

Cabinet – 17 April 2024

Surveillance and Access to Communications Data

Portfolio: Councillor Perry – Deputy Leader & Resilient Communities

Related portfolios:

Service: Community Safety and Enforcement

Wards: All

Key decision: No

Forward plan: Yes

1. Aim

- 1.1. The Regulation of Investigatory Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016 (IPA) provide a framework for public bodies including local authorities 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 (ECHR). RIPA and IPA ensure that these techniques are used in a regulated way and provides safeguards against the abuse of such methods. In the case of local authorities' use of these covert techniques will only be authorised through a court of summary jurisdiction if considered legal, necessary and proportionate.

2. Summary

- 2.1. This report asks Cabinet to consider and approve the revised policy and procedures regarding the use of the powers available to the Council under the RIPA and the IPA. It also informs Cabinet about the Council's use of the RIPA powers available to it.
- 2.2. The proposed revisions are to update the existing corporate policy and procedures only. There is no change to the Council's approach to use of the powers available to it under the RIPA and the IPA. However, the existing policy and procedures required updating not least because of structural changes within the authority.
- 2.3. The Council only very rarely uses the powers available to it, but it still needs to have a robust and up to date policy in place which officers can follow should the need arise. If the council's policy is not fully compliant with current legislative requirements this may lead to the Council not meeting its statutory obligations, exceeding its powers and placing it at risk of legal challenge with its attendant reputational and financial consequences.

3. Recommendations

- 3.1. That Cabinet recommend to Council the approval of the Council's Regulation of Investigatory Powers Act 2000 ('RIPA') and the Investigatory Powers Act 2016 ('IPA') Corporate Policy and Procedures.

4. Report detail - know

Context

- 4.1. Cabinet received a report about the RIPA Corporate Policy and Procedures on the 7 September 2022. The current policy and procedures state that every year elected members should be asked to review their content for the period in question and to recommend any changes to that content. Members should also be provided with an annual update on the Council's use of the RIPA powers available to it. This report serves as a review of 2023 as well as an update to the relevant policies for the years ahead.
- 4.2. RIPA and the IPA put a regulatory framework around a range of investigatory powers used by local authorities. This is done to ensure the powers are used lawfully and in a way that is compatible with Article 8 of the European Convention on Human Rights which governs an individual's right to respect for their private and family life, home and correspondence. Any interference with that right must be necessary, proportionate and in accordance with the law. If these requirements are not met any investigation undertaken that interfered with this right would be unlawful.
- 4.3. RIPA surveillance can therefore be used for example in relation to fly tipping, food related offences, benefit fraud, trading standards offences including the sale of counterfeit goods and some test purchases as well as health and safety at work matters.
- 4.4. There are three separate investigatory powers available to the Council, two under RIPA:
 - Covert directed surveillance – which includes covert surveillance in public areas (not including residential premises or private vehicles which is never permissible) which is likely to result in the obtaining of private information.
 - Use of covert human intelligence sources ('CHIS') – this includes undercover officers, public informants and people making test purchases (for example, relevant in trading standards cases).
- 4.5. The third under the IPA:
 - Obtaining communications data from telecommunications providers – this includes service use or subscriber information (but not the content).
- 4.6. Before the Council may undertake covert surveillance under RIPA, there are various criteria which must be met including only carrying out covert surveillance where the criminal offence under investigation ordinarily carries a

term of imprisonment of six months or more, its use is authorised internally by a senior officer and the external approval of the application by a Magistrate. For surveillance required under the IPA authorisations involve scrutiny by the National Anti-Fraud Network and are granted by the Office for Communications Data Authorisations a national body who act on behalf of the Council. The information obtained because of surveillance operations or acquired from telecommunications providers can be relied on in court proceedings providing RIPA or the IPA is complied with.

