

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL**

**Audit & Accounts Committee**

**17 February 2023**

<b>TITLE:</b>	<b>Regulation of Investigatory Powers Act (2000) - Review of Policy and Procedures</b>
<b>PORTFOLIO HOLDER:</b>	<b>Councillor Michael Worthington – Portfolio Holder for Finance</b>
<b>CONTACT OFFICER:</b>	<b>John Leak - Head of Audit</b>
<b>WARDS INVOLVED:</b>	<b>Non Specific</b>

**Appendices Attached – Appendix 1 Regulation of Investigatory Powers Act 2000 Policy & Procedures**

**1. Reason for the Report**

- 1.1 The Council must have arrangements in place to ensure compliance with the Regulation of Investigatory Powers Act 2000 (RIPA) and those arrangements are subject to inspection by the Investigatory Powers Commissioner's Office (IPCO). This is achieved through the adoption of a set of Policy and Procedures that ensure compliance with the requirements of the legislation. The Council has had arrangements and procedures in place for authorising and conducting necessary surveillance since 2002. Councillors should review the use of RIPA and set the policy at least once per year. They should also consider internal reports on use of RIPA periodically to ensure it is being used consistently with the policy and that the policy remains fit for purpose.

**2. Recommendation**

- 2.1 That the committee note the Council's use of RIPA powers and the outcome of the October 2022 Investigatory Powers Commissioner's Office Inspection.
- 2.2 That the updated Regulation of Investigatory Powers Act 2000 Policy and Procedures attached at **Appendix 1** are approved and adopted.

### 3. **Executive Summary**

3.1 RIPA was introduced in order to provide the correct balance between an individual's right to privacy under the Human Rights Act 1998 and the proper use of data and surveillance by public authorities, such as the police and local councils, who are entrusted by law to carry out certain enforcement duties. The Act identifies certain areas where carrying out these enforcement duties will inevitably conflict with individuals' rights to privacy. The main areas which are of concern to the Council are:

- The use of directed surveillance;
- The use of covert human intelligence sources (CHIS);
- Obtaining communications and data about communications.

3.2 Some of the Council's activities necessarily require surveillance as part of their enforcement functions such as environmental, planning and licensing enforcement and other fraud investigations. However, the use of RIPA powers by the Council has been very limited and no authorisations have been granted since 2008. The current policy and procedures were approved and adopted by this committee in February 2022.

3.3 The Investigatory Powers Commissioner's Office (IPCO) carry out an inspection of the Council's arrangements for managing the use of RIPA authorisations approximately every three years, the last inspection of the Alliance joint arrangements taking place in November 2019.

3.4 The latest inspection by the IPCO was undertaken during October 2022 and their Inspection Report was received by the Council in November 2022.

3.5 The IPCO report contained just one advisory point regarding revision of the Policy and Procedures to include review times and the allocation of an owner who should undertake the review of any material acquired covertly and decide upon destruction of this material.

3.6 In addition an updated Covert Human Intelligence Sources (CHIS) Code of Practice was released by the Home Office in December 2022 primarily to reflect the new provisions relating to the authorisation of criminal conduct by CHIS brought in by the Covert Human Intelligence Sources (Criminal Conduct) Act 2021.

3.7 The Council's Policy and Procedures have therefore been updated to reflect both the IPCO advice and the updated CHIS Code of Practice and are attached as **Appendix 1**.

### 4. **How this report links to Corporate Priorities**

4.1 Maintaining up-to date policy and procedures and reporting on their use will ensure that the Council complies with its legislative duties under RIPA.

## 5. **Alternative Options**

- 5.1 Approve the Regulation of Investigatory Powers Act 2000 Policy and Procedures (*Recommended*). The Council will have Policy & Procedures based on best practice and current legislation which ensures compliance with the requirements of the Regulation of Investigatory Powers Act 2000.
- 5.2 Do not approve the Regulation of Investigatory Powers Act 2000 Policy and Procedures (*Not Recommended*). The Council will not have up-to date Policy & Procedures based on current best practice and legislation.

## 6. **Implications**

### 6.1 Community Safety - (Crime and Disorder Act 1998)

None.

### 6.2 Workforce

None.

### 6.3 Equality and Diversity/Equality Impact Assessment

None.

### 6.4 Financial Considerations

None.

### 6.5 Legal

Surveillance investigations which are not authorised could leave the Council open to legal challenge by individuals who consider that there has been an intrusion of their privacy.

### 6.6 Climate Change

None.

### 6.7 Consultation

None.

### 6.8 Risk Assessment

None.

MARK TRILLO

**Executive Director (Governance & Commissioning) and Monitoring Officer**

**Web Links and**

**Background Papers**

Regulation of Investigatory Powers Act 2000 &  
subsequent amendments

RIPA Codes of Practice

Protection of Freedoms Act 2012 – changes to provisions  
under the Regulation of Investigatory Powers Act 2000  
(RIPA)

Investigatory Powers Act 2016

OSC/IPCO Inspection Reports

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## **7. Detail**

### **7.1 Introduction**

- 7.1.1 The Council must have arrangements in place to ensure compliance with the Regulation of Investigatory Powers Act 2000 (RIPA) and those arrangements are subject to inspection by the IPCO, formally the Office of Surveillance Commissioners (OSC). The Council has therefore had arrangements and procedures in place for authorising and conducting necessary surveillance since 2002 and the current policy and procedures were approved and adopted by this committee in February 2022.
- 7.1.2 The IPCO carry out an inspection of the Council's arrangements for managing the use of RIPA authorisations approximately every three years, the last inspection of the Alliance joint arrangements taking place in November 2019.
- 7.1.3 The latest inspection by the IPCO was undertaken during October 2022 and their Inspection Report was received by the Council in November 2022.
- 7.1.4 The purpose of this report is to update Councillors on the use of RIPA powers and the outcome of the October 2022 IPCO Inspection, and to seek approval for adoption of updated Policy and Procedures.

