

REPORT TO:	Audit and Governance Committee
DATE:	22 nd November 2023
SUBJECT:	Regulation of Investigatory Powers Act (RIPA) 2000 – Update
PURPOSE:	To advise Members of any RIPA regulatory activity in the last 12 months and any work needed to ensure arrangements remain up to date and to provide assurance that our legal obligations are effectively managed.
KEY DECISION:	<i>N/A</i>
PORTFOLIO HOLDER:	Councillor Graham Marsh – Deputy Leader of the Council and Portfolio Holder for Community Safety, Leisure and Culture and Carbon Reduction
REPORT OF:	Christian Allen Assistant Director Regulatory and Senior Responsible Officer (SRO) for RIPA
REPORT AUTHOR:	As above
WARD(S) AFFECTED:	All
EXEMPT REPORT?	<i>No</i>

SUMMARY

The purpose of this report is to provide Audit and Governance Committee with an update on the Council's activities in respect of the Regulation of Investigatory Powers Act (RIPA) 2000 during the last 12 months. The report also seeks to update members on anticipated changes necessary to our Policy and Procedures to reflect current guidance issued by the Home Office and the Investigatory Powers Commissioners Office (IPCO), the regulatory body that oversees compliance with RIPA by public bodies.

The Council was last audited by IPCO in March 2021 and recent correspondence with IPCO has indicated that they wish to undertake a combined audit involving all three Councils in the South and East Lincolnshire Councils Partnership in 2024.

Currently East Lindsey District Council and Boston Borough Council have a common Policy, Procedures and Arrangements in place for RIPA, established when the two Councils were in a 'Strategic Alliance'. South Holland District Council currently has sovereign arrangements in place.

In preparation for the IPCO audit next year, Officers are intending to harmonise our Policy, Procedures and Arrangements for RIPA so that we have a single, consistent Partnership approach.

Members of the Audit and Governance Committee are asked to note the report and the preparations underway to harmonise RIPA Policy, Procedures and Arrangements for the Partnership ahead of the IPCO audit in 2024.

RECOMMENDATIONS

Members are invited to note the report and comment on the report as appropriate.

REASONS FOR RECOMMENDATIONS

To ensure awareness of the use of RIPA over the past year by East Lindsey District Council and advise on the work necessary and underway to harmonise our approach across the Partnership, maintain compliance and prepare for the Partnership IPCO Audit next year.

Ensuring Members are informed about RIPA activity, policy and procedures demonstrates good governance and an organisational commitment to the obligations imposed by RIPA on public bodies.

OTHER OPTIONS CONSIDERED

Retain current arrangements where East Lindsey District Council and Boston Borough Council have common Policy, Procedures and Arrangements in place for RIPA.

This option has not been explored as economies of scale, efficiencies and shared learning can be optimised by harmonising our approach to RIPA across the Partnership. This sub regional approach also accords with the objectives set out in the Memorandum of Agreement and the Business Case for the South and East Lincolnshire Councils Partnership.

1. BACKGROUND

- 1.1** The Regulation of Investigatory Powers Act (RIPA) 2000 was enacted to regulate the powers of public bodies that carry out surveillance and investigation as part of their functions including the potential interception of communications.
- 1.2** The Council's RIPA policy, procedures and practices must seek to ensure that we comply with the requirements of the European Convention on Human Rights and the Human Rights

Act 1998 when undertaking any investigative activities which may interfere with a person's right to respect for a private family life, home and correspondence.

- 1.3** The requirements of the European Convention on Human Rights, the Human Rights Act 1998 and RIPA potentially impact any Officers of the Council performing investigatory or enforcement activities. Officers, when determining whether to undertake covert investigative activities, must only do so in accordance with the requirements set out in RIPA and associated guidance.
- 1.4** RIPA governs local authorities use of Directed Surveillance (surveillance of an individual/s without their knowledge for a specific purpose), use of a Covert Human Intelligence Source (use of informants or undercover officers) and access to communications data (obtaining subscriber information of a telephone number or internet user, etc) provided the investigatory activity is shown to be lawful, necessary, proportionate and non-discriminatory.
- 1.5** The Investigatory Powers Commissioner's Office (IPCO) is the regulatory body designated to oversee the compliance arrangements of public bodies in their use of RIPA and undertake audits of public authorities to evaluate their compliance with the legislation.

2. REPORT

- 2.1** East Lindsey District Council last underwent a remote audit with IPCO in March 2021. The few recommendations from the last audit were implemented and joint Policy, Procedures and Arrangements for RIPA were established with Boston Borough Council soon after.
- 2.2** The Council has not found it necessary to authorise any applications to the courts for use of Directed Surveillance, use of covert human intelligence sources (CHIS) or for access to communications data since the last report to this Committee in September 2022.
- 2.3** The Assistant Director Regulatory is the appointed Senior Responsible Officer (SRO) for RIPA for both East Lindsey District Council and Boston Borough Council. In September 2023 the SRO responsibilities for the AD Regulatory role were extended to include South Holland District Council.
- 2.4** The Joint RIPA Policy for East Lindsey District Council and Boston Borough Council was reviewed and approved by Executive Board in September 2021. With the establishment of the South and East Lincolnshire Councils Partnership and the forthcoming IPCO audit in 2024 the opportunity exists to develop and adopt a single RIPA policy for the Partnership. A revised Partnership RIPA Policy will be developed and brought forward for approval in Q1/Q2 of 24.25.
- 2.5** A common RIPA Policy also enables the Councils to share named Officers with designated policy roles under RIPA at East Lindsey District Council and Boston Borough Council, with

South Holland District Council. Similarly, for designated Officers identified for South Holland District Council to share those responsibilities with East Lindsey and Boston.

