

## Slough Borough Council

<b>Report To:</b>	Cabinet
<b>Date:</b>	17 <sup>th</sup> July 2023
<b>Subject:</b>	Regulation of Investigatory Powers Act (RIPA) updated Policy and Use
<b>Lead Member:</b>	Cllr Muvvala, Lead Member for Public Protection, Customer Service, IT and Young Futures
<b>Chief Officer:</b>	Stephen Taylor, Monitoring Officer
<b>Contact Officer:</b>	Garry Tallett - Group Manager
<b>Ward(s):</b>	All
<b>Key Decision:</b>	YES
<b>Exempt:</b>	NO
<b>Decision Subject To Call In:</b>	YES
<b>Appendices:</b>	Appendix 1 – RIPA Policy and Guidance.

### 1. Summary and Recommendations

- 1.1 To seek approval of the updated RIPA policy and guidance which covers covert surveillance and the acquisition and disclosure of communications data.
- 1.2 To update members on RIPA applications and activity during 2022/23.

#### Recommendations:

Cabinet is requested to:

- a) Resolve that the revised policy and guidance be approved,
- b) Note the RIPA applications and activity during 2022/23, and
- c) Authorise the Monitoring Officer to update the Policy as may be required, in consultation with the Lead Member, to reflect either changes in the Authorising Officers or relevant legislation.

#### Reason:

1. The Covert Surveillance and Property Interference Code of Practice issued by the Home Office requires that our RIPA Policy is subject to annual review and submitted to Elected Members for approval.

2. While the use of covert surveillance is rare and the use of an agent, informant or officer working undercover is very rare it is essential to ensure that the council can fully carry out its investigative and enforcement statutory powers and duties to protect residents and local businesses from the detrimental impacts of crime.
3. Similarly, the use of communications data to gather intelligence is rare but can be vital to identify and pursue persons involved in criminal activity, such as fraud, which can cause very significant financial harm and distress.
4. The legal duty requires Members to review the policy and provide assurance that the council has the appropriate safeguards and processes in place to ensure compliance with the Code of Practice.

## **Commissioner Review**

Commissioners have reviewed this report and have no specific comments to add.

## **2. Report**

### **Introductory paragraph**

- 2.1 The Code of Practice sets out a legal requirement that a council reviews its RIPA Policy annually and submits the policy to elected members for approval. While this does not directly align with any single corporate priority, it does underpin the council's operational effectiveness by providing our investigators with the tools needed to carry out their duties and responsibilities.
- 2.2 In addition to the operational need, the policy review provides assurance that the council is complying with RIPA legislation and provides the Investigatory Powers Commissioner's Office (IPCO) with the necessary assurance that the council is operating within the legal parameters set out in legislation.

### **Options considered.**

The review of our RIPA Policy is a legal requirement to ensure that the council is compliant with Code of Practice. The options are:

**Option 1** – Members **approve** the RIPA Policy – this is recommended as we have a legal duty and need to be compliant.

**Option 2** – Members do not approve the proposed amendments in their current form – this is not recommended as the amendments have been drafted with a view to the council compiling with its statutory duties. In addition, the forthcoming IPCO Inspection may deem us to be non-compliant.

### **Background**

- 2.3 The Regulation of Investigatory Powers Act 2000 (RIPA) came into force in 2000. Both the legislation and Home Office Codes of Practice that support the Act strictly prescribe the situations and conditions under which councils can use their RIPA powers. All authorities are required to have a RIPA policy and procedure that they adhere to in using their RIPA powers.

