
Audit and Procurement Committee
Cabinet Member for Policing and Equalities

10 September 2018
25 October 2018

Name of Cabinet Member:

Cabinet Member for Policing and Equalities – Councillor A Khan

Director Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

None

**Title: Updated Procedural Guidance: Regulation of Investigatory Powers (RIPA)
Covert Surveillance and Covert Human Intelligence Sources (RIPA
Procedural Guidance)**

Is this a key decision?

No

Executive Summary:

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.

The Council uses powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more, or are related to the underage sale of alcohol and tobacco. The three powers available to local authorities under RIPA: the acquisition and disclosure of communications data; directed surveillance; and covert human intelligence sources (CHIS)

The Act sets out the procedures that Coventry City Council must follow if it wishes to use directed surveillance techniques or acquire communications data in order to support core function activities (e.g. typically those undertaken by Trading Standards and Environmental Health). The information obtained as a result of such operations can later be relied upon in court proceedings providing RIPA is complied with.

The Council's compliance with RIPA is monitored by the Investigatory Powers Commissioner's Office (formerly by the Office of Surveillance Commissioners, which was abolished in 2017) who conduct inspections on roughly a bi-annual basis. The last

inspection at Coventry City Council was December 2016.

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 Part II of the Act, should review the Council's use of the legislation and provide approval to its policies. The Council adopted this approach for oversight of the authority's use of Parts I and II of the Act.

This report sets out the updates and amendments made to the Council's RIPA Procedural Guidance following:

1. The Inspection by the Office of Surveillance Commissioners in December 2016 and their subsequent inspection report, dated December 2016; and
2. The introduction of the General Data Protection Regulation (GDPR) on 25 May 2018.

Recommendations:

The Audit and Procurement Committee are requested to:

1. Consider the updated and amended RIPA Procedural Guidance.
2. Forward any comments and/or recommendations to the Cabinet Member for Policing and Equalities.

The Cabinet Member for Policing and Equalities is requested to:

1. Consider any comments and recommendations provided by the Audit and Procurement Committee.
2. Approve the updated and amended RIPA Procedural Guidance as a formal record of the Council's use and compliance with RIPA.

List of Appendices included:

Appendix 1: Updated and amended RIPA Procedural Guidance
Appendix 2: Use of Social Media in Investigations Guidance

Other useful background papers:

None

Other useful background information:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

The RIPA Policy was considered and approved by the Information Management Strategy Group on 22 May 2018, prior to the preparation of this report.

Will this report go to Council?

No

Report title: Updated Procedural Guidance: RIPA Covert Surveillance and Covert Human Intelligence Sources (RIPA Procedural Guidance)

1. Context (or background)

- 1.1 RIPA governs the acquisition and interception 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 where an offence may be punishable by a custodial sentence of 6 months or more (e.g. offences relating to counterfeit goods which carry a maximum penalty of 10 years in prison) or the offence is related to the underage sale of alcohol and/or tobacco.
- 1.2 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 covert human intelligence sources (CHIS") (such as the deployment of undercover officers). The powers are most commonly used by Trading Standards. However, powers can also be used by other Council services if their offences meet the serious crime threshold, mentioned in 1.1 above.
- 1.3 RIPA sets out the procedure that local authorities must follow when applying to use RIPA powers. These include approval by Authorised Officers that the proposed use of the powers is "necessary and proportionate". All applications must also be approved by the Magistrates Court before RIPA powers can be exercised.
- 1.4 The Council is required to have a Senior Responsible Officer to maintain oversight of the RIPA arrangements, procedures and operations. The Council's Monitoring Officer performs this function and is responsible for the integrity of the Council's process for managing the requirements under RIPA.
- 1.5 On 1st September 2017, The Office of Surveillance Commissioners (OSC) and The Interception of Communications Commissioner's Office (ICCO) were abolished by the Investigatory Powers Act 2016. The Investigatory Powers Commissioner's Office (IPCO) is now responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.
- 1.6 The Council's RIPA arrangements in respect of directed surveillance were inspected by the then OSC on 8 December 2016. One of the recommendations that was made in the Inspection Report was: "that Coventry City Council's Policy and Guidance documents be further revised."
- 1.7 Appendix 1 to the report contains a copy of the updated and amended Council's RIPA Procedural Guidance following the inspection of December 2016 and the introduction of GDPR on 25 May 2018. The Procedural Guidance is similar to the existing one but updates and makes amendments as follows:

