



**OPEN REPORT
GOVERNANCE AND RESOURCES COMMITTEE**

Governance and Resources Committee – 2 November 2023

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

Report of the Director of Corporate and Customer Services (Monitoring Officer)

Report Author and Contact Details

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Wards Affected

District-wide

Report Summary

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

Recommendations

1. That the Annual Report on the Council's use of the Regulation of Investigatory Powers Act be accepted and approved.
2. That the Regulation of Investigatory Powers Act (RIPA) Policy be amended as detailed within the report.

List of Appendices

None

Background Papers

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

Consideration of report by Council or other committee

No

Council Approval Required

No

Exempt from Press or Public

No

Annual Report on the Regulation of Investigatory Powers Act (RIPA)

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. Key Issues

- 2.1 The District Council's RIPA Policy was approved by Council in January 2020 and communicated to officers accordingly following that time.
- 2.2 It was updated in July 2022 to include a procedure for the use of corporate social media accounts to access information. The policy 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.
- 2.3 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).

- 2.4 Following the adoption of the updated policy in July 2022, the Council was subject to a desktop inspection by the Investigatory Powers Commissioner's Office (IPCO). The feedback from the IPCO was that the policy was well structured but required a further update in respect of:
- (a) Part two of the policy, which provides guidance regarding the acquisition of communications data, does not reflect the impact of Section 73 of the Act. The organisation is yet to form a collaboration with the National Anti-Fraud Network and the SRO should ensure that all are aware of the opportunities presented under Section 73 of the IPA going forward.
 - (b) Deletion of references to the OSC Procedures and Guidance document which is now obsolete.
- 2.5 In response to (a) above, the Investigatory Powers Act 2016, which came into force on 30 December 2016 sets out how communications data can be obtained. Much of the Act is only relevant to local authorities in a peripheral way. Local authorities are not included in the Schedule 4 list of relevant public authorities that may obtain communications data and section 61 specifically excludes local authorities from being able to obtain internet connection records (ICRs). However, section 73 defines local authorities as a relevant public authority for the purposes of Part 3 of the Act and section 78 – 79 set out the circumstances in which local authority authorisation for obtaining communications data (other than ICRs) can be granted.
- 2.6 In order to obtain communications data, the following tests must be satisfied:
- It must be for the purpose of preventing or detecting crime or of preventing disorder;
 - The local authority must be part of a collaboration agreement that has been published and has been certified by the Secretary of State;
 - The authorisation must be granted by a designated senior officer, which means a director, head of service, service manager, or equivalent or a higher person;
 - It must be granted to an officer of a local authority that is either a 'supplying' or 'subscribing' authority under the collaboration agreement. (The Council have not entered into a collaboration agreement.);
 - A person who is acting as the single point of contact must be consulted, unless the circumstances are exceptional, i.e. an imminent threat to life; and
 - The conduct authorised must be proportionate to what is sought to be achieved and judicial approval from a justice of the peace obtained.
- 2.7 Whilst the authority has not carried out any activity under the Act for some time, the IPCO was pleased that that a number of targeted training sessions were delivered in 2021 to those involved in the use, application, and authorisation of covert tactics.

3. Options Considered and Recommended Proposal

- 3.1 The other option is to do nothing and to keep the Regulation of Investigatory Powers Act (RIPA) Policy as currently drafted and not amend the policy as detailed within the report. This option is not considered as appropriate due to the amendments are in line with feedback from the IPCO.

4. Consultation

- 4.1 The feedback from the IPCO has informed the development of the policy changes proposed within this report. No formal consultation has taken place.

5. Timetable for Implementation

- 5.1 The proposed changes to the policy will take effect immediately and will also be communicated to officers.

6. Policy Implications

- 6.1 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.

7. Financial and Resource Implications

- 7.1 As the Council has previously responded to the recommendations of the IPCO, this has helped to 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.

8. Legal Advice and Implications

- 8.1 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.
- 8.2 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.
- 8.3 The legal risk associated with this report is considered to be low.

9. Equalities Implications

- 9.1 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.

10. Climate Change and Biodiversity Implications

- 10.1 There are no climate change or biodiversity implications associated with this report.

11. Risk Management

- 11.1 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.

Report Authorisation

Approvals obtained from Statutory Officers:-

	Named Officer	Date
Chief Executive	Paul Wilson	24/10/2023
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	20/10/2023
Monitoring Officer (or Legal Services Manager)	Kerry France	27/10/2023