- 4.7. The Investigatory Powers Commissioner's Office ('the IPCO') is responsible for the inspection of public authorities with regard to compliance with RIPA. Inspections take place periodically and focus on RIPA policies, procedures, and practice. The last inspection by the IPCO was in January 2020 and a letter was sent to the authority in September 2023 requesting a written update on its compliance with legislation. The outcome of the submission of the written information is awaited.
- 4.8. The Council's Corporate Policy and Procedures were last reviewed in September 2022. The Corporate Policy and Procedures are being further revised to ensure it is up to date with current legislation and compliant with relevant Home Office Codes of Practice. The revised Corporate Policy and Procedures for RIPA and IPA are attached as **Appendix 1** to this report.
- 4.9. The Home Office Covert Surveillance and Property Interference Code of Practice requires local authorities to involve elected members in strategic oversight of RIPA including setting the relevant Policy and considering reports on its use by the Council. Cabinet is advised that in the calendar year 2022 there were three directed surveillance applications to the magistrate's court and in 2023 there were four RIPA applications. Each of these applications was for the purposes of tackling crime and disorder in relation to age restricted sales of tobacco, vapes or alcohol by Trading Standards. No applications for communications data were made in the same period.
- 4.10. In March 2024 training on the use of RIPA was arranged for relevant council staff including Environmental Health, Trading Standards, Community Protection and Community Safety, Legal Services, Planning and Building Control, Housing Standards, Environmental Protection, Childrens and Adults services.

Council Plan priorities

- 4.11. By using the tools and powers in the legislation, the corporate priorities are supported:
 - children are safe from harm and healthy for example in restricting the illegal sale of age restricted goods such as alcohol and tobacco
 - there are greater local economic opportunities for all people, communities and businesses for example by investigating and restricting the supply of illicit and unsafe goods

- communities are empowered so they feel they are well connected and belong in Walsall, creating safe and healthy places that build a strong sense of community for example by ensuring communities are protected from crime linked to organised crime groups or from the disruption caused by children who have been drinking underage

Risk management

- 4.12. Where there is an interference by a local authority with the right to respect for private and family life guaranteed under Article 8 of the European Convention on Human Rights and where there is no other source of lawful authority, the consequence of not obtaining an authorisation under the 2000 and 2016 Acts may be that the action is unlawful by virtue of section 6 of the Human Rights Act 1998.
- 4.13. Failure to follow the procedures set out in the legislation and the Councils Policies may result in the Council's actions being deemed unlawful and consequently lead to claims for compensation, loss of reputation and information being ruled inadmissible in a prosecution action. Adherence to these Acts also provides an additional layer of protection under the Data Protection Act 2018 and the General Data Protection Regulations 2016. These risks are mitigated by the adoption of the policies and training of staff.

Financial implications

- 4.14. The financial implications of these procedures are in training of staff which is met from the existing staff training budgets for those services whose staff may use RIPA and therefore need to be aware of its practical and lawful implementation. There is a financial risk of failing to adhere to the 2000 and 2016 Acts in that it may lead to claims for compensation.

Legal implications

- 4.15. The legislation enforced by teams across the council contain tools and powers to enable them to investigate criminal offences. The 2000 and 2016 Acts provide some controls on the use of these powers. The legal implications of failing to follow these requirements is the same as is outlined in the risk management section.

Procurement Implications/Social Value

- 4.16. There are no procurement implications to this report.

Property implications

- 4.17. There are no property implications to this report.

Health and wellbeing implications

- 4.18. There are no health and wellbeing implications to this report.

Reducing Inequalities

- 4.19. The implications for reducing inequalities have been taken into account. The approvals process requires that all the circumstances of any persons identified are considered in each case. An equalities impact assessment (EqIA) has been carried out and is attached to this report as **Appendix 2**.

Staffing implications

- 4.20. The only staffing implications relevant to this report is in the provision of training to officers.

Climate Impact

- 4.21. There are no climate implications to this report.

Consultation

- 4.22. There are no consultations required because of this report.

5. Decide

- 5.1. This report is to enable members of cabinet to present the draft proposed policies to Council in order that they can be formally adopted to mitigate the risks identified in paragraph 4.13.

6. Respond

- 6.1. If cabinet accept the recommendations, a report will be presented to full Council to adopt the draft policies.

7. Review

- 7.1. The Senior Responsible Officer provides oversight on the use of RIPA and IPA. An annual report will be presented to members as required in the Surveillance Code of Practice.

Appendices

Appendix 1: Regulation of Investigatory Powers Act 2000 (“RIPA”) and the Investigatory Powers Act 2016 (“IPA”) Policy and Procedure.

Appendix 2: Equalities impact assessment

Background papers

- Interception of communications code of practice 2022
- Covert surveillance code of practice

- Covert Human Intelligence Sources code of practice 2022
- Code of practice for investigation of protected electronic information

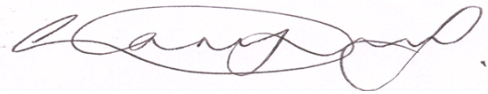
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5 April 2024



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