

Wednesday, 27 September 2023

Report of the Assistant Director - Partnerships

Regulation of Investigatory Powers Act 2000

Exempt Information

None

Purpose

To consider the annual report to demonstrate compliance with the Council's Code of Practice for carrying out surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA)

Recommendations

It is recommended that the Audit and Governance Committee:

1. Endorse the RIPA monitoring report for 2022/23 and Policy review
2. Consider and endorse the recent audit findings of the Investigatory Powers Commissioner's Office (IPCO)

Executive Summary

The Council has several statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them, including powers under the Regulation of Investigatory Powers Act 2000 (RIPA) which enable it to carry out covert Directed Surveillance in certain strict circumstances.

RIPA provides a legal framework for the control and regulation of covert surveillance and information gathering techniques which public bodies such as Tamworth Borough Council must comply with.

Following the review of the constitution in 2020, the annual review and any RIPA policy updates are now endorsed by the Audit and Governance Committee where identified. An annual report is now submitted on the use of powers to Audit and Governance Committee for update, unless applications have been made during any Council year requiring separate report.

The RIPA powers have been amended and changed in accordance with various pieces of legislation and the policy updated accordingly. The annual review by the Senior Responsible Officer, the Assistant Director Partnerships, has not identified any material changes at this time. The 2023 reviewed policy is attached at Appendix 1.

No Directed Surveillance has been carried out by the Council during 2022/23 and there have been no authorisations for the use of Covert Human Intelligence Sources.

It is not envisaged that there will be any appreciable change in the foreseeable future.

By adhering to Policy the Council ensure that the acquisition and disclosure of data is lawful, necessary and proportionate so that the Council will not be held to be in breach of Article 8 (the right to respect for private family life, home and correspondence) of the European Convention on Human Rights.

Investigatory Powers Commisioner's Office (IPCO) Inspection

The Council's policies, processes and use of powers were audited by the IPCO in June 2023 as part of a tri-yearly inspection regime.

There were no issues or concerns and the IPCO consider that the Council is compliant. Letter attached as Appendix 2. The next inspection will be 2026.

Options Considered

Obligations arising under RIPA for the authority are statutory therefore there the only option is compliance.

Resource Implications

Support for the RIPA obligations and functions are met from existing budget and existing staff resources.

Legal/Risk Implications Background

The recording of applications, authorisations, renewals and cancellations of investigations using covert surveillance techniques or involving the acquisition of communications data is covered by the Regulation of Investigatory Powers Act 2000.

The Regulation of Investigatory Powers Act was introduced to regulate existing surveillance and investigation in order to meet the requirements of Article 8 of the Human Rights Act. Article 8 states: Everyone has the right for his private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the Country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

RIPA investigations can only be authorised by a local authority where it is investigating criminal offences which

- (1) attract a maximum custodial sentence of six months or more or
- (2) relate to the sale of alcohol or tobacco products to children.

There are no risk management or Health and Safety implications.

Equalities Implications

No issues arising from this report and equality issues are addressed within the policy

Environment and Sustainability Implications (including climate change)

The legislation requires the Authority to record and monitor all RIPA applications, keep the records up to date and report annually to the Audit and Governance Committee.

Background Information

The Protection of Freedoms Act 2012 requires that local authority authorisations under RIPA for Directed Surveillance or CHIS can only become effective on the granting of an order

approving the authorisation by a Justice of the Peace. Further a local authority can now only have an authorisation under RIPA for the use of Directed Surveillance where the local authority is investigating criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco under the Licensing Act 2003 or the Children and Families Act 2014.

The RIPA Code of Practice produced by the Home Office in April 2010 and updated in January 2016 and again in August 2018 introduced the requirement to produce at a minimum annual reports to elected members to demonstrate that the Council is using its RIPA powers appropriately and complying with its own Code of Practice when carrying out covert surveillance. This requirement relates to the use of directed surveillance and covert human intelligence sources (CHIS).

Report Author

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Appendices

Appendix 1 - Tamworth Borough Council RIPA Policy and Code of Practice

Appendix 2 - IPCO inspection letter 2023

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