

Cabinet – 7 September 2022

Surveillance and Access to Communications Data

Portfolio: Councillor Perry - Resilient Communities

Related portfolios: Councillor Bird – Leader of the Council

Service: Resilient Communities

Wards: All

Key decision: No

Forward plan: Yes

1. Aim

- 1.1 This report is presented to Cabinet to report members on the use of the powers contained in the Regulation of Investigatory Powers Act 2000 (RIPA 2000) and the Investigatory Powers Act 2016 (IPA 2016) with regard to surveillance and acquisition of communications data. It further informs members of the draft amended policies on these matters that will be presented for adoption at the next full meeting of Council.

2. Summary

- 2.2 The RIPA and IPA policies have been updated to reflect changes in legislation and associated Codes of Practice issued by the Home Office, recommendations from the Investigatory Powers Commissioner's (IPC) annual report and to reflect organisational changes. These need to be referred to full Council for adoption.

3. Recommendations

- 3.1 That Cabinet notes the use of the Regulation of Investigatory Powers Act 2000 for the years ending 31 March 2018, 31 March 2019, 31 March 2020, 31 March 2021 and 31 March 2022 and is assured by the Executive Director Economy Environment and Communities, as the Council's Senior Responsible Officer for this legislation, that usage is consistent with the Council's Policy and Procedures.
- 3.2 That the draft Corporate Policy and Procedures on the Regulation of Investigatory Powers Act 2000 be presented to Council for approval.
- 3.3 That the Executive Director Economy Environment and Communities is delegated authority to make administrative amendments to the policies as part of the report to Council.

4. Report detail - know

Context

- 4.1. 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 RIPA 2000 Act and IPA 2016 may be that the action is unlawful by virtue of section 6 of the Human Rights Act 1998.
- 4.2 The Home Office has strongly recommended that local authorities seek an authorisation where the surveillance is likely to interfere with a person's Article 8 rights to privacy by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. Obtaining an authorisation ensures that the action is carried out in accordance with law and subject to stringent safeguards against abuse.
- 4.3 Directed surveillance authorisations under RIPA 2000 may be granted in relation to covert surveillance undertaken in relation to a specific investigation or operation which is likely to result in the obtaining of private information about a person, and which is other than an immediate response to events or circumstances and for the use of Covert Human Intelligence Sources (CHIS). Authorisations under IPA 2016 may be granted for the acquisition of certain communications data.
- 4.4 Table 1 below summarises the authorisations which have been granted in Walsall for the last 5 financial years. Due to the introduction of the serious crime threshold, the use has in reality been limited to trading standards investigations into the sale of age restricted goods and counterfeiting. Other surveillance activities which were previously conducted by the use of RIPA have either ceased or are conducted overtly. In certain circumstances, surveillance may be carried out that is not within the scope of the RIPA regime. However, in these circumstances, the same considerations are applied to ensure the activity is necessary and proportionate. An example of such activity is the use of covert recording for the operations to ensure hackney carriage and private hire drivers are complying with appropriate legislation when conveying passengers with disabilities.

Regulatory Services – age restricted sales test purchasing (eg cigarettes, alcohol), counterfeit goods	Y/E 31/03/18	Y/E 31/03/19	Y/E 31/03/20	Y/E 31/03/21	Y/E 31/03/22
Directed Surveillance Authorisations	3	6	1	0	0
Covert Human Intelligence Source Authorisations	0	0	0	0	0

Table 1 RIPA authorisations 2016/18 to 2019/22

- 4.5 The Walsall Council Policy and Procedures on the Regulation of Investigatory Powers Act 2000 has been updated to reflect changes in the legislation and the codes of practice; to incorporate recommendations from the IPC's annual report and to reflect some organisational changes. The draft proposed policy is attached as **Appendix 1**.
- 4.6 The Walsall Council Policy and Procedures on the Investigatory Powers Act 2016 has also been updated to reflect changes in the legislation and the codes of practice, as well as some organisational changes. The draft proposed policy is attached as **Appendix 2**.

Council Plan priorities

- 4.7. By using the tools and powers in the legislation which is enforced by officers within the Regulatory Services teams of Walsall Council legally, the teams support the corporate priorities to ensure that:
- 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

- 4.8 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. Failure to follow the procedures set out in the legislation and the Councils Policies (**Appendices 1 and 2**) 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

- 4.9 The financial implications of these procedures are in training of staff which is met from existing revenue budgets. 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

- 4.10 The legislation which is enforced by the teams within Regulatory Services contains 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 described at paragraph 4.8 above.

Procurement Implications/Social Value

- 4.11 There are no procurement implications to this report.

Property implications

- 4.12 There are no property implications to this report.

Health and wellbeing implications

- 4.13 By using the 2000 and 2016 Acts appropriately, services are able to investigate criminal offences. This ensures that the Marmot objectives are met by protecting people at all life stages and promoting a fair and safe environment in which business can thrive.

Reducing Inequalities

- 4.14 The implications for reducing inequalities have been taken into account. The approvals process requires that all the circumstances of any persons identified are taken into account in each case. An equalities impact assessment (EqIA) has been carried out and is attached to this report as **Appendix 3**.

Staffing implications

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

Climate Impact

- 4.16 There are no climate implications to this report.

Consultation

- 4.17 Consultation has been undertaken with legal services, finance, public health, human resources and communications. External consultation is not required for 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 4.8.

6. Respond

- 6.1 If cabinet accept the recommendations, a report will be presented to full Council on 19 September 2022 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 - Walsall Council Policy and Procedures on the Regulation of Investigatory Powers Act 2000

Appendix 2 - Walsall Council Policy and Procedures on the Investigatory Powers Act 2016

Appendix 3 - Equalities impact assessment

Background papers

There are no background papers for this report

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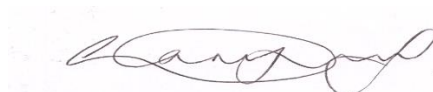
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30 August 2022



Councillor Perry
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30 August 2022