Human Intelligence Sources an offence has to be punishable by a custodial sentence of 6 months or more. In the case of Communications Data an offence has to be punishable by a custodial sentence of 12 months or more (e.g. offences relating to counterfeit goods which carry a maximum penalty of 10 years in prison).

4.3 Where the above criteria are met, local authorities can make an application for the acquisition and disclosure of communications data (such as telephone billing information or subscriber details) or directed surveillance (covert surveillance of individuals in public places); and the use of a CHIS (such as the deployment of undercover officers).

4.4 The Act and its Codes of Practice set out the procedures that local authorities must follow when undertaking surveillance. These include approval by Authorised Council Officers for Directed Surveillance / CHIS applications to show that the proposed use of the powers is "necessary and proportionate".

4.5 The Council is required to have a Senior Responsible Officer (SRO) to maintain oversight of the RIPA arrangements, procedures and operations. The Group Head of Law & Governance performs this function and is responsible for the integrity of the Council's process for managing the requirements under RIPA.

4.6 The Investigatory Powers Commissioner's Office (IPCO) is responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.

4.7 The Investigatory Powers Act 2016 introduced the Office for Communications Data Authorisation (OCDA) which is now responsible for independently authorising all applications for communications data. This has removed the requirement for local authorities to seek judicial approval for communications data. In addition, the legislation has broadened the range of communications data available including access to location data.

4.8 The acquisition of communications data is undertaken through the National Antifraud Network (NAFN). NAFN acts as the single point of contact for local

authorities and ensures the application is RIPA/ IPA compliant. It is NAFN that are audited by the commissioners.

Use of Directed Surveillance or Cover Human Intelligence Sources

4.9 For the period from 1 January 2023 to 31 December 2023:

Applications made for a Directed Surveillance authorisation	0
Directed Surveillance authorisations granted	0
Directed Surveillance authorisations cancelled	0
Directed Surveillance authorisations extant at the end of the year	0

There were no reported instances of the Council having misused its powers under RIPA.

Use of Acquisition & Disclosure of Communications Data

4.10 No applications were made for the disclosure of communications data in the period from 1 January 2023 to 31 December 2023.

Inspection by IPCO

4.11 The Council was subject to an inspection by the Investigatory Powers Commissioner's Office on 13 March 2023. The Commissioner's report provided a positive conclusion and comments regarding the Council's policy and procedures, and made a number of recommendations for changes to the Council's RIPA Policy and guidance in order to ensure they are up to date. That will be the subject of a separate report to this Committee in the next municipal year.

RIPA Training

4.12 It is recommended good practice to provide RIPA training to all relevant officers periodically. Training was delivered to relevant operational and senior officers in September and October 2022 and the IPCO report noted this and confirmed that this met the Commissioner's requirements in terms of regular refresher training. Further refresher training will be scheduled for 2025.

5. CONSULTATION

5.1 Consultation was not required in relation to this report.

6. OPTIONS / ALTERNATIVES CONSIDERED

6.1 As set out above, it is recommended good practice for a regular report to be provided to elected members and therefore a 'do nothing' alternative is not considered appropriate in those circumstances.

7. COMMENTS BY THE GROUP HEAD OF FINANCE/SECTION 151 OFFICER

7.1 There are no direct legal implications arising from this report.

8. RISK ASSESSMENT CONSIDERATIONS

8.1 The annual reporting of RIPA/IPA use to elected members ensures compliance with relevant Codes of Good Practice.

9. COMMENTS OF THE GROUP HEAD OF LAW AND GOVERNANCE & MONITORING OFFICER

9.1 The legislative background is set out within the body of this report.

10. HUMAN RESOURCES IMPACT

10.1 There are no human resources implications.

11. HEALTH & SAFETY IMPACT

11.1 There are no such implications associated with this report.

12. PROPERTY & ESTATES IMPACT

12.1 There are no such implications associated with this report.

13. EQUALITIES IMPACT ASSESSMENT (EIA) / SOCIAL VALUE

13.1 There are no such implications associated with this report.

14. CLIMATE CHANGE & ENVIRONMENTAL IMPACT/SOCIAL VALUE

14.1 There are no such implications associated with this report.

15. CRIME AND DISORDER REDUCTION IMPACT

15.1 There are no such implications associated with this report.

16. HUMAN RIGHTS IMPACT

16.1 There are no such implications associated with this report.

17. FREEDOM OF INFORMATION / DATA PROTECTION CONSIDERATIONS

17.1 There are no such implications associated with this report.

CONTACT OFFICER:

Name: Daniel Bainbridge

Job Title: Group Head of Law & Governance

Contact Number: 01903 737607

BACKGROUND DOCUMENTS: None