- 2.4 The updated policy and the associated procedures are intended to ensure that investigations undertaken by the Council are conducted in accordance with the requirements of the Act and the amendments to guidance. RIPA ensures that when the Council needs to use covert investigation techniques, which by their very nature may otherwise be in breach of the Human Rights Act (HRA) and European Convention of Human Rights (ECHR), they are placed on a legitimate footing and that appropriate controls are put in place to ensure that the activities are properly controlled and monitored. It should be noted that these powers are only available in more serious cases and where other investigative methods are not appropriate or have been unsuccessful.
- 2.5 RIPA allows Local Authorities to carry out Directed Surveillance (surveillance of an individual/s for a specific purpose without their knowledge), use a Covert Human Intelligence Source (use of informants or undercover officers) and access communications data (obtaining subscriber information of a telephone number or internet user etc.) provided the investigatory activity is lawful, necessary, proportionate and non-discriminatory.
- 2.6 The requirements of the ECHR, HRA and RIPA impact on all officers of the Council who undertake investigatory, or enforcement activities. This policy requires that all officers undertaking investigative activities only do so in accordance with the requirements set out by the Regulation of Investigatory Powers Act 2000 and the associated guidance. Officers last received training on the use of RIPA in 2020, just before Covid lockdown and further training will be given on the refreshed policy, following its approval by cabinet on the 17th July 2023.
- 2.7 The Council's use of its RIPA powers is subject to annual reporting to, and triennial inspection by, the IPCO. The Council received its most recent inspection by the IPCO on the 30<sup>th</sup> April 2020.
- 2.8 While the IPCO did not make any formal recommendations, as in previous inspections, there were some minor amendments suggested to the Council's RIPA policy and the Council have ensured that these amendments are reflected in the 2023 Policy refresh as follows:
- I. The Inspector provided updated guidance on the acquisition of communications data to reflect legislative changes arising from the implementation of the Investigatory Powers Act 2016 (IPA).
  - II. The Council was reminded of the importance of ensuring that designated officers maintain their level of training.
  - III. That guidance was provided to staff within the relevant social media policy (a copy of the guidance was emailed to the Inspector who suggested that links to the relevant paragraphs of the revised codes of practice would be helpful);
  - IV. That staff have not used covert profiles or pseudonymous accounts to conduct internet or social media enquiries; and
  - V. That all activity is recorded to provide an audit trail which will withstand external scrutiny.
- 2.9 The IPCO contacted the council on 23<sup>rd</sup> May 2023, informing us that we are required to submit a self-assessment of RIPA and it was agreed that this be done

by the 31st July 2023. The IPCO inspector wants confirmation on the following areas, and the council's response is set out below each of the requirements -

- a) Any Areas of Non-Compliance identified at your last inspection have been remedied.

*Council Response – None identified since the last inspection.*

- b) Your RIPA Policy is subject to annual review and submitted to your Elected Members for approval (please advise when this was most recently revised and shared with Members).

*Council response – The Council last reported to the Audit and Corporate Governance Committee on the 5<sup>th</sup> March 2020 - [AGENDA ITEM \(slough.gov.uk\)](#) [Minutes Template \(slough.gov.uk\)](#). The 2020 policy refresh did not go through Cabinet or Audit and Corporate Governance Committee, as it did not contain any significant changes. The 2023 Policy was reviewed by Cabinet on the 17th July 2023.*

- c) Training, both initial and ongoing for key officers, plus awareness training for all staff, is provided (please provide dates since the last inspection)

*Council response - The council has provided officer training on the following dates,*

- i. 30/10/2017 – RIPA training provided by LAFOJE Limited*
- ii. 10/12/2018 – RIPA fraud Awareness Training and RIPA quiz*
- iii. 22/10/2019 – RIPA authorising Officer (Core Skills) Training, Bond Solon*
- iv. 16/01/2020 – RIPA training delivered by HB Law*
- v. Further training is proposed for Authorising Officer July 2023 – by HB Law*
- vi. RIPA Awareness training for Senior managers and Heads scheduled for July/August 2023*

- d) A Central Record that meets the requirements of the relevant Codes of Practice is in place.

*Council response -The Council's Central Record is stored electronically, shared with the SRO and the RIPA Co-ordinator. This is kept up to date by the Group Manager for Public Protection in the role of Authorising Officer. In addition to the electronic record, the council retains a hard copy of authorisations (as per the document retention policy). This folder is kept secured at Observatory House (HQ).*

- e) You have a named SRO in place, as well as designated Authorising Officers.

*Council response – Our SRO is our Monitoring Officer, and we have a number of designated Managers as authorising officers as referenced in the Policy.*

- f) You have policies and training that appropriately cover the potential or actual use of social media as part of investigations/enforcement activities.