### **7.2 The Council's Use of RIPA**

- 7.2.1 RIPA was introduced in order to provide the correct balance between an individual's right to privacy under the Human Rights Act 1998 and the proper use of data and surveillance by public authorities, such as the police and local councils, who are entrusted by law to carry out certain enforcement duties. The Act identifies certain areas where carrying out these enforcement duties will inevitably conflict with individuals rights to privacy. The main areas which are of concern to the Council are:
- The use of directed surveillance ;
  - The use of covert human intelligence sources (CHIS); and
  - Obtaining communications and data about communications.
- 7.2.2 Some of the Council's activities necessarily require surveillance as part of their enforcement functions. Examples include environmental, planning and licensing enforcement and other fraud investigations. RIPA provides the statutory framework for the granting of authority to carry out surveillance. Where the Council is required to gather evidence using surveillance and/or covert human intelligence sources, these measures must be subject to an authorisation, review and cancellation procedure to ensure that it is lawful. In addition, the Council must comply with the Codes of Practice issued by the Home Secretary in accordance with the Act. Detailed operational procedures have been developed to back-up the Council's policy to ensure that this is the case. These procedures include details of the Council's authorising officers.
- 7.2.3 As a responsible local authority, Staffordshire Moorlands District Council has ensured that no individual, whether an employee of the Council or otherwise,

has suffered as a result of a breach of any provision of RIPA. It is essential that all activities of this nature, whether they will lead to prosecution or not, are carried out in accordance with RIPA, the Codes of Practice and the Council's policy and procedures. Investigations which are not authorised could leave the Council open to legal challenge by individuals who consider that there has been an intrusion of their privacy. However, the use of RIPA powers by the Council has been very limited and no authorisations have been granted since 2008.

### **7.3 Inspections and Review of RIPA Policy and Procedures**

- 7.3.1 Two significant changes governing how local authorities use RIPA were contained within the Protection of Freedoms Act 2012 and became law from 1<sup>st</sup> November 2012 onwards. Local authority authorisations and notices under RIPA for the use of directed surveillance and the use of CHIS can only be given effect once an order approving the authorisation or notice has been granted by a Justice of the Peace. In addition, the crime threshold was introduced for directed surveillance by local authorities which means that directed surveillance under RIPA can only be authorised to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment or are related to the underage sale of alcohol and tobacco.
- 7.3.2 In order to ensure that the Council's arrangements remained up-to date, the Policy and Procedures were therefore updated in February 2013 to ensure that they continued to reflect best practice. There was also a need to standardise procedures across the Alliance so that officers apply the same processes across both authorities. Following this update of policy and procedures, training for practitioners from relevant services and authorising officers was provided.
- 7.3.3 Following an inspection of the Alliance arrangements for managing the use of RIPA authorisations by the Office of Surveillance Commissioners in May 2013, the Policy and Procedures were again updated in February 2014 to include guidance on the use of social networking sites and internet. Subsequently in December 2014, the Home Office issued revised Codes of Practice for Covert Surveillance and Covert Human Intelligence Sources, incorporating the latest legislative changes and the Council's Policy and Procedures were updated to reflect these in September 2015.
- 7.3.4 The last inspection by the now defunct OSC took place in June 2016 which concluded that the Alliance joint arrangements for RIPA compliance were good and in particular, the RIPA Policy was commended and described as one of the best policy and guidance documents seen in any second-tier authority. The Council's Policy and Procedures were updated to reflect the single recommendation contained in this report in September 2016.

- 7.3.5 Subsequently the Investigatory Powers Act 2016 became law in late 2016. This Act primarily relates to obtaining communications and data about communications and also introduced a new oversight framework, establishing the Investigatory Powers Commissioner. The first inspection of the Alliance's arrangements to ensure compliance with RIPA by the IPCO took place in November 2019. The report was issued in December 2019 and both core recommendations were subsequently implemented.
- 7.3.6 During July to September 2022 RIPA Essentials refresher training was undertaken by 28 members of staff including Authorising Officers, RIPA Senior Responsible Officer, Head of Audit and officers nominated by Heads of Service that may sometimes consider the use of covert surveillance as part of their enforcement functions. These officers are from Environmental Health/Licensing, Development Control, Communities & Climate Change, Revenues & Benefits and Housing Services.
- 7.3.7 The latest inspection by the IPCO was undertaken during October 2022 and their Inspection Report was received by the Council in November 2022. The IPCO report concluded that the Council's RIPA arrangements are "in a good place" with "well formed" Policy & Procedures. The report contained just one advisory point regarding revision of the Policy and Procedures to include review times and the allocation of an owner who should undertake the review of any material acquired covertly and decide upon destruction of this material.
- 7.3.8 In addition an updated Covert Human Intelligence Sources (CHIS) Code of Practice was released by the Home Office in December 2022 primarily to reflect the new provisions relating to the authorisation of criminal conduct by CHIS brought in by the Covert Human Intelligence Sources (Criminal Conduct) Act 2021. Although not relevant to local authorities who do not have the power to grant Criminal Conduct Authorisations, a number of other minor updates and some clarifications to the text were also made to ensure that public authorities continue to apply best Practice.
- 7.3.9 The Council's Policy and Procedures have therefore been updated to reflect both the IPCO advice and the updated CHIS Code of Practice and are attached as **Appendix 1**.