

<b>Annual Update - Regulation of Investigatory Powers Act 2000 (RIPA)</b>	
Executive Summary	<p>The Council is required to have a Policy for the use of powers under the Regulation of Investigatory Powers Act 2000 (RIPA).</p> <p>Home Office guidance recommends that elected members should review the use of the RIPA powers and ensure the policy remains fit for purpose, at least once per year.</p> <p>Officers have reviewed the Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Procedures document and made a number of minor changes. These changes reflect references in the document to relevant Codes of Practice and removed references to a guidance document which has been withdrawn and not yet replaced.</p> <p>Officers have reviewed the Internet &amp; Social Media Research &amp; Investigations Policy and identified that no changes are necessary at this time.</p> <p>The Council has made use of powers under RIPA on one occasion in the last 12 months.</p>
Options considered	The Policy is required to ensure proper application of the Act, so there is not an alternative option.
Consultation(s)	Consultation has been undertaken with the Monitoring Officer, who also acts as the Gatekeeper for RIPA activity.
Recommendations	<ol style="list-style-type: none"> <li>1. That the amendments to the revised Regulation of Investigatory Powers Act 2000 Policy and Procedures, set out at Appendix A, be accepted.</li> <li>2. That Members note that there are no amendments required to the Internet &amp; Social Media Research &amp; Investigations Policy</li> <li>3. That Members note the activity undertaken under RIPA.</li> </ol>
Reasons for recommendations	<p>The Council is required to have an up to date policy/procedure in order to exercise its powers.</p> <p>Members are required to be aware of the RIPA activity undertaken by the Council.</p>
Background papers	None

Wards affected	All
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<b>Links to key documents:</b>	
Corporate Plan:	This item does not directly relate to delivery of the Corporate Plan objectives but is a statutory requirement.
Medium Term Financial Strategy (MTFS)	There is no direct impact on the Medium-Term Financial Strategy.
Council Policies & Strategies	NNDC Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Procedures  NNDC Internet & Social Media Research & Investigations Policy

<b>Corporate Governance:</b>	
Is this a key decision	No
Has the public interest test been applied	Yes, not exempt
Details of any previous decision(s) on this matter	N/A

## 1. Purpose of the report

To demonstrate that the Council has met best practice, in the Home Office guidance, that members should review the use of the RIPA powers and ensure the policy remains fit for purpose, at least once per year.

To inform members that the Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Procedures and Internet & Social Media Research & Investigations Policy have been reviewed.

To advise members that minor changes have been made to the Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Procedures document. These changes reflect references in the document to relevant Codes of Practice and removed references to a guidance document which has been withdrawn and not yet replaced.

To advise members that no changes are required to the Internet & Social Media Research & Investigations Policy.

To request that members accept the Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Procedures and the Internet & Social Media Research & Investigations Policy documents as fit for purpose.

To inform members of the use of powers under RIPA since the last annual update report.

## **2. Introduction & Background**

The Human Rights Act 1998 gave effect in UK law to the rights set out in the European Convention on Human Rights (ECHR). Some of these rights are absolute, while others are qualified, meaning that it is permissible for the state to interfere with those rights if certain conditions are satisfied.

Amongst the qualified rights is a person's right to respect for their private and family life, home and correspondence, as provided for by Article 8 of the European Court of Human Rights. It is Article 8 that is most likely to be engaged when public authorities seek to obtain private information about a person.

The performance of certain investigatory functions of Local Authorities may require the surveillance of individuals or the use of undercover officers and informants. Such actions may intrude on the privacy of individuals and can result in private information being obtained and as such, should not be undertaken without full and proper consideration.

The Regulation of Investigatory Powers Act 2000 (RIPA) governs these activities and provides a means of ensuring that they are carried out in accordance with law and subject to safeguards against abuse. If relevant surveillance activity does not comply with the requirements set out in the legislation and related Codes of Practice, it opens the Council up to the risk of challenge under the Human Rights Act and failure of any legal action which may seek to rely on evidence collected through this method.

Home Office's guidance recommends that, to attain best practice: "...elected members of a local authority should review the authority's use of the 2000 Act and set out the policy at least once a year. They should also consider internal reports on use of the 2000 Act on a regular basis to ensure that it is being used consistently within the local authority's policy and that the policy remains fit for purpose."