- 1.7.1 References to the Data Protection Act 1998 have been updated to reflect the changes under GDPR (including the Data Protection Act 2018 and other applicable legislation and guidance, collectively referred to in the Procedural Guidance as “the Data Protection Legislation”). Any information obtained under RIPA must be collected, stored and processed in accordance with GDPR (please see paragraph 1.2 of the Procedural Guidance at Annex 1 of this report);
- 1.7.2 As detailed in this report the Office of Surveillance Commissioners was abolished in 2017 and the Investigatory Powers Commissioner’s Office will now be responsible for inspections, and reference has been made to this at paragraph 1.1 of the RIPA Procedural Guidance;
- 1.7.3 How to deliver authorisations to the Council’s Information Governance Team has been clarified at paragraph 6.23 of the RIPA Procedural Guidance. Authorising Officers are required to maintain an electronic copy and the original hard copy for their records, and send electronic copies (electronic copies only) to the Council’s Information Governance Team within three working days: to infogov@coventry.gov.uk.
- 1.7.4 All references to “oral authorisations” have been removed from the Procedural Guidance and this has been clarified at paragraph 4.1(vi) of the RIPA Procedural Guidance by saying that “**Oral authorisations are prohibited in all circumstances** (even in urgent situations). Local authorities no longer have the power to make oral authorisations under s43 (1A) RIPA, inserted by the Protection of Freedoms Act 2012”.
- 1.7.5 Whether or not an individual is a Covert Human Intelligence Source (CHIS) as a result of the fact that they have volunteered information has been clarified at paragraphs 6.18 and 6.19 of the RIPA Procedural Guidance. Where a task does not require the member of the public to establish or maintain a relationship with another person in order for the Council to obtain information, they will **not** be a CHIS. Where a person establishes, maintains and uses a personal or other relationship for the covert purpose of obtaining information they **are** a CHIS.
- 1.7.6 Separate guidance on the use of Social Media (also known as Social Networking Sites or SNS) has been produced and is at Appendix 2 to the report. Reference to the Use of Social Media in Investigations Guidance (the Social Media Guidance) has also been made in the RIPA Procedural Guidance at paragraph 7. The Social Media Guidance states that repeated viewing of Social Media could be classed as “surveillance” and as a consequence a RIPA authorisation should be sought to carry this out where the RIPA criteria are met (please see paragraph 1.1 and 1.2 of this report) or further advice should be sought from the Information Governance Team in the event that the activity falls outside of the RIPA criteria.

2. Options considered and recommended proposal

- 2.1 The Audit and Procurement Committee is recommended to approve the updated and amended RIPA Procedural Guidance attached at Appendix 1 to the report. In addition, the Committee is recommended to forward any comments or recommendations to the Cabinet Member for Policing and Equalities.
- 2.2 The Cabinet Member for Policing and Equalities is recommended to consider any comments or recommendations from the Audit and Procurement Committee, and approve the updated and amended RIPA Procedural Guidance as a formal record of the Council's Procedural Guidance for the use of RIPA.

3. Results of consultation undertaken

- 3.1 Not applicable.

4. Timetable for implementing this decision

- 4.1 Upon approval of the report, the RIPA Procedural Guidance will be published to the Council's Internet page and replace the existing RIPA Procedural Guidance.

5. Comments from Director of Finance and Corporate Resources

- 5.1 **Financial implications** – There are no specific financial implications arising from the recommendations within this report.
- 5.2 **Legal implications** – The Council is required to have RIPA Procedural Guidance under the Home Office Codes of Practice for 1) Covert Surveillance and Property Interference, Draft Revised Code of Practice, dated June 2018 (Code of Practice for Covert Surveillance) and 2) Covert Human Intelligence Sources, Revised Code of Practice, dated August 2018. Please note that at the time of writing this Procedural Guidance the Home Office has closed a consultation in relation to revision of its codes of practice under Parts II and III of RIPA. The Code of Practice for Covert Surveillance is still in draft form. Feedback from the consultation is being analysed and the final Code of Practice for Covert Surveillance has not yet been published.
Paragraph 4.47 of the Code of Practice for Covert Surveillance states that: "Elected members of a local authority should...ensure...that the policy remains fit for purpose." It is important that the Procedural Guidance is therefore regularly reviewed and updated to ensure that it is fit for purpose.

6. Other implications

6.1 How will this contribute to achievement of the Council's Plan?

As and when judicial approval is sought to use these powers, it will help support the Council's core aims by providing clear up-to-date RIPA Procedural Guidance in relation to preventing and detecting crime associated with enforcement activities such as: investigations relating to counterfeiting and fraudulent trading activity, or underage sales of alcohol or tobacco (in addition to support from Information Governance and Legal Services).

6.2 How is risk being managed?

There is no direct risk to the organisation as a result of the contents of this report, but a failure to implement and maintain up-to-date RIPA Procedural Guidance could lead to a sanction by the Investigatory Powers Commissioner's Office and / or a Council officer making a decision based on outdated information.

6.3 What is the impact on the organisation?

The updating of the RIPA Procedural Guidance should assist in facilitating good, clear and transparent decision making on the basis of the latest information available.

6.4 Equalities / EIA

There are no public sector equality duties which are of relevance at this stage.

6.5 Implications for (or impact on) the environment?

There are no implications on the environment.

6.6 Implications for partner organisations?

There are no implications on partner organisations.

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