



**CABINET – 24 MAY 2019**

**REGULATION OF INVESTIGATORY POWERS ACT 2000 AND THE  
INVESTIGATORY POWERS ACT 2016 - REVIEW OF POLICY  
STATEMENT**

**REPORT OF THE DIRECTOR OF LAW AND GOVERNANCE**

**PART A**

**Purpose of the Report**

1. The purpose of this report is to advise the Cabinet on the Council's use of the Regulation of Investigatory Powers Act 2000 (RIPA) for the period from 1 October 2017 to 1 May 2019 and changes to legislation relating to the acquisition of communications data by local authorities, and, in light of those changes, to seek approval for the revised Covert Surveillance and the Acquisition of Communications Data Policy Statement which is attached to this report.

**Recommendations**

2. It is recommended that:
  - (a) The Council's use of the Regulation of Investigatory Powers Act 2000 for the period from 1 October 2017 to 1 May 2019 be noted;
  - (b) That the revised Covert Surveillance and the Acquisition of Communications Data Policy Statement attached as an Appendix to this report be approved.

**Reasons for Recommendations**

3. The Codes of Practice made under RIPA require elected members of a local authority to review the Authority's use of RIPA and set the Policy at least once a year. Changes in legislation affecting the acquisition of communications data by local authorities are to be introduced imminently and have resulted in the need to update the Council's current Policy Statement.

**Timetable for Decisions (including Scrutiny)**

4. The revised Policy Statement was considered and supported by the Council's Corporate Governance Committee on 10 May 2019. Subject to approval by the Cabinet, the Policy Statement will be implemented following approval of the commencement order by Parliament which will bring the new legislation in to force. This is expected to be by at the end of May 2019.

### **Policy Framework and Previous Decisions**

5. Since October 2000 the County Council has had statutory responsibilities under RIPA to ensure there is appropriate oversight for the authorisation of its officers who are undertaking covert surveillance governed by the Act.
6. In December 2013 and December 2016, in accordance with the recommendations of the Corporate Governance Committee (in November 2013 and November 2016 respectively), the Cabinet agreed amendments to the Policy Statement to reflect legislative changes and recommendations made by the Office of Surveillance Commissioners following two separate inspections of the County Council. In 2017 and 2018, the Policy Statement was confirmed to be fit for purpose without change.
7. On 24<sup>th</sup> October 2018, the Corporate Governance Committee agreed to delay the annual review of the Council's Policy Statement until such time as the IPA 2016 had been fully implemented and its effect on the Council's current Policy Statement and processes made clear.

### **Resources Implications**

8. There are no resources implications arising from this report.

### **Circulation under the Local Issues Alert Procedure**

9. None.

### **Officers to Contact**

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## **PART B**

### **Background**

10. The Trading Standards Service is the primary user of RIPA within the County Council. The three activities primarily used by the County Council are –
  - i. Directed Surveillance - the pre-planned covert surveillance of individuals, sometimes involving the use of hidden visual and audio equipment;
  - ii. Covert Human Intelligence Sources (CHIS) - the use of County Council officers, who pretend to be acting as consumers to purchase goods and services, e.g. in person, by telephone or via the internet
  - iii. Communications data – the acquisition of information obtained from communication service providers, for example, subscriber details relating to an internet account, mobile phone or fixed line numbers, but not the contents of the communication itself.

These are the RIPA ‘powers’ referred to in this report.

### **The Current Process**

11. An application by the Authority for a RIPA authorisation or notice is considered at a hearing in the Magistrates’ Court. The hearing is conducted in private and heard by a Magistrate or District Judge who will read and consider the RIPA authorisation or notice applied for.
12. Home Office guidance recommends the County Council Monitoring Officer (the Director of Law and Governance in this Authority) should designate certain officers for the purpose of presenting RIPA cases to the Magistrates’ Court. Delegated powers agreed by the Cabinet enable the Director of Law and Governance to “authorise staff to prosecute, defend or appear in proceedings before Magistrates’ Courts on behalf of the County Council”. A pool of suitable officers within Regulatory Services are designated for this purpose. The existing delegated power will allow for further designations to be made by the Director of Law and Governance should it become necessary and appropriate for officers from other service areas to be able to represent the County Council in RIPA hearings.
13. The Corporate Governance Committee continues to be the appropriate body to review the RIPA Policy Statement annually, with a view to reporting to the Cabinet on both the use of RIPA powers and whether the Policy remains fit for purpose.
14. Procedures and all published Home Office guidance for local authorities are available to all employees via the County Council’s intranet.
15. In September 2017 the Investigatory Powers Commissioner’s Office (IPCO) took over responsibility for oversight of investigatory powers from the Interception of Communications Commissioner’s Office (IOCCO), the OSC and the Intelligence Services Commissioner (ISComm). The IPCO is now responsible for the audit functions of these former bodies and will have