- 2.6** Enforcement Officers in key roles and services across the Council such as community safety, environmental health and planning are required to undertake training on a regular basis to refresh their knowledge of RIPA policy, procedure and practice. Training records show that relevant Officers in East Lindsey last underwent training in 2022. Best practice is to refresh training every three years or when there has been a substantial amendments to legislation, policy or guidance.
- 2.7** Training/refresher training is managed through the Partnership Training and Development Plan. Working to common policy and procedures for RIPA presents an opportunity to organise and commission training/re-training centrally so that relevant Officers have a consistent understanding and knowledge across the Partnership thus facilitating cross boundary working where appropriate.

3. CONCLUSION

- 3.1** There has been no audit undertaken by IPCO since March 2021.
- 3.2** There has been no RIPA relevant activity undertaken by East Lindsey District Council in the last 12 months.
- 3.3** The Joint (Alliance) RIPA policy, whilst current, will be refreshed to include South Holland District Council resulting in a single RIPA policy for the Partnership which will be presented to sovereign councils for adoption in 2024.
- 3.4** Named Officers with already designated roles and responsibilities under RIPA have been consulted and have advised of their willingness to perform these functions on behalf of the Partnership for whichever Council requires them. Two additional Officers from South Holland District Council have also agreed to adopt designated roles under RIPA and to perform that function for the Partnership. This approach provides resilience, capability and capacity to our RIPA arrangements.
- 3.5** Enforcement Officers in key roles and with RIPA designated responsibilities will undertake training/refresher training commensurate with their obligations and at intervals established through the Partnership Training and Development Plan 2024/25. Any training/refresher training identified as necessary following the harmonisation of our RIPA arrangements will be delivered prior to the IPCO audit.

4. EXPECTED BENEFITS TO THE PARTNERSHIP

- 4.1** By adopting a common approach to RIPA across all three councils, economies of scale, efficiencies and shared learning can be optimised across the Partnership. This sub regional approach also accords with the objectives set out in the Memorandum of Agreement and the Business Case for the South and East Lincolnshire Councils Partnership.

5. IMPLICATIONS

5.1 SOUTH AND EAST LINCOLNSHIRE COUNCILS PARTNERSHIP

5.1.1 Whilst the obligations of RIPA remain the responsibility of each sovereign council, Officers and Members will benefit from a consistent and recognised approach being adopted to meet these obligations across the Partnership.

5.2 CORPORATE PRIORITIES

5.2.1 None

5.3 STAFFING

5.3.1 Staff with designated roles under RIPA have agreed to support the extension of their responsibilities to cover the South and East Lincolnshire Councils Partnership area. Designated staff have been consulted and have indicated their agreement to this. Two Officers from South Holland District Council have also agreed to adopt designated roles under RIPA and to perform that function hence providing resilience, capability and capacity to our RIPA arrangements.

5.4 CONSTITUTIONAL AND LEGAL IMPLICATIONS

5.4.1 *Non* - compliance with the legislation associated with covert surveillance leaves the Council open to evidential challenge to enforcement activities in the courts and potentially formal claims for compensation from individuals or corporate bodies should it be found that RIPA policy, guidance and procedures have not been followed. The Policy and training ensures all officers considering surveillance and making an application to do so are aware of the requirements of the legislation and the evidential burden they need to demonstrate when making an application to the courts.

5.5 DATA PROTECTION

5.5.1 The protection of data is implicit in our obligations and compliance with RIPA.

5.6 FINANCIAL

5.6.1 None

5.7 RISK MANAGEMENT

5.7.1 The Council may be exposed to legal, financial and reputational risk were it to undertake enforcement activity inconsistent with the obligations of RIPA. Hence it is important that our policy, practices and procedures are regularly reviewed to ensure that they are up to date with IPCO and Home Office guidance. Adopting common policy, practices and procedures also provides the Partnership with improved resilience, capability and capacity to our RIPA arrangements.

5.8 STAKEHOLDER / CONSULTATION / TIMESCALES

5.8.1 Consultation has been undertaken with the relevant Portfolio Holder, Monitoring Officer, Group Manager for Information Governance and Data Protection Officer and Section 151.

5.9 REPUTATION

5.9.1 Non-compliance with the legislation associated with covert surveillance leaves the Council open to reputational damage should a formal claim for compensation from individuals or corporate bodies find RIPA policy, guidance and procedures have not been followed.

5.9.2 If any prosecution is undertaken, and that through disclosure it becomes clear that either our RIPA policy is not robust or it has not been followed, it may compromise the outcome of the prosecution as a result.

5.10 CONTRACTS

5.10 None

5.11 CRIME AND DISORDER

5.11.1 Compliance with the obligations of RIPA must be intrinsic to all enforcement activities undertaken by the Council.

5.12 EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

5.12.1 Adopting an approach to RIPA that is consistent with IPCO and Home Office guidance will help to ensure that the Council is meeting its equality and diversity, human rights and safeguarding obligations.

5.13 HEALTH AND WELL BEING

5.13.1 None.

5.14 CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

5.14.1 None.

5.15 LINKS TO 12 MISSIONS IN THE LEVELLING UP WHITE PAPER

5.15.1 None

6. ACRONYMS

6.1 RIPA – Regulation of Investigatory Powers Act 2000

IPCO – Investigatory Powers Commissioners Office

SRO – Senior Responsible Officer

APPENDICES

None

BACKGROUND PAPERS

No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report.

CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.

REPORT APPROVAL

Report author:	Christian Allen - Assistant Director Regulatory and Senior Responsible Officer (SRO) for RIPA
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Signed off by:	John Leach Deputy Chief Executive - Communities
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Approved for publication:	Councillor Graham Marsh – Deputy Leader of the Council and Portfolio Holder for Community Safety, Leisure and Culture and Carbon Reduction
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