

Regulation of Investigatory Powers Act 2000 – Annual Report and Review of the RIPA Guidance

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| Report number: | PAS/WS/21/015 | |
| Report to and date(s): | Performance and Audit Scrutiny | 30 September 2021 |
| Cabinet member: | Councillor Carol Bull Portfolio Holder for Governance Email: carol.bull@westsuffolk.gov.uk | |
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Decisions Plan: This item is not included in the Decisions Plan.

Wards impacted: No specific wards are impacted by this report.

Recommendation: It is recommended that the Performance and Audit Scrutiny Committee -

- i) Note the update on the use of RIPA and other associated matters, including the findings of the Investigatory Powers Commissioner’s Office (IPCO) following a recent RIPA inspection, and
- ii) Approves the Council’s RIPA Guidance, taking into account the recommendations of the IPCO.

1. Context to this report

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework to ensure investigatory techniques are used in a way that is compatible with the Article 8 right to respect for private and family life enshrined in the European Convention on Human Rights. RIPA ensures that these techniques are used in a regulated way and provides safeguards against the abuse of such methods. Use of these covert techniques will only be authorised if considered legal, necessary and proportionate.
- 1.2 The Covert Surveillance and Property Interference Code of Practice (Code of Practice) provides guidance on the use by public authorities of Part II of RIPA.
- 1.3 RIPA and the Code of Practice require councillors to have regular oversight of activities authorised under RIPA. The Code of Practice also requires councillors to review the Council's RIPA Guidance (an appendix to the Council's Enforcement Policy) at least once a year.
- 1.4 On 21 June 2021 the Council was, also, the subject of an annual inspection by one of IPCO's Inspectors.

2. RIPA activity at West Suffolk Council

- 2.1 The overwhelming majority of surveillance undertaken by the Council will be done overtly, meaning there will be nothing secretive or hidden about the way it is conducted. In many cases officers will be going about council business openly (e.g. a routine inspection by an Environmental Health Officer) or will have notified the subject of the investigation that they are likely to be under surveillance (e.g. where a noisemaker is warned that noise will be recorded if it continues).
- 2.2 The Council's RIPA Guidance makes sure that when we do use covert techniques (for example, persons subject to the surveillance are unaware that it is or may be taking place) to help prevent or detect crime or disorder, we do so in compliance with RIPA.
- 2.3 Officers will only carry out covert surveillance where such action is justified and proportionate and we have a small pool of senior officers who are trained to authorise such applications which must then be granted by a Magistrate.
- 2.4 Authorisations are regularly reviewed by an authorising officer, and a confidential register, detailing all covert surveillance authorisations, is held by the legal service.

- 2.5 While we do not widely use these powers across the Authority, two authorisations for the use of a Covert Human Intelligence Source (CHIS) have been granted by Magistrates to help prevent and detect crime over the last two years. This was commended by the IPCO Inspector.

3. RIPA Guidance

- 3.1 The RIPA Guidance is currently fit for purpose, but an action plan is in place to make revisions to the Guidance in accordance with recommendations made by the IPCO Inspector.
- 3.2 A revision has already been made to clause 8 of the RIPA guidance in respect of the use of Communications Data. This was advised by the IPCO Inspector who, also, provided the revised wording. These revisions can be seen as tracked changes to the Guidance in Appendix 1.

4. Outcome of the inspection by IPCO

- 4.1 Overall, the inspection was very positive and the IPCO Inspector was assured that our Guidance is fit for purpose, effectively covers our RIPA Activity and staff are aware of and abiding by the Guidance.
- 4.2 The IPCO Inspector has suggested some development areas and officers have prepared an action plan in response (Appendix 2). The development areas mainly fall under training (last provided in 2018) and recommended that refresher training be provided every three years. The Inspector, also, recommended exploring the use of social media across the Council to be satisfied that it does not amount to any form of covert surveillance, as well as looking at how the Council retains, reviews and destroys material collected under RIPA.

5. Risks

- 5.1 There are no significant residual risks that cannot be fully minimised by existing or planned controls or additional procedures.

6. Implications arising from the proposals

- 6.1 Legal Compliance – as a public authority, the Council must ensure it is fully compliant with all relevant legislation. RIPA ensures that covert surveillance, or the use of a CHIS is properly authorised, necessary and proportionate.

7. Appendices referenced in this report

- 7.1 Appendix 1: RIPA Guidance (incorporates a link to the Code of Practice)
- 7.2 Appendix 2: IPCO Inspection report and Action Plan