

NOT CONFIDENTIAL – For public release

Governance and Resources Committee

14 July 2022

Report of Director of Corporate and Customer Services

ANNUAL REPORT ON THE REGULATION OF INVESTIGATORY POWERS ACT (RIPA)

PURPOSE OF REPORT

To provide the annual report on the Council's use of RIPA and any related matters.

RECOMMENDATION

1. That the report be noted.
2. That the procedure for the use of corporate social media accounts to access information be endorsed and included in the RIPA Policy.

WARDS AFFECTED

District-wide

STRATEGIC LINK

By complying with RIPA, the authority continues to demonstrate that it is a modern efficient and effective Council that delivers for its community by delivering a high quality, effective and timely service to our customers and communities and harnessing intelligence to ensure priorities are informed by evidence.

1 BACKGROUND

1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) was put in place to ensure that the use of investigatory powers by certain organisations complies with the UK's obligations under the European Convention on Human Rights (ECHR) including Article 8 (the right to privacy). The proper authorisation of certain covert surveillance powers under RIPA ensures that the Council is acting in accordance with such human rights.

1.2 The provisions of the Act include:

- the interception of communications;
- the acquisition of communications data (e.g. billing data);
- intrusive surveillance (on residential premises/ in private vehicles);
- covert surveillance in the course of specific operations;

- the use of covert human intelligence sources (agents, informants, undercover officers); and
 - access to encrypted data.
- 1.3 There are various code of practice, updated periodically, which broadly cover the specific bullet points above. These help public authorities assess and understand whether, and in what circumstances, it is appropriate to use covert techniques. The codes also provide guidance on what procedures need to be followed in each case.
- 1.4 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.
- 1.5 The purpose of this annual report is to set out the level and nature of Derbyshire Dales District Council's use of covert surveillance under RIPA.

2 REPORT

- 2.1 The District Council's RIPA Policy was approved by Council in January 2020 and communicated to officers accordingly following that time. It clearly explains the type of surveillance the Council can and cannot undertake and also explains those limited circumstances where covert surveillance, requiring external authorization, may be appropriate.
- 2.2 The policy ensures compliance with the regulatory framework for the use of covert investigatory techniques by officers, as set out in the Regulation of Investigatory Powers Act 2000 and RIPA (Directed Surveillance and Covert Human Intelligence Sources CHIS) Order 2010 (and as amended 2012).
- 2.3 RIPA Training has been provided to Members on 30 November and 1 December 2021 with 24 Members attending in total. Training has also been delivered to officers, including Directors, on 6 December 2021 to assist with compliance with legislation and our policy, including understanding of when RIPA authorisation is required.
- 2.4 The Legal Services Manager is the RIPA Administrator and responsible for ensuring a comprehensive single corporate record exists to enable full reporting to the Investigatory Powers Commissioner's Office and to the Governance and Resources Committee.
- 2.5 The Investigatory Powers Commissioner's Office (IPCO) conducts audits and inspections of the use of investigatory powers to ensure that public bodies are authorised to use investigatory powers are doing so lawfully and in line with best practice. In July 2019, the IPCO conducted its three year review/inspection of the Council. The IPCO's report was primarily positive. There were no issues that raised major concerns for the inspector, however 2 recommendations and 4 observations were made.
- 2.6 Both previous recommendations from the IPCO in 2019 have been addressed through the provision of reports such as this and by providing bespoke corporate social media

accounts for officers to use to access information through social media. These will not, however, be established accounts bearing the Derbyshire Dales District Council name. For completeness it is recommended that this practice is reflected in the RIPA Policy and Members are asked to endorse its inclusion.

- 2.7 Once again the Council has not used its RIPA surveillance powers during the 2021/22 financial year and the Council's RIPA Authorising Officers have not approved the use of covert surveillance techniques in any cases. The last time such powers were used dates back to 2014.
- 2.8 The RIPA Policy states that overall responsibility for the use of RIPA lies with the Senior Responsible Officer (SRO) who is the Director of Corporate and Customer Services (& Monitoring Officer). The deputy SRO is the Legal Services Manager.
- 2.9 The Directors of Community & Environmental Services, Corporate & Customer Services, Housing, Regeneration & Policy and Regulatory Services, along with the Chief Executive, are the Council's Authorising Officers in respect of RIPA applications. The Legal Services Manager is also the RIPA Administrator and is responsible for maintaining a central register of authorisations applied for.

3 RISK ASSESSMENT

Legal

- 3.1 This report ensures that the Council has oversight of the use of RIPA powers and ensure that policies remain fit for purpose. A failure to follow the updated Policy which reflects government guidance and the recommendations of the IPCO inspector would increase the risk of a misuse of RIPA powers and intervention by the Investigatory Powers Commissioner.
- 3.2 Evidence obtained unlawfully in breach of the policy may result in a breach of the provisions of the Human Rights Act 1998 and also result in evidence being inadmissible in subsequent court proceedings.
- 3.3 The legal risk associated with this report is considered low.

Financial

- 3.4 As the Council has previously responded to the recommendations of the IPCO this has helped mitigate any financial risks which may arise should the Council fail to comply with legislation, government guidance and recommendations. The financial risk of this report is assessed as low.

Corporate Risk

- 3.5 There are some risks associated with RIPA, most notably reputational risks arising from possible adverse media coverage. Given that the use of RIPA is minimal, the

Council is already mitigating that risk by following a use of RIPA that is proportionate and appropriate.

4 OTHER CONSIDERATIONS

- 4.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.
- 4.2 This report has a low or low relevance to the substance of the Equality Act 2010. There is no apparent equality impact on end users. However, the use of RIPA powers can result in a direct interference with a person's human rights. As noted in the legal implications above, the Council must comply with its procedures and any authorisations must be proportionate in order to justify such interference.

5 CONTACT INFORMATION

James McLaughlin, Director of Corporate and Customer Services & Monitoring Officer
01629 761281 or james.mclaughlin@derbyshiredales.gov.uk

Kerry France, Legal Services Manager
01629 761152 or kerry.france@derbyshiredales.gov.uk

6 BACKGROUND PAPERS

- Home Office Codes of Practice on Covert Surveillance and property interference
- Home Office Codes of Practice on Covert Human Intelligence Sources

7 ATTACHMENTS

None