*Council response – Social Networking is covered under section 6 of our RIPA Policy. The training also picks up the use of social media/networking sites.*

- g) The potential (for inadvertent, unauthorised) use of such media is actively monitored by managers.

*Council response – Managers have received training in this regard and the officers responsible for RIPA will receive refresher training in the summer 2023.*

*Staff awareness briefings are also planned, and will specifically refer to the impact of social media.*

- h) If you own/manage a town centre CCTV system, that this is operated and appropriately managed in line with RIPA considerations, including when used by third parties such as the local police.

*Council response – The Council RIPA Policy covers CCTV use and links to the Council's CCTV policy [untitled \(slough.gov.uk\)](#). We are currently reviewing the Council's CCTV policy in light of cabinet approval to transfer all public space camera equipment and monitoring to Thames Valley Police - [Agenda for Cabinet on Monday, 27th February, 2023, 6.30 pm \(slough.gov.uk\)](#)*

- i) You are aware of NAFN and how access to communications data is managed through OCDA.

*Council response – NAFN is covered in the policy and council officers comply with the lawful processing of data through the Office for Communications Data Authorisations.*

- j) Your Council has recognised and adheres to the Safeguards outlined in the relevant Codes of Practice in relation to its retention, review and destruction of material obtained using covert powers.

*Council response – The Council adheres to the safeguards outlined in the Codes of Conduct, as per the Council's document retention policy <http://insite/media/4101/retention-schedule-sbc.pdf>*

And to confirm if the council has,

- Used the powers since the last inspection, or plan to use them imminently (or can envisage doing so following the formation of a new investigative/enforcement team or strategy).

*Council Response – one RIPA Authorisation was granted on the 20<sup>th</sup> January 2021. Officers carried out investigations, commencing on the 15<sup>th</sup> March 2021, in accordance with the authorised notice. Officers assessed the viability and proportionality of this action and carried out a review to assess if this was still required. Due to the impact of Covid restrictions, the surveillance was stopped on the 16<sup>th</sup> March 2021. This was noted in the case log and reported to the then RIPA co-ordinator.*

- If you have used the powers, please provide an electronic copy of the relevant applications and authorisations for my review when you reply to this letter.  
*Council response – documents have been supplied to the IPCO Inspector.*

### **Proposed amendments**

- 2.10 The current policy was reviewed during the 2020 IPCO inspection. The policy was broadly approved by the Inspector and the suggested amendments have been duly made and are set out at Appendix 1 with the proposed amendments shown track changed.
- 2.11 The purpose of this policy refresh is to incorporate changes since 2020 and has been updated to reference the updated Codes of Practice issued by the Home Office. Examples which were not relevant to the work of Council officers are to be

removed. The role of elected members in section 18 has been updated and the designation of Authorising Officers has also been updated to reflect staffing changes.

### **Authorised Officers**

2.12 Due to the turnover in staff the list of authorised officers needs to be updated. The following posts will be responsible for RIPA in the 2023 policy -

- a) CEO – Head of Paid Service and Senior Executive Officer
- b) SRO – Monitoring Officer
- c) RIPA Coordinating Officer – Group Manager Community Safety, Housing Regulation and Enforcement
- d) Authorising Officer – Group Manager Community Safety, Housing Regulation and Enforcement
- e) Authorising Officer – Corporate Fraud Manager

## **3 Implications of the Recommendation**

### *Financial implications*

3.1 There are no new financial implications because of this policy update.

### *Legal implications*

3.2 The Covert Surveillance and Property Interference Revised Code of Practice issued by the Home Office pursuant to section 71 Regulation of Investigatory Powers Act 2000 provides guidance to local authorities. The guidance states Members should review the Council's use of RIPA and set the Council's policy at least once a year.

### *Risk management implications*

3.3 This Policy and forthcoming training will mitigate the risk of staff breaching codes of practice.

### *Environmental implications*

3.4 None

### *Equality implications*

3.5 As there have been no RIPA authorisations in the last 12 months, there is no equality impact and an assessment is not needed

### *Procurement implications*

3.6 None

### *Workforce implications*

3.7 Training is to be provided for authorising officers and managers whose staff would use surveillance for information gathering.

### *Property implications*

3.8 None

## **4 Background Papers**

None other than as referred to in the report