The Council uses powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more.

The three powers available to local authorities under RIPA are:

- directed surveillance;
- covert human intelligence sources ("CHIS");
- the acquisition and disclosure of communications data.

RIPA requires that when a Council undertakes covert directed surveillance or uses a CHIS, these activities must be authorised in advance by an officer who must then seek the approval by a Magistrate/Justice of the Peace.

This Authority will only ever be required to deal with matters relating to directed surveillance and the use of covert human intelligence sources (CHIS). The acquisition of communications data, if ever required, is

undertaken through the National Antifraud Network (NAFN). They act as the single point of contact for many local authorities and ensure the application is RIPA compliant. It is NAFN that are audited by the commissioners.

Public bodies are required to formally establish arrangements and responsibilities for approving directed surveillance under RIPA and these arrangements are described in the Policy and Procedure.

### **3. Policy and Procedures - Review and Update**

#### **3.1 Regulation of Investigatory Powers Act 2000 Policy and Procedures**

The Policy and Procedures was subject to a significant review and overhaul last year. In line with national guidance an annual review has been undertaken. This identified a number of changes which needed to be made to the Policy and Procedures to ensure that they were up to date and accurate.

Several of the Codes of Practice relating to RIPA have been updated. References to these Codes in the document have been updated and links to the latest documents on the .GOV website updated.

The OSC Procedures and Guidance document, which was referred to in the policy, has been withdrawn. The document is still available on the IPCO website but does say it is withdrawn. On this basis the Policy has been updated to remove references to this guidance. No replacement guidance has been issued but as and when this is issued the Policy will be updated to reflect this.

The document at Appendix A has the track changes shown for ease of reference. Should Members approve the changes then this document will be finalised and reissued to officers and published on our website.

This is an Operational Policy outside the Policy Framework so a recommendation for Council to approve it is not required.

#### **3.2 The Internet and Social Media Research and Investigations Policy**

The Internet and Social Media Research and Investigations Policy has been produced as a separate document to the RIPA Policy and Procedures. This is to ensure that it is readily understood by all those who use the internet or social media to gather information as part of the delivery of their role.

The policy established the approach that North Norfolk District Council takes to ensure that all online research and investigations are conducted lawfully and ethically, are in compliance with the relevant legislation, government guidance and best practice. This reduces the risk of challenge and to ensure that the activity undertaken, and any evidence obtained, will stand scrutiny in any subsequent criminal proceedings.

There have been no requirements for amendments identified during the review process. This is an Operational Policy outside the Policy Framework so a recommendation for Council to approve it is not required.

Since the policy introduction last November a number of activities have been undertaken to ensure staff are aware of the requirements placed on them by the policy.

These include:

- An article on the intranet for all staff, launching the policy and general awareness raising on what it contained.
- An item on the All Staff Briefing session, setting out more detail of the policy and expectations on staff activity relating to compliance.
- Attendance by the Senior Responsible Officer (SRO) at team meetings, of those teams who are more likely to use the internet or social media in the course of their activities, to cover in more detail the requirements of the policy.
- The SRO responding to specific queries on use of the policy and where it applies in specific use case situations.

### **3.3 Training**

Update and refresher training is booked during December 2023. Two sessions will be held.

The first will be for officers who may undertake surveillance as part of their role. The session will raise the general awareness of where and how the Regulation of Investigatory Powers Act applies and the requirements of the application process.

The second will be for those in Authorising Officer and the Senior Responsible Officer roles to ensure that the process of authorising any applications is well understood.

The date of the training is slightly later than normal in the year due to the availability of the trainer and to reflect a number of changes in staff within the relevant teams over recent months.

### **3.4 Investigatory Powers Commissioners Office (IPCO) Inspection**

All public authorities are subject to periodic inspection by the Investigatory Powers Commissioners Office (IPCO) who independently oversee the use of investigatory powers, ensuring they are used in accordance with the law and in the public interest. The Council was subject to a remote inspection by an IPCO Inspector on the 17 February 2021. The outcome of that inspection was reported to Cabinet in September 2021.

IPCO undertake periodic inspections on a risk-based frequency, reflecting previous compliance and how much the powers are used by an Authority. It is usual for an inspection every two to three years.

