

# Joint Audit and Governance Committee



Report of Head of Legal and Democratic (Interim)

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## Regulation of Investigatory Powers Act 2000 (RIPA) annual review

### Recommendation(s)

That the committee:

- a) notes that surveillance is one of the tools available to the councils as part of their law enforcement functions.
- b) consider and note the council's use and compliance with RIPA.
- c) approve the amendments made to the currently approved Regulation of Investigatory Powers Act 2000 Policy and Procedures, for use by council teams as part of their work.
- d) agree the conclusions of this report and support the recommended actions in the action plan.
- e) authorises the Head of Legal and Democratic (Interim) to make such changes to the Policy and Procedures documents as she may consider necessary from time to time to ensure ongoing compliance with the requirements of the 2000 Act and associated guidance.

<b>Implications (further detail within the report)</b>	<b>Financial</b>	<b>Legal</b>	<b>Climate and Ecological</b>	<b>Equality and diversity</b>
	No	Yes	No	No
<b>Signing off officer</b>	<b>Simon Hewings</b>		<b>Heather Saunders</b>	<b>Abi Witting</b>

## Purpose of Report

1. To inform the Committee regarding the council’s use of directed surveillance and covert human intelligence sources during 2022 and 2023 as required by the statutory code of practice in our enforcement work having proper regard to the principles of necessity, proportionality and lawfulness. To also seek approval for revisions to the council’s RIPA policy, procedures and action plan

## Strategic Objectives

2. Managing and monitoring compliance with RIPA will support openness and transparency in South Oxfordshire District Council and working in an open and inclusive way in Vale of White Horse District Council.
3. Working to adopted and agreed RIPA policies and procedures will facilitate the use of covert surveillance as a legitimate and effective tool in enforcement investigations. It will also help ensure the lawfulness of such activity, thereby avoiding potentially costly and harmful legal challenges to our actions.

## Background

4. The councils carry out a number of statutory functions that may require resort to enforcement action of many different types, and investigations carried out into breaches or suspected breaches of the law may lead the councils to take action in the courts, including criminal prosecutions. Protecting the environment from harm, particularly from illegal waste disposal (fly-tipping), fraud, licensing, planning and various aspects of health and safety are all areas of the councils’ work where the councils and our residents are concerned to see effective enforcement action being taken against illegal activity. The ability to take such effective action may give rise to a need for investigative work, and the deployment of a range of techniques by the service teams who are charged with regulatory enforcement. Directed covert surveillance, and the use of covert human intelligence source (CHIS) are techniques that the councils may deploy in investigative work, and RIPA establishes a legislative framework within which the councils may seek to legitimately undertake such activity.
5. The ‘law of RIPA’, and the parameters of the legislation, are set out in a degree of detail in the attached documents, Regulation of Investigatory Powers Act 2000 Policy and Regulation of Investigatory Powers Act 2000 Procedures. The policy and procedures endorsed in 2020 by this committee have been reviewed and updated in accordance with current guidance and the Committee is asked to approve the amended updated documents. The detail that is included in those documents will therefore not be repeated in the body of this report. It may be helpful however for councillors to understand that RIPA does not of itself provide local authorities with powers to undertake covert surveillance that they otherwise might not have. What

RIPA and its associated guidance does do, is to establish a framework of principles against which the lawfulness of such surveillance activity might be able to be judged.

6. The Regulation of Investigatory Powers Act 2000 (RIPA) came into force in 2000 and governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities. This is supported by a set of codes of practice setting out processes and safeguards for a number of investigatory powers.
7. The councils can use powers under RIPA to support 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,
  - Directed Surveillance,
  - Covert Human Intelligence Sources (CHIS), and
  - the acquisition and disclosure of communications data.
8. RIPA and Codes of Practice set out the procedures that local authorities must follow when undertaking surveillance. For example, approval by Authorised Council Officers for Directed Surveillance / CHIS applications to show that the proposed use of the powers is “necessary and proportionate”.
9. The councils are required to have a Senior Responsible Officer to maintain oversight of the RIPA arrangements, procedures and operations. The councils’ Monitoring Officer performs this function and is responsible for the integrity of the process for managing the requirements under RIPA.
10. The Investigatory Powers Commissioner’s Office (IPCO) provides independent oversight of the use of investigatory powers by public authorities as outlined in the Investigatory Powers Act 2016 (IPA). In 2019, Part 3 of the IPA was introduced which amended the acquisition of communications data and overhauled the way these powers are authorised and overseen. 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.
11. 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 any application is RIPA/ IPA compliant. It is NAFN that are audited by the commissioners.

