

Report to: Audit and Governance Committee



Date of Meeting 20 January 2022

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Directed surveillance and covert human intelligence sources policy (RIPA) update

Report summary:

To enable strategic oversight of the Council's RIPA function, to update Members following receipt of the Investigatory Powers Commissioners Report and to seek adoption of the revised Policy.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

Members are asked to consider the revised RIPA Policy contained at Appendix A and recommend its adoption to officers.

Reason for recommendation:

To update Members on RIPA including following receipt of the Investigatory Powers Commissioner's Report and to seek Members approval to a revised RIPA policy.

Officer: Henry Gordon Lennox, Strategic Lead Governance and Licensing

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Medium Risk;

Although not often used it is important that the Council are aware of RIPA powers and responsibilities and have a robust policy that can be applied and followed when the need arises. Using RIPA properly allows evidence to be legitimately gathered such that it can be used in court proceedings.

Links to background information

[September 2017 A&G report](#)

[January 2018 A&G report](#)

[Current RIPA policy](#)

[Link to **Council Plan**](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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Report in full

1. The Committee last received reports on the Council's Directed Surveillance and Covert Human Intelligence Sources Policy (also known as RIPA) back in September 2017 and January 2018 (see background links). In light of the Committee's decision in January 2018, there is a standing item on RIPA for the committee to receive updates on activity falling within the scope of the Policy.
2. At its 24th September 2020 meeting, the Committee asked for a simple written explanation of RIPA to be provided to the Committee at its next meeting this could then be used on the Council's website to inform the public of the powers available and any recent use made of them; this being in line with some other authorities practice. More recently, the Council has been subject to an inspection by the Investigatory Powers Commissioner's Office (IPCO) in September 2020. This report addresses the committee request and outcome from the inspection.
3. Members are owed an apology for the length of time it has taken to bring the above information to the Committee, which has simply been down to workload pressure and competing priorities.

What is RIPA?

4. Everyone has a fundamental right to privacy. This right is contained in Article 8 of the European Convention on Human Rights enshrined in the Human Rights Act 1998 (HRA 1998):

"Everyone has the right to respect for his private and family life, his home and his correspondence".
5. This means, for example, a right not to be watched, have your mail opened or have your personal space invaded including by a public authority. Accordingly, a local authority is required to respect the private and family life of each citizen, their homes and correspondence. However, this right is qualified such that it can be interfered with where it is necessary and proportionate and carried out in accordance with the law. If these requirements are not met and an investigation undertaken that interfered with these rights then it would be unlawful interference.

6. The Regulation of Investigatory Powers Act 2000 (RIPA) is one such law that permits interference – it details ways in which public bodies can lawfully carry out investigations when there is a wish to use surveillance techniques. For local authorities these comprise;
 - directed surveillance (covert surveillance of individuals outside of residential premises and vehicles); and
 - covert human intelligence sources (CHIS) (such as the deployment of undercover officers)
 - the acquisition and disclosure of communications data (such as telephone billing information or subscriber details);
7. Where a local authority carries out overt investigation (e.g. enforcement officers on patrol, signposted CCTV cameras in normal use) then this does not fall within the scope of RIPA. Equally, obtaining information that is not private information about an individual but which is obtained without someone's immediate knowledge is in most cases not caught (e.g. including recording noise levels from outside a property where the occupier has been warned this will happen if the noise continues or Food Safety or Health and Safety inspections).
8. The general guiding principle is that if surveillance is overt, or is not obtaining private information it does not need to follow RIPA requirements. Where there is directed surveillance or use of a covert human intelligence source then the requirements of RIPA must be followed.
9. In short, RIPA requires any activity it covers to be appropriately authorised and there is an involved procedure for achieving this including, for local authorities, the need to get approval from a magistrate before commencing. When seeking approval, consideration must be given to the relevant Codes of Practice: Covert Surveillance and Property Interference and Covert Human Intelligence Sources (currently 2018) which include the requirement that a council should ensure that authorisations which are granted should be proportionate to the matter under investigation.
10. However it is not an unlimited power because local authorities may only use covert surveillance for the prevention and detection of crime; and only in those cases where the offence under investigation is subject to a term of imprisonment of 6 months or more. For example, if the investigation is into dog fouling an authorisation for surveillance would not be permitted and would in any event not be proportionate as it involves an invasion of privacy which is disproportionate to the seriousness of the offence. Local authorities may use covert techniques in support of their statutory powers where they are responsible for enforcing the law in respect of:

Environmental crime; consumer scams; loan sharks; taxi cab regulation; underage sale of knives, alcohol and tobacco; and the employment of minors. *[Not all of these areas are applicable to EDDC but they are included here for completeness].*

CHIS and directed surveillance techniques are used in test purchase operations to investigate the sale of tobacco, alcohol and other age-restricted products.
11. EDDC has not had cause to seek authorisation for any RIPA related activity in the recent past. RIPA activity (or lack of) is reported as the standing item on the Committee's agenda. The RIPA regime is overseen by the Investigatory Powers Commissioner's Office and regular inspection visits are made by IPCO to ensure that the Council's training regime and records are in order. The outcomes of the inspection visits are reported to this Committee to

ensure that the Council complies with statutory requirements. Complaint can also be made to IPCO where it is considered that the requirements of the RIPA regime have not been followed in any given case.

IPCO inspection

12. In light of COVID and also the lower risk that local authorities present, the last inspection was not a physical inspection and was carried out remotely. The letter from IPCO has been provided on the basis that before the report is made public then the organisation should be consulted first. IPCO is not subject to FOI and given the nature of what RIPA is and IPCO's role, one can understand the concern about disclosing such information. Whilst respecting this, it is worth noting the following headline comments;

- That the action points from previous inspections had been undertaken
- The Council is well placed with regard to the required safeguarding measures
- The Senior Responsible Officer has a strong understanding of the requirements, and a number of appropriate measures are in place which are supported by the relevant corporate policies
- While powers are rarely used, it is important that there should be regular, ongoing internal oversight of the actual or potential use of these powers, through the Senior Responsible Officer
- IPCO received appropriate reassurance that the integrity of your Council's processes and governance procedures will be maintained to ensure that high standards of compliance with the Act and relevant codes of practice are achieved

13. Overall the above is a positive endorsement to the Council's approach, however the Inspector did have some '*minor observations*' to strengthen the Council's position. In summary these are listed below;

- a. updating the RIPA Policy to incorporate some recent legislative and procedural changes (though the Investigatory Powers Act 2016 and with reference to the oversight role of IPCO)
- b. a change to the authorisation period for juvenile CHIS and a cross-reference to our corporate data management policies in relation to any data obtained
- c. combining the central records held for direct surveillance, CHIS and acquiring communications data into one record
- d. establishing the relationship with the National Anti-Fraud Network (which ensures that any applications to acquire communications data are monitored across the UK and make it much easier for organisations to process such applications).

14. These have been actioned and where the above necessitates changes to the Policy, amendments have been made and therefore the Committee is requested to approve the revised policy attached at Appendix A.

Financial implications:

There are no financial implications identified.

Legal implications:

Although the RIPA powers are rarely used, it is important that the Council has an up to date and relevant RIPA Policy so that officers are able to understand when authorisation is required and how to go about obtaining an authorisation. The IPCO report identifies amendments that will improve the policy and these have been made and the recommendation is to adopt these which is sound. A failure to do so could result in a failure to follow RIPA requirements and / or reputational issues upon the next inspection.