

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	5 JULY 2021	9
REGULATION OF INVESTIGATORY POWERS ACT (RIPA) POLICY			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

Under the Regulation of Investigatory Powers Act 2000, the council must have in place a system of authorising, recording and reviewing any surveillance that it carries out that is covered by the act. Its system must comply with the act, regulations and codes of practice. It must have its own RIPA policy.

It is good practice for the council to evaluate and review its RIPA policy annually. It is proposed to amend the policy by providing expanded and updated material on handling and disclosing the product of surveillance.

RECOMMENDATION

Council is recommended to endorse the RIPA policy as updated.

SUMMARY OF PREVIOUS DECISIONS

The council is invited annually to note the use made by the council of surveillance powers and adopt or endorse the council's RIPA policy. The council last did so at its meeting on 20 July 2020.

The Audit and Standards Committee receives quarterly reports on the council's use of surveillance powers.

CORPORATE PRIORITIES

Economy – To create a vibrant and healthy economy	√
Environment – To deliver services customers expect	
Efficiency – By spending money in the most efficient way	
Tourism – To create a great place to live and visit	

REPORT

THE RIPA FRAMEWORK

1. The Regulation of Investigatory Powers Act 2000 (RIPA) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
2. Fylde Council is therefore included within RIPA framework with regard to the authorisation of both directed surveillance and of the use of covert human intelligence sources.

3. Directed surveillance includes the covert surveillance of an individual in circumstances where private information about that individual may be obtained. A covert human intelligence source (“CHIS”) is a person who, pretending to be someone that they are not, builds up a relationship of trust with another person for the purpose of obtaining information as part of an investigation.
4. RIPA introduced a mandatory system of authorisation and review for surveillance activities. Only certain people can be designated to authorise surveillance. Authorisations must be approved by the Magistrates’ Court. There must be a centrally-retrievable record of authorisations.
5. As well as the act, the RIPA framework includes statutory instruments and codes of practice issued by the Home Office. Each public authority that can use RIPA must have its own RIPA policy. Inspectors from the Investigatory Powers Commissioners Office (“IPCO”) can inspect any public authority’s RIPA compliance. The inspections can be rigorous and thoroughgoing.

CONSIDERATION OF RIPA POLICY

6. Like all bodies covered by RIPA, the council is subject to regular inspections by inspectors from the the Information Powers Commissioner’s Office (‘IPCO’). The council was inspected during 2020, and the inspection report was received shortly after the council endorsed the policy last July. While the report found that the council was compliant in all respects, it suggested that the policy should be amended to recast the guidance on the use of the product of surveillance line with the requirements of the Data Protection Act 2018 and the UK GDPR.
7. The policy with the suggested amendments is attached. There is one minor amendment in paragraph 1.9, but the bulk of the change is in section 6. The new text is set out in `this distinctive font`.
8. Because the suggestion from the IPCO inspector was received very shortly after the previous report to the council, the changes were added to the policy as commentary pending adoption by the council. The previous section 6 (which the new text replaces) is set out below for members’ reference.

Replaced text from section 6:

<p>6.1 <i>Authorising Officers are reminded of the guidance relating to the retention and destruction of confidential material as described in paragraph 5.2.9.3 above.</i></p> <p>6.2 <i>Authorising Officers are responsible for ensuring that authorisations undergo timely reviews and are cancelled promptly after directed surveillance activity is no longer necessary. It is good practice for a cancellation application to describe the activity undertaken, any material acquired and how that material is to be managed.</i></p> <p>6.3 <i>Authorising Officers must ensure that the relevant details of each authorisation are sent to the designated officer for registration as described in paragraph 8 below.</i></p> <p>6.4 <i>The authorised officer should retain applications for directed surveillance for 5 years. Where it is believed that the records could be relevant to pending or future criminal proceedings, they should be retained for a suitable further period, commensurate to any subsequent review.</i></p>	<p>6.5 <i>Authorising officers must ensure compliance with the appropriate data protection requirements and the relevant codes of practice in the handling and storage of material. Where material is obtained by surveillance, which is wholly unrelated to a criminal or other investigation or to any person who is the subject of the investigation, and there is no reason to believe it will be relevant to future civil or criminal proceedings, it should be destroyed immediately. Consideration of whether or not unrelated material should be destroyed is the responsibility of the Authorising Officer.</i></p> <p>6.6 <i>There is nothing in RIPA that prevents material obtained through the proper use of the authorisation procedures from being used in other investigations. However, you should always bear in mind that the purpose of your surveillance is governed by its authorisation. If the purpose changes, you will need to seek a new authorisation.</i></p>
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IMPLICATIONS	
Finance	There are no financial implications arising from this report
Legal	Authorisation of surveillance activity gives that surveillance “lawful authority” for the purposes of the European Convention on Human Rights.
Community Safety	CCTV cameras have the capability of being used for purposes falling within the ambit of RIPA. If they were so used, a RIPA authorisation would need to be obtained.
Human Rights and Equalities	See the comments under “Legal”
Sustainability and Environmental Impact	No implications

Health & Safety and Risk Management	Failure to comply with the statutory requirements would lead to an adverse report by the regulator.
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Employees' Guide: RIPA	June 2020	Town Hall, Lytham St Annes

Attached documents

Appendix 1 – 2021 RIPA Employees' Guide Policy