

Audit and Procurement Committee  
Cabinet Member for Policing and Equalities

29<sup>th</sup> November 2021  
2<sup>nd</sup> December 2021

**Name of Cabinet Member:**

Cabinet Member for Policing and Equalities – Councillor A S Khan

**Director Approving Submission of the report:**

Director of Streetscene and Regulatory Services

**Ward(s) affected:**

None

**Title:**

Annual Compliance Report 2021 - Regulatory & Investigatory Powers Act (RIPA) 2000

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**Is this a key decision?**

No

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**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. 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”).

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 (e.g. typically those undertaken by Business Compliance 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 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.

**Recommendations:**

The Audit and Procurement Committee is requested to:

- 1) Consider and note the Council's use and compliance with RIPA.
- 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/or recommendations provided by the Audit and Procurement Committee.
- 2) Approve the report as a formal record of the Council's use and compliance with RIPA.

**List of Appendices included:**

None

**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?**

Yes – Audit and Procurement Committee 29<sup>th</sup> November 2021

**Will this report go to Council?**

No

Report title: **Annual Compliance Report - Regulatory & Investigatory Powers Act (RIPA) 2000**

## **1. Context (or background)**

- 1.1 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.
- 1.2 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 (CHIS) an offence has to be punishable by a custodial sentence of 6 months or more or the offence is related to the underage sale of alcohol and/or tobacco. 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).
- 1.3 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). The powers are most commonly used by Business Compliance. However, powers can also be used by other Council services if their offences meet the serious crime threshold, mentioned in 1.2 above.
- 1.4 RIPA and 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”.
- 1.5 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.
- 1.6 Since 1st September 2017, the [Investigatory Powers Commissioner's Office](#) (IPCO) has been responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.
- 1.7 2019 saw the implementation of Part 3 of the Investigatory Powers Act 2016 (IPA). The introduction of this legislation has seen the most significant change to the acquisition of communications data in recent years. The IPA consolidates all existing powers available to law enforcement and other agencies. It radically overhauls the way these powers are authorised and overseen. The legislation also ensures that the powers conveyed are fit for the fast-moving digital age that we live in. The IPA has 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.

1.8 The acquisition of communications data is undertaken through the National Antifraud Network (NAFN). They act as the single point of contact for many local authorities and ensure the application is RIPA/ IPA compliant. It is NAFN that are audited by the commissioners.

1.9 Details of the applications that the Council has made are set out below:

1.9.1 Use of Directed Surveillance or Covert Human Intelligence Sources

For the Period 1 January 2020 – 31 December 2020

The number of applications made for a Directed Surveillance authorisation	0
The number of Directed Surveillance authorisations successfully granted	0
The number of Directed Surveillance authorisations that were cancelled	0
The number of Directed Surveillance authorisations extant at the end of the year	0

- Due to the pandemic and the need for officers to undertake duties related to legislation brought in during the pandemic the need for Directed Surveillance has not been required. An example would be the assistance of volunteer young people below the age of 18 to make test purchases of age restricted goods.
- If requests had been submitted, they would have related to core functions permitted by the Act and for the purpose of preventing and detecting crime.
- There were no reported instances of the Council having misused its powers under the Act.

1.9.2 Use of Acquisition & Disclosure of Communications Data

No applications for the disclosure of communications data were made during the period 1 January 2020 – 31 December 2020.

1.10 Statistical Data

The IPCO require annual statistical data each year. The [Annual Report of the Investigatory Powers Commissioner 2019](#) is published on the IPCO website. Part 14 provides the findings relating to local authorities.

1.11 RIPA Training

It is recommended good practice to provide RIPA training to all relevant officers periodically. A one day training session was delivered on 18 January 2017. Elected Members, and Council Officers from core function departments, Legal and those who play a key role in implementing and/or managing CCTV systems attended.

Refresher training will take place in January 2022 for Elected Members and Council Officers.

