

AUDIT AND GOVERNANCE COMMITTEE



Report subject	Use of Regulation of Investigatory Powers Act (RIPA) and Investigatory Powers Act (IPA) Annual Report for 2023/24 financial year
Meeting date	25 July 2024
Status	Public Report
Executive summary	<p>Following an annual review process, the Regulation of Investigatory Power Act (RIPA) and Investigatory Powers Act (IPA) Policy was updated with some minor changes to include a contents page, authorising officer title changes, expanding implications of not following correct procedures and adding a new in year minor amendments and editing log.</p> <p>BCP Council has used powers under IPA once during the 2023/24 financial year to assist with a trading standards investigation.</p> <p>BCP Council has not made use of powers under RIPA during the 2023/24 financial year.</p> <p>The BCP Council statutory return for the 2023 calendar year has been sent to the Investigatory Powers Commissioner's Office (IPCO).</p>
Recommendations	<p>It is RECOMMENDED that:</p> <p>Audit & Governance Committee note that the Council has used powers under the Investigatory Powers Act once during the 2023/24 financial year, and that the Council has not made use of powers under the Regulation of Investigatory Powers Act during the 2023/24 financial year.</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 Mike Cox, Portfolio Holder for Finance
Corporate Director	Graham Farrant, Chief Executive
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Wards	Council-wide
Classification	For Information

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 2016 (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 Annual Evolution

4. An annual review of the Council's Regulation of Investigatory Powers Act (RIPA) and Investigatory Powers Act (IPA) Policy took place in early 2024 and the revised policy was approved by Audit & Governance Committee (7 March 2024).
5. Some minor changes were made to the policy as part of the annual evolution as summarised below:
 - Added contents page.
 - Section 6 'The Policy' - Authorising Officer title changes – Regulatory Services Manager replaced with Head of Public Protection and Director of Communities replaced with Director of Housing & Communities.
 - Section 10 'Enforcement and Sanctions – Added subjects of surveillance may bring their own proceedings on Human Rights grounds if correct procedures are not followed.
 - Added new In Year Minor Amendments and Editing Log.
6. A corporate communication on the updated Policy along with other Finance Policies was issued to all staff including senior managers in April 2024.

Use of RIPA/IPA by the Council

7. The BCP Council 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.
8. The Head of Public Protection (was Regulatory Services Manager in 2023/24), Director of Housing & 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.
9. The use of covert surveillance techniques can assist councils in delivering objectives in areas such as preventing or detecting crime, anti-social behaviour and in licensing. As a result of complying with RIPA, the Council only invokes these powers as a last resort where overt surveillance is not possible.
10. The Regulatory Services Manager, in accordance with the RIPA/IPA Policy, approved **one use of an IPA application during 2023/24** for the purpose of a trading standards investigation. NAFN arranged for the IPA application (to access to communications data) to be granted by the OCDA in accordance with the Council's Policy. The investigation related to 'rogue trading' whereby the subject was involved in taking significant payments for building work that failed to be completed or commenced or of a poor quality. As the subject was believed to be using multiple false identities (to avoid any future civil liability in respect of goods/works supplied) information was sought on telephone numbers linked to the offender. The matters were considered to meet the definition of serious crime and therefore a proportionate request to make. This large scale, multi-offender, fraudulent trading investigation is still ongoing. All subjects have been interviewed and a report, recommending prosecution of some, if not all, of the subjects under the Fraud Act, will be submitted over the next couple of months.
11. The Council has **not made use of powers under RIPA during 2023/24**. The Council's RIPA Authorising Officers have not approved the use of covert surveillance techniques.

Investigatory Powers Commissioner's Office - Oversight

12. All entities able to use RIPA/IPA are required to complete a statutory return to the IPCO for the preceding calendar year. The single IPA application was not recorded on this return as NAFN are responsible for reporting these applications. The Council completed and sent off this return within the required timeframe (in January 2024).
13. During 2024, BCP Council is due its three-yearly inspection by the IPCO. The inspection is to assess compliance with the Regulation of Investigatory Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016.
14. The Council has been asked to provide a written response to a set of questions which will then determine whether a remote or in-person inspection is required. The Council's RIPA Administrator is currently leading on compiling a response to the questions on behalf of the Council. An update on the outcome of the inspection will be provided to a future Audit & Governance Committee meeting.

Options Appraisal

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

Summary of financial implications

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

Summary of legal implications

17. 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

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

Summary of sustainability impact

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

Summary of public health implications

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

Summary of equality implications

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

Summary of risk assessment

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

Background papers

None

Appendices

None