

# Annual RIPA (Regulation of Investigatory Powers Act 2000) Report

## Strategy & Resources Committee Thursday, 30<sup>th</sup> March 2023

Report of: Head of Legal Services & Monitoring Officer

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Purpose: For decision

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Publication status: Open

Wards affected: All

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### Executive summary:

This report provides an annual update and proposed amendments to the Council's current RIPA Policy and Officer Guidance.

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**This report supports the Council's priority of:** Building a better Council

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### Recommendations to Committee:

That the Committee notes:

- A. the content of this report; and
  - B. the Council's updated RIPA Policy and Officer Guidance.
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### Reason for recommendation:

These recommendations ensure compliance with The Regulation of Investigatory Powers Act 2000 (RIPA).

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## **Introduction and background**

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) sets out the ways in which the Council can lawfully carry out investigations where it wants to employ surveillance techniques, ensuring that the right balance is achieved between public interest and individual human rights. RIPA requires the Council to have in place procedures to ensure that when required, surveillance is necessary, proportionate and properly authorised.
- 1.2 Where properly authorised under RIPA the surveillance activity will be a justifiable interference with an individual's rights under the European Convention on Human Rights (ECHR); if the interference is not properly authorised an action for breach of the Human Rights Act could be taken against the Council, a complaint of maladministration made to the Local Government Ombudsman or a complaint made to the Investigatory Powers Tribunal. In addition, if the procedures are not followed any evidence collected may be disallowed by the courts.
- 1.3 The Council is required to have a RIPA Policy and the current one was last noted by the Strategy & Resources Committee on 22 September 2020. The RIPA Policy must be reviewed annually.
- 1.4 This report provides (i) an annual update, and (ii) a revised RIPA Policy to be noted by the Committee. The Officer Guidance has also been updated.

## **2. Amendments to policy**

- 2.1 The current policy refers to a number of "Authorising Officers". Several of the named individuals have since left the Council. The new policy has been updated at Annex A to note the following individuals/posts as "Authorising Officers":
  - David Ford - Chief Executive;
  - Cliff Thurlow - Chief Planning Officer; and
  - Katy Humphrey – Legal Specialist.
- 2.2 The current policy has also been updated to include:
  - website links to the Home Office Codes;
  - additional guidance in relation to online covert activity e.g. the use of social media as a means to collecting information. This is a useful tool and reminds officers that an authorisation for directed surveillance need only be sought where they are 'systematically collecting and recording information about a particular person or group';
  - a list of documents that need to be kept within the central register of authorisations;

- some clarification in the current policy (and Officer Guidance) in relation to the duration of authorisations for directed surveillance and CHIS noting that as a result of the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018 coming into force on 20 July 2018, the authorisation period for juveniles used as CHIS has been increased from one month to four months subject to at least monthly reviews;
- some clarification of the complaints procedure
- additional guidance in relation to Council use of communications data.

### **3. Training**

- 3.1 On 10th September 2020, an external provider attended the Council offices to provide a day of training not only for those mentioned within the RIPA policy but also for officers who deal with enforcement and revenue and benefits, for example. In total, 16 delegates attended the course, to include all of the Authorised Officers at that time.
- 3.2 The Policy recommends that refresher training is provided every 18 months. However, as there are three new Authorised Officers, new training was arranged for them and any other staff who recently joined the Council, particularly in the Revenue and Benefits, Planning Enforcement and Locality teams as they may be involved in the application, authorisation and management of covert activity. The training was provided by Bond Solon at a cost of £2,000 plus VAT. We had limited spaces and therefore could not join up with another local authority in order to share some of the costs.

### **4. Equality implications**

- 4.1 In line with the Public-Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 4.2 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

### **5. Financial implications**

- 5.1 Aside from the training expenditure noted above, the S151 Officer confirms that there are no other direct financial implications that affect the Medium-Term Financial Strategy arising from Tandridge District Councils revised Regulation of Investigatory Powers Act 2000 (RIPA) policy. The training is a specialist area which cannot be delivered internally, making external provision the most appropriate decision in this case.

## **6. Comments of the Head of Legal Services**

- 6.1 The Council is required to review its RIPA Policy annually and following this review it has been noted that further amendments need to be made to ensure that the policy (and Guidance Note for Officers) remains up to date. This, together with the training that has been provided, should ensure the Council is fully compliant with all its obligations in relation to RIPA when the full inspection by the IPCO (which is overdue) takes place. It should also provide Officers with the practical knowledge and confidence to be able to utilise RIPA, where relevant.
- 6.2 The key risks to the Council are that without clear and robust policies and procedures in place, there would be a risk that Officers/Members would fail to comply with the relevant legislation and associated codes of practice. Consequently, complaints may be made against the Council by aggrieved persons, which may proceed to investigation by the independent tribunals set up by the Office of the Surveillance Commissioner. The Tribunals have the power to cancel authorisations, order the destruction of any records obtained in exercise of the powers conferred by RIPA and award compensation as they see fit. The IPCO would also severely criticise such failure and the adverse publicity arising therefrom could damage the Council's reputation and not serve in its best interests.

## **7. Conclusion**

- 7.1 As set out in the body of the report, it is necessary for the Council to review and refresh policies to avoid legal challenge and ensure practice and procedures are in line with legislation, codes of practice and good practice. Members are asked to note this compliance.

## **Appendices**

- Appendix A – RIPA Policy (updated)  
Appendix B - RIPA Officer Guidance (updated)  
Appendix C – Equality Impact Assessment

## **Background papers**

None

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