### **Annual usage of investigatory powers**

12. The Home Office Code for Covert Surveillance and Property Interference recommends that councillors, whilst by law are not permitted to be involved in making decisions or specific authorisations for the local authority to use its powers under Part II of the Act, should review the councils’ use of the legislation at least annually and provide approval to its policies.
13. The IPCO are required by law to gather statistical data from public authorities on their use of investigatory powers under the relevant legislation. Annual returns are submitted to the IPCO by the end of each January covering the previous calendar year.

14. For the period 1 January 2022 to 31 December 2022 and for 1 January 2023 to 31 December 2023 the statistical returns for both South Oxfordshire District Council and Vale of White Horse District Council was that no applications or authorisations had been made for either directed surveillance or covert human intelligence sources. There were no reported incidents of the councils having misused powers under RIPA during this period.
15. No applications for the disclosure of communications data were made during the period 1 January 2022 to 31 December 2022 or during the period 1 January 2023 to 31 December 2023.

### **Inspection outcomes**

16. IPCO inspections of local authorities are normally every three years, and the councils were last subject to a remote inspection by the IPCO during 2021. As summarised in the commissioner's letter of 31 March 2021 to our Chief Executive, the IPCO noted that both councils are limited users of the surveillance powers but demonstrated the importance of maintaining strong policies and procedures in an effort to ensure a good level of compliance.
17. The 2021 inspection noted that the actions from the January 2018 review had been discharged and raised new recommendations which were added to an action plan in May 2021.

### **Action plan**

18. The current action plan updates actions brought forward from previous years and additional actions identified since.

### **Policy changes**

19. The RIPA policy and procedures documents have been reviewed and updated to include items identified within the 2021 inspection letter and guidance provided by the IPCO within newsletters.

### **Financial Implications**

20. There are no financial implications attached to this report.

### **Legal Implications**

21. Each Council has demonstrated compliance with its statutory obligations under RIPA to the satisfaction of the Surveillance Commissioner following inspection in January 2021 and continues to update its policy and provide training for officers.
22. This report to members complies with the Code of Practice requirement that members should be updated annually on RIPA activity and endorse the Policy, including any changes to it, for the coming year.

### **Climate and ecological impact implications**

23. There are no direct climate or ecological implications arising from this report.

## Equalities implications

24. This report is for information only and therefore there are no equalities implications.

## Risks

25. The Councils are required to comply with the statutory provisions and guidance governing the RIPA regime and any recommendation made by the Inspector on behalf of the Commissioner. Officers need to be aware of the RIPA powers so that there is no risk of surveillance or CHIS activity being undertaken without the correct oversight and approvals being in place. Adherence to a robust RIPA policy and procedures will help avoid legal challenges to the lawfulness of the councils' actions which would be likely to be costly and could potentially cause reputational harm.

## Other Implications

26. The councils continue to operate a system of closed-circuit television (CCTV) across six market towns in the districts. There are 86 cameras in total, monitored from a control room within Abingdon Police Station, by staff employed by the councils. The management, operation and use of this system is undertaken in accordance with a code of practice and an operational handbook separate from the policy and procedures document accompanying this report, it being noted that CCTV of public place activity generally is considered to be classed as overt rather than covert activity.

27. In a similar vein, the presence of cameras which are deployed to detect and prevent the crime of fly tipping at 'hotspot locations' in the districts is normally accompanied by signage placed nearby, informing the public that surveillance takes place. This means that the process of surveillance is not strictly subject to the requirements of 'full RIPA', as the surveillance is overt. The carrying out of this kind of surveillance activity however is still subject to a process of assessment based on principles of necessity and proportionality, and consideration of rights of privacy.

28. Officers in the waste team use Body Video cameras on occasion. The management operation and use of such cameras is undertaken in accordance with documented guidance and generally falls to be considered as overt rather than covert activity.

## Conclusion

29. The adoption of the updated policy and procedures documents setting out the way in which the councils may seek to use covert surveillance as a tool in investigative work will facilitate effective enforcement work and will help ensure that the councils operate within the legal rules that regulate such activity. The committee is therefore asked to endorse the updated documents attached to this report, Regulation of Investigatory Powers Act 2000 Policy and Procedures, for adoption and use within the councils and to authorise the Head of Legal and Democratic to make further changes to keep the document up to date as appropriate.

## Background Papers

- RIPA Policy
- RIPA Procedure
- RIPA Action Plan