oversight of the newly formed Office of Communications Data Authorisations as detailed below.

### **Legislative Changes**

16. The introduction of the Data Retention and Acquisition Regulations 2018 will introduce changes to the above process so far as they relate to a local authority's request to access 'communications data' and the Council's Policy Statement has been updated to reflect this specific area of change. In respect of the other RIPA powers (Directed Surveillance and CHIS), the above process and the Council's Policy Statement remains unchanged.
17. The new legislation creates a new authorisation process for all public bodies that seek to obtain communications data for a specific criminal investigation. Judicial oversight for communications data authorisations will be transferred from magistrates' courts to a new independent body established by the Government, the Office of Communications Data Authorisations (OCDA).
18. Authorities will also be required to enter into a formal collaboration agreement with the National Anti-Fraud Network (NAFN), an organisation hosted by Thameside Metropolitan Borough Council which specialises in providing data and intelligence services to enforcement agencies. NAFN will in future act as the single point of contact between any communications service provider and the Council and prepare on the Council's behalf any applications to the OCDA.
19. Local authorities will be permitted to acquire the less intrusive types of communications data, now referred to as '*entity*' data (e.g. the identity of the person to whom services are provided) and '*events*' data (e.g. the date and type of communications, time sent, and duration, frequency of communications). However, it will remain the case that under no circumstances will it be permitted to obtain or intercept the content of any communications.
20. Before it can be submitted to the OCDA for consideration, an application to obtain communications data must first meet the Council's own necessity and proportionality test and receive senior internal approval by the delegated designated person (currently the Team Leader for Civil Litigation and Prosecution and the Head of Regulatory Services).
21. In addition, in order to obtain either type of data an authority previously had to show the purpose for the application was for the prevention and detection of a crime. This remains the same for '*entity*' data. However, for '*events*' data, the threshold has been raised and the purpose must now be for the prevention or detection of a '*serious*' crime (e.g. an offence for which an individual could be sentenced to imprisonment for a term of 12 months or more, or offences which involve, as an integral part, the sending of a communication or a breach of a person's privacy).
22. Any application to the OCDA will be guided by the Council's revised Policy Statement attached, as well as current best practice and the Communications Data Code.

**Use of RIPA**

23. For the period from 1 October 2017 to 1 May 2019 the following authorisations were approved:
- 1 directed surveillance;
  - 5 relating to the use of covert intelligence sources.
24. All RIPA authorisations granted within this period were associated with covert surveillance activities undertaken by the Trading Standards Service. These criminal investigations related to the alleged supply of age restricted products to children or the supply of illicit tobacco products.
25. All applications were submitted for judicial approval between October 2017 and May 2019 and considered by a District Judge or a Magistrate sitting at Leicester Magistrates' Court. The County Council was able to demonstrate that appropriate consideration had been applied as to the necessity and proportionality of the covert activity to be undertaken and that it was being sought for a legitimate purpose.

**Equality and Human Rights Implications**

26. There are no Equality and Human Rights Implications arising from this report.

**Background Papers**

Reports to the Cabinet on 13 December 2016 and December 2017 "The Regulation of Investigatory Powers Act 2000 Revised Policy Statement" and minutes of that meeting.

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=4608&Ver=4>

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=4866&Ver=4>

Report to the Corporate Governance Committee on 24 October 2018 "Regulation of Investigatory Powers Act 2000 (RIPA) -" and minutes of that meeting.

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=434&MId=5295&Ver=4>

**Appendix**

Covert Surveillance and the Acquisition of Communications Data Policy Statement

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