The Council received a pre-inspection questionnaire in June 2023, seeking information regarding its use of the powers and the steps taken to ensure that

adequate steps had been taken to ensure compliance with the relevant legislation, guidance, and codes of practice. A full response was submitted and to date no further contact has been made by IPCO.

Given the last inspection was undertaken in February 2021, it is likely that an inspection will be due in the near future.

### **3.5 Use of RIPA Powers by the Council**

There has been one authorisation for the use of a covert human intelligence source (CHIS) since the last annual update in November 2022.

This application related to an investigation in respect of a licensable activity where attempts to gather evidence via other investigation techniques had not been possible. The use of a Covert Human Intelligence Source was considered necessary and proportionate by the Authorising Officer and the application was then considered and authorised by the Magistrate.

The CHIS activity was conducted in accordance with the Policy and Procedure in place at that time. The authorisation was cancelled at the point that the CHIS was no longer needed.

Other investigations have been progressed using other investigation techniques to gather information and evidence, which is consistent with the approach set out in the Policy and Procedures.

No applications for the use of directed surveillance have been made during the time since the last annual report.

No applications for the disclosure of communications data were made during the above period.

## **4. Corporate Priorities**

This item does not directly relate to delivery of Corporate Priorities but is a statutory requirement.

## **5. Financial and Resource Implications**

There are no financial or resource implications associated directly with the implementation of the Policy.

Non-compliance with the legislation associated with covert surveillance leaves the Authority open to challenge and formal claims for compensation from individuals or corporate bodies should it be found that appropriate guidelines and procedures have not been followed. IPCO may also audit our compliance with RIPA and impose penalties where the authority is found to be in non-conformance. Evidence obtained from surveillance conducted under an outdated or non-compliant RIPA Policy and Procedure would be inadmissible or liable to fail challenge in any legal proceedings which could result in the award of costs against the Council.

## **6. Legal Implications**

The Human Rights Act 1996 makes it unlawful for a Local Authority to breach any article of the European Convention on Human Rights (ECHR).

Article 8 of the ECHR states that:

- 1) everyone has the right of respect for his private life, his home and his correspondence.
- 2) 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 wellbeing of the country, for the prevention and detection of crime, for the protection of health and morals, or the protection of the rights and freedoms of others.

Public Authorities can therefore interfere with the Article 8 rights if it meets the reasons given above. The Regulation of Investigatory Powers Act sets the lawful basis for interference with those qualified rights to ensure that any activity undertaken, and any information obtained is compatible with the Human Rights Act.

The Policy and Procedures document sets the framework under which the Council undertakes surveillance which meets the definitions under the Regulation of Investigatory Powers Act and is undertaken following correct authorisation and approvals, therefore reducing the risk to the authority of legal challenge.

There are reputational and legal risk implications if the RIPA policy is out of date and/or out of step with legal obligations under the act or relevant Home Office Guidance.

If surveillance is conducted which does not comply with the Act, Home Office guidance and/or best practice the Council is open to challenge under the Human Rights Act or may face sanctions being imposed by the Investigatory Powers Commissioners Office.

Any evidence obtained from surveillance conducted outside of the RIPA Policy would be inadmissible or liable to fail challenge in any legal proceedings.

## **7. Risks**

None identified as a direct result of this report.

## **8. Net Zero Target**

There are no sustainability issues arising from this report.

## **9. Equality, Diversity & Inclusion**

There are no Equality Diversity and Inclusion issues arising directly from this report. These are considered as an integral part of the process when making decisions regarding the use of RIPA powers.

## **10. Community Safety issues**

None identified as a direct result of this report.

The Regulation of Investigatory Powers Act Policy and Procedure applies where it is necessary and proportionate to collect personal information through covert means. This is only the case where the offence being investigated meets the serious crime threshold where a conviction for an offence could result in 6 months imprisonment. Circumstances where RIPA powers are likely to be used are therefore more likely to have Community Safety implications.

## **11. Conclusion and Recommendations**

This report provides Members with an annual update on the use of RIPA powers and that it is following best practice identified in Home Office Guidance.

1. That the amendments to the revised Regulation of Investigatory Powers Act 2000 Policy and Procedures, set out at Appendix A, be accepted.
2. That Members note that there are no amendments required to the Internet & Social Media Research & Investigations Policy.
3. That Members note the activity undertaken under RIPA.