

**Report for: Community, People and Equalities Policy Development Group**

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Date of Meeting:	3 December 2024
<b>Subject:</b>	<b>Regulation of Investigatory Powers Act</b>
Cabinet Member:	Cllr Wulff, Cabinet Member for Quality of Living, Equalities and Public Health
Responsible Officer:	Maria de Leburne, Director of Legal, People & Governance (Monitoring Officer)
Exempt:	There are no exemptions within the documents
Wards Affected:	All
Enclosures:	Appendix 1 - RIPA Policy

### **Section 1 – Summary and Recommendation(s)**

To update Members on RIPA following receipt of the Investigatory Powers Commissioner’s Office (IPCO) Audit and in accordance with IPCOs recommendation that the Policy is presented to members annually.

#### **Recommendation(s):**

**That the Community People and Equalities PDG recommends to Cabinet that**

- (a) The Council’s policy for ensuring compliance with Regulation of Investigatory Powers Act 2000 (RIPA) is appropriate and shall remain as currently drafted;**
- (b) To note that the Council has not used its powers under RIPA since March 2014.**

### **Section 2 – Report**

#### **1.0 Background**

- 1.1 Everyone has a fundamental right to privacy. This right is contained in Article 8 of the European Convention on Human Rights enshrined in the Human Rights Act 1998 (HRA 1998): “Everyone has the right to respect for his private and family life, his home and his correspondence”.

- 1.2. This means, for example, a right not to be watched, have your mail opened or have your personal space invaded including by a public authority. Accordingly, a local authority is required to respect the private and family life of each citizen, their homes and correspondence. However, this right is qualified such that it can be interfered with where it is necessary and proportionate and carried out in accordance with the law. If these requirements are not met and an investigation undertaken that interfered with these rights then it would be unlawful interference.
- 1.3 The Regulation of Investigatory Powers Act 2000 (RIPA) is one such law that permits interference – it details ways in which public bodies can lawfully carry out investigations when there is a wish to use surveillance techniques. For local authorities these comprise:
  - Directed surveillance (covert surveillance of individuals outside of residential premises and vehicles);
  - Covert human intelligence sources (CHIS) (such as the deployment of undercover officers); and
  - The acquisition and disclosure of communications data (such as telephone billing information or subscriber details)
- 1.4 Where a local authority carries out overt investigation (e.g. enforcement officers on patrol, signposted CCTV cameras in normal use) then this does not fall within the scope of RIPA. Equally, obtaining information that is not private information about an individual but which is obtained without someone's immediate knowledge is in most cases not caught (e.g. including recording noise levels from outside a property where the occupier has been warned this will happen if the noise continues or Food Safety or Health and Safety inspections).
- 1.5 The general guiding principle is that if surveillance is overt, or is not obtaining private information it does not need to follow RIPA requirements. Where there is directed surveillance or use of a covert human intelligence source then the requirements of RIPA must be followed.
- 1.6 Following criticism of local authorities' use of covert surveillance powers additional safeguards were put in place including:
  - The need to obtain magistrate approval
  - Only be used to investigate offences which attract sentences of six months or more or relate to the underage sale of alcohol or tobacco.
- 1.7 The Council's RIPA Policy as currently published is attached as Appendix 1. As it provides and as is appropriate, the Council's policy is to not use these covert surveillance powers save where absolutely necessary and the procedure is set out for what should be done where it is felt that it is necessary, including requiring the authority of named Authorised Officers.

1.8 Adopting this practice has not been to the detriment of carrying out the Council's functions and the Council has not used these powers of surveillance since 2014, providing an annual nil return to the IPCO, which requests statistics of how these powers are being used by public authorities across the country.

## **2.0 The Council and RIPA in the last 12 months**

2.1 The Council has not used its RIPA surveillance powers in the last 12 months. The last time such powers were used dates back to 2014.

2.2 In August 2024, the Investigatory Powers Commissioner's Office (IPCO) conducted its 3 year review/inspection of the Council. The inspector appointed by the IPCO conducted a "remote" inspection. The Investigatory Powers Commissioner's Office in a letter dated the 9 August 2024 informed the Chief Executive of the results of the inspection. It was stated the inspector was satisfied that the information provided offered the required assurance that ongoing compliance with RIPA 2000 and the Investigatory Powers Act 2016 will be maintained. He also stated that MDDC appears to be in a strong compliance position. He did make one observation that the code outlines the requirement for elected members to review the authority's use and set the policy annually.

2.3 In the light of the inspector's comment the RIPA policy is attached at Appendix 1. The Inspector did not require any amendments to this policy. This was previously amended following the last audit and approved at the 8 March 2022 Cabinet meeting.

2.4 On 15 December 2021, the Council arranged RIPA training for officers, and in particular for front-line practitioners. The training was provided by an experienced external trainer in RIPA and was well attended. The training included social media surveillance. Further training is currently being arranged for front-line practitioners, and this will be cascaded down to their teams. Training of wider staff is also being considered at present and is likely to be appropriate to avoid inadvertently carrying out directed or other form of covert surveillance in breach of the Procedures in place.

**Financial Implications:** None directly arising from this report.

**Legal Implications:** The use of RIPA powers is heavily regulated and scrutinised by the Investigatory Powers Commissioner's Office ("IPCO"). The legislation, combined with Codes of Conduct, sets the framework for the use of RIPA powers. Statutory guidance requires the Council to review the use of RIPA and the RIPA policy annually.

**Risk Assessment:** There are no risks directly arising from this report. The Council has the necessary policy and procedures in place with appropriate training have been given to officers.

**Impact on Climate Change:** None.

**Equalities Impact Assessment:** None directly arising from this report, but human rights, including equalities matters, are central to RIPA.

**Relationship to Corporate Plan:** None.

### **Section 3 – Statutory Officer sign-off/mandatory checks**

**Statutory Officer:** Andrew Jarrett  
Agreed by or on behalf of the Section 151  
**Date:** 19 November 2024

**Statutory Officer:** Maria de Leburne  
Agreed on behalf of the Monitoring Officer  
**Date:** 18 November 2024

**Chief Officer:** Stephen Walford  
Agreed by Chief Executive  
**Date:** 19 November 2024

**Performance and risk:** Stephen Carr  
Agreed on behalf of the Corporate Performance & Improvement Manager  
**Date:** 20 November 2024

**Cabinet member notified:** Yes

### **Section 4 - Contact Details and Background Papers**

Maria de Leburne, Director of Legal, People & Governance (Monitoring Officer)  
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**Background papers:**

None