

Arun District Council

REPORT TO:	Audit & Governance Committee
SUBJECT:	Regulation of Investigatory Powers Act (RIPA) – Review of Policy and Procedures
LEAD OFFICER:	Daniel Bainbridge, Group Head of Law & Governance
LEAD MEMBER:	Councillor Matt Stanley
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 Law & Governance group in the Growth 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 outcome of the Investigatory Powers Commissioner's inspection of the Council and to bring forward a revised set of policy, procedure and guidance documents as a result of the Commissioner's recommendations.

2. RECOMMENDATIONS

It is recommended that the Audit and Governance Committee approves the revisions to the 'Corporate RIPA Policy & Procedures' and 'Guidance on the Use of Social Media in Investigations' and that the revised Policy is adopted by the Council.

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 must have in place a policy governing its use of RIPA powers, and a set of procedures detailing how officers will implement its policy as part of investigations.

4. DETAIL

- 4.1 RIPA governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities. 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').

- 4.2 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.
- 4.3 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.
- 4.4 At its meeting on 19 February 2024, the Committee received a report setting out that the Council had not used these powers in the period from 1 January 2023 to 31 December 2024. There has been no use of the powers in the period from 1 January 2024 to the date of publication of this report.
- 4.5 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 (CHIS) 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).
- 4.6 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).
- 4.7 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".
- 4.8 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.
- 4.9 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 and for inspecting local authorities periodically to examine their use of these powers.

IPCO Inspection

- 4.8 On 13 March 2023 the Council was the subject of its periodic inspection by IPCO, with the process facilitated by the Group Head of Law & Governance. The inspection took place over the course of one day, and the Investigatory Powers Commissioner's inspection letter is attached as Appendix 1.
- 4.9 The Commissioner's report provided positive conclusion and comments regarding both the Council's policy and procedures, and the way in which the use of RIPA is governed at the Council. The Commissioner made a number of recommendations for changes to the Council's Policy and guidance in order to ensure they are up to date, together with other recommendations as set out in the table below.

IPCO REPORT REQUIREMENT	ADC ACTION	STATUS
Review RIPA Policy to ensure it reflects current ADC structure and legal requirements	SRO to review Policy and Audit & Governance Committee to consider and adopt revised policy	Considered at this meeting
Include pseudo-RIPA process of authorisation within RIPA Policy	To be introduced in the revised RIPA Policy to be considered by the Audit & Governance Committee	Considered at this meeting
Review and revise RIPA Policy to correctly reflect retention periods for authorisations and associated case files	SRO to review Policy and Audit & Governance Committee to consider and adopt revised policy	Considered at this meeting
Review RIPA Social Media Guidance and reduce in length	SRO to review Guidance and Audit & Governance Committee to consider and adopt revised policy	Considered at this meeting
Annual update to Elected Members on ADC use of RIPA powers	Annual update to be presented to the Audit & Governance Committee	Completed 19 February 2024
Senior Responsible Officer to review storage and auditable booking of	Senior Responsible Officer to undertake checks with Group Heads and service managers responsible for surveillance devices	Completed July 2023

surveillance devices		
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4.10 Attached at Appendix 2 is the existing ‘Corporate Policy and Procedures Document on The Regulation of Investigatory Powers Act 2000’. This has been renamed as ‘Corporate RIPA Policy & Procedures’ for simplicity and ease of understanding. The version at Appendix 2 shows tracked changes that reflect the Commissioner’s recommendations in respect of the Council’s structure, ‘pseudo-RIPA activities’, and retention periods for documentation.

4.11 Attached at Appendix 3 is the existing ‘Guidance on the Use of Social Media in Investigations’ with tracked changes showing proposed amendments that reflect the Commissioner’s recommendation:

“The RIPA social media guidance is similarly detailed and there is a danger that the core message may be lost in the detail; it is therefore suggested that this be reviewed and reduced in length. Councils often find it helpful to circulate key messages about viewing information online and how this might engage RIPA, linking the supporting social media guidance.”

4.12 Both documents are presented to the Committee for consideration and the revisions are recommended for adoption.

5. CONSULTATION

5.1 Consultation was not required in relation to this report.

6. OPTIONS / ALTERNATIVES CONSIDERED

6.1 The recommendations of the Commissioner should be implemented by the Council and no alternative option exists in this regard.

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 Adoption of an up-to-date and lawful policy supports sound criminal investigative techniques and ensures that the Council’s investigations and prosecutions are beyond legal challenge where covert surveillance techniques are utilised.

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. Local authorities are inspected by IPCO on a periodic basis – usually every three years. It is important, as set out in paragraph 8.1, that the Council’s policy, procedures and guidance documents are updated in line with the

Commissioner's recommendations in order that evidence obtained through the use of covert surveillance cannot be challenged as part of any legal proceedings, and to protect the rights of individuals when those techniques are being employed.

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:

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BACKGROUND DOCUMENTS: None