## **2. Options considered and recommended proposal**

- 2.1 The Audit and Procurement Committee is recommended to consider and note the Annual Compliance Report, which sets out how the Council has used its powers during the reporting periods of the individual Commissioners. In addition, the Committee is recommended to forward any comments or recommendations to the Deputy Leader Policing and Equalities.
- 2.2 The Deputy Leader Policing and Equalities is recommended to consider any comments and/or recommendations from the Audit and Procurement Committee and approve the report as a formal record of the Council's use and compliance with RIPA.

## **3. Results of consultation undertaken**

- 3.1 Not applicable

## **4. Timetable for implementing this decision**

- 4.1 The report will be a formal record of the Council's use of RIPA in 2020 when approved by the Cabinet Member for Policing and Equalities.

## **5. Comments from the Director of Finance and the Director of Law and Governance**

### **5.1 Financial implications**

The Council has budget provision to cover the cost of the training, which will be delivered by an external trainer who specialises in RIPA legislation. There are no other direct financial implications arising from this report.

### **5.2 Legal implications**

The powers of local authorities have remained largely unchanged following the introduction of the Investigatory Powers Act 2016. However, Officers will continue to monitor the operation of RIPA and ensure that any amendments are incorporated into the Council's policy and procedures as appropriate.

Consideration and endorsement by Members, ensures that appropriate scrutiny is in place. Consideration of RIPA activity as recommended by the OSC guidance ensures that such activity is subject to appropriate scrutiny and control.

## **6. Other implications**

Whilst the requirement to obtain judicial / OCDA approval introduced an additional step into the process, given the Council's low use of its powers under RIPA, it has not resulted in any significant delays for planned operations. Routine patrols, ad-

hoc observations at trouble 'hot spots', immediate response to events and overt use of CCTV do not require RIPA authorisation.

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

As and when judicial / OCDA approval is sought to use these powers, it will help support the Council's core aims by 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.

**6.2 How is risk being managed?**

The requirement for the Council to seek judicial / OCDA approval for any proposed use of its powers under the Regulation of Investigatory Powers Act 2000, as amended by the Protection of Freedoms Act 2012 and IPA, reduces the risk of the Council using such powers inappropriately or unlawfully. This will help ensure any evidence gained from such use will be admissible in a court of law.

**6.3 What is the impact on the organisation?**

There is no additional impact on the Council.

**6.4 Equalities / EIA**

When submitting a request for authorisation to use RIPA, consideration is given to any impact on equalities.

**6.5 Implications for (or impact on) climate change and the environment?**

There are no implications on the environment.

**6.6 Implications for partner organisations?**

There are no implications on partner organisations.

**Report author(s):****Name and job title:**

Andrew Tandy  
Principal Trading Standards Officer

**Service:**

Streetscene and Regulatory Services

**Tel and email contact:**

Tel: 024 7697 2225

Email: [Andrew.tandy@coventry.gov.uk](mailto:Andrew.tandy@coventry.gov.uk)

Enquiries should be directed to the above.

<b>Contributor/ approver name</b>	<b>Title</b>	<b>Service</b>	<b>Date doc sent out</b>	<b>Date response received or approved</b>
<b>Contributors:</b>				
A Walster	Director of Streetscene and Regulatory Services	-	20/09/2021	20/09/2021
Davina Blackburn	Strategic Lead of Regulation	Streetscene and Regulatory Services	31/08/2021	6/9/2021
Debbie Cahalin-Heath	Licensing and Business Compliance Manager	Streetscene and Regulatory Services	31/08/2021	31/08/2021
Roy Hammond	Regulatory Lawyer, Legal Services	Law and Governance	20/09/2021	23/09/2021
Sharon Lock	Head of Information Governance and Records Management	Law and Governance	31/08/2021 20/09/2021 15/11/2021	15/11/2021
Michelle Salmon	Governance Services Officer	Law and Governance	20/09/2021	20/09/2021
<b>Names of approvers for submission: (officers and members)</b>				
Cath Crosby	Lead Accountant (Business Partnering)	Finance	20/09/2021	24/09/2021
Julie Newman	Director of Law and Governance and Monitoring Officer	-	20/09/2021	28/09/2021
Councillor A S Khan	Cabinet Member for Policing and Equalities	-	15/11/2021	15/11/2021

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