

# AUDIT AND GOVERNANCE COMMITTEE



Report subject	<b>Use of Regulation of Investigatory Powers Act and Investigatory Powers Act Annual Report 2021/22</b>
Meeting date	28 July 2022
Status	Public Report
Executive summary	<p>Following an annual review process, the previous Regulation of Investigatory Power Act (RIPA) Policy was strengthened and includes provision for acquiring communications data and is now titled the BCP Regulation of Investigatory Powers Act (RIPA) and Investigatory Powers Act (IPA) Policy.</p> <p>All observations arising from the inspection by the Investigatory Powers Commissioner's Office (IPCO) on the use of investigatory powers have been addressed.</p> <p>The Council has not made use of powers under RIPA or IPA during the 2021/22 financial year.</p> <p>The Council has completed and sent its' statutory nil-return for the 2021 calendar year to the IPCO.</p>
Recommendations	<p><b>It is RECOMMENDED that:</b></p> <p><b>Audit &amp; Governance Committee note that the Council has not made use of powers under the Regulation of Investigatory Powers Act or the Investigatory Powers Act during the 2021/22 financial year.</b></p>
Reason for recommendations	To ensure transparency in respect of the Council's use of its powers under the Regulation of Investigatory Powers Act and the Investigatory Powers Act.
Portfolio Holder(s):	Cllr Drew Mellor, Leader of the Council
Corporate Director	Graham Farrant, Chief Executive
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Wards	Council-wide

Classification	For Information
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## Background

1. The Regulation of Investigatory Powers Act (RIPA) was enacted in 2000 to regulate the manner in which certain public bodies may conduct surveillance and access a person's electronic communications and to ensure that the relevant investigatory powers are used in accordance with human rights. 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.
2. The Investigatory Powers Act (IPA) is the main legislation governing the access to or acquisition of communications data. It does not fully replace all pre-existing RIPA requirements but does introduce some important and significant variations to authorisation and regulatory oversight in particular.
3. There are various codes 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 and identifies **as a matter of best practice that elected members of an authority should review the authority's use of RIPA and IPA at least once a year**. The purpose of this annual report is to set out the level and nature of BCP Council's use of covert surveillance under RIPA and acquisition of communications data under IPA.

## BCP RIPA and IPA Policy

4. Following an annual review process the previous Regulation of Investigatory Power Act (RIPA) Policy was strengthened to include provision for acquiring communications data and is now more explicitly and accurately titled, Regulation of Investigatory Powers Act (RIPA) and Investigatory Powers Act (IPA) Policy.
5. The strengthened sections include a statement that the scenario of BCP acquiring communications data, using the IPA provisions, is unlikely to be used. However, should the need ever arise, the strengthened sections include the process for a Council nominated Authorising Officer to give approval for IPA communications data access/acquisition and is reflected in the Accessing Communications Data Flowchart (Appendix E to the Policy).
6. Some amendments have been made to Appendix B (RIPA Authorisation Process) including use of necessary forms and clarification that surveillance can only take place until the expiry date is reached. A section has also been added for Policy consultation, equalities impact assessment date and document control.
7. The updated policy was approved by the Audit & Governance Committee on 17 March 2022 and communicated to officers during April/May at various officer meetings and via corporate communications.

## Investigatory Powers Commissioner's Office (IPCO) Inspection - Recommendations Update

8. The Investigatory Powers Commissioner's Office (IPCO) conducted an inspection on the use of investigatory powers by BCP Council in June 2021 to ensure that we were doing so lawfully and in line with best practice.
9. The outcome from the inspection contained some helpful observations from the Inspector as to how we could further improve policies and procedures, an update on which is detailed below:
  - *The RIPA Policy, while a comprehensive document, could be more 'user friendly'; the presence of a number of flow charts is a useful addition.*  
Update: Flowcharts have been amended and updated as part of the annual review process and subsequently approved by this Committee on 17 March 2022.
  - *The Policy should make it clear that the authorisation period for a juvenile Covert Human Information Source (CHIS) differs from that for an adult CHIS.*  
Update: RIPA Authorisation Process Flowchart at Appendix B clearly states the shorter authorisation period a juvenile CHIS (4 months) vs an adult CHIS (12 months).
  - *The Policy could helpfully, and arguably should, cross reference your data management policy regarding compliance with the required safeguarding measures for the product of surveillance.*  
Update: The Central Record of Authorisation was amended to highlight what the product of surveillance looks like (e.g. camera recording, with or without sound) what personal information will be obtained in what format and where it will be stored and for how long.
  - *The BCP RIPA Central Record could be expanded to identify the presence of surveillance product and indicate its current review status.*  
Update: Changes have been incorporated in the BCP RIPA Central Record.
10. In summary action has been taken to address all of the observations arising from the inspection.

### **Use of RIPA/IPA by the Council**

11. The BCP RIPA & IPA Policy states that overall responsibility for the use of RIPA & IPA lies with the Senior Responsible Officer (SRO) who is the Director of Law & Governance (& Monitoring Officer). The deputy SRO is the Chief Executive.
12. The Regulatory Services Manager, Director of Communities, Chief Executive and Corporate Directors are the Council's Authorising Officers in respect of both RIPA and IPA applications which are then subject to judicial approval in the local Magistrates' Court. For internally authorised IPA applications, approval for the acquisition of communications data must be granted by the Office for Communications Data Authorisations (OCDA) which National Anti-Fraud Network (NAFN) arrange on behalf of the Council. The Head of Audit & Management Assurance is the RIPA Administrator and is responsible for maintaining a central register of authorisations applied for.
13. The use of covert surveillance techniques can assist councils in delivering objectives in areas such as crime, anti-social behaviour and licensing. As a result of complying with RIPA, the Council only invokes these powers as a last resort where overt surveillance is not possible.
14. During the 2021/22 financial year, the Council has **not** made use of powers under RIPA or IPA. The Council's RIPA/IPA Authorising Officers have not approved the use of covert surveillance techniques or requests to access communications data in any cases.

15. In January of each year all entities able to use RIPA/IPA are required to complete a statutory return to the IPCO for the preceding calendar year. The Council completed and sent off this return within the required timeframes.

### **Options Appraisal**

16. An options appraisal is not applicable for this report.

### **Summary of financial implications**

17. There are no direct financial implications from this report.

### **Summary of legal implications**

18. The Council must follow Regulation of Investigatory Powers Act (RIPA) and Investigatory Powers Act (IPA) requirements should it wish to enact covert surveillance.

### **Summary of human resources implications**

19. There are no direct human resource implications from this report.

### **Summary of sustainability impact**

20. There are no direct sustainability impact implications from this report.

### **Summary of public health implications**

21. There are no direct public health implications from this report.

### **Summary of equality implications**

22. There are no direct equalities implications from this report.

### **Summary of risk assessment**

23. There are no direct risk implications from this report.

### **Background papers**

None

### **Appendices**

None