

SUBJECT:	Regulation of Investigatory Powers Act 2000 (RIPA)
MEETING:	Cabinet
DATE OF REPORT:	8 November 2023
DIVISION/WARDS AFFECTED:	All

1. PURPOSE

- 1.1 To consider the updated MCC RIPA policy and recent IPCO inspection outcome.

2. RECOMMENDATIONS

- 2.1 Cabinet is requested to approve the MCC RIPA Policy as per proposed amendments.
- 2.2 Cabinet is requested to note the recent IPCO Inspection Report.

3. KEY ISSUES

- 3.1 Local authorities carry out investigations for a variety of regulatory services. In carrying out these duties, they have general powers to conduct surveillance of individuals suspected of committing criminal offences.
- 3.2 The Regulation of Investigatory Powers Act 2000 (RIPA) regulates the use of certain surveillance powers, including:
- Directed Surveillance (covert surveillance conducted as part of a specific investigation likely to result in obtaining private information about an individual);
 - Use of Covert Human Intelligence Sources (CHIS), and
 - Access to communications data (e.g. details of subscribers to telephone numbers or email accounts).
- 3.3 These powers are seldom used by the Council. However it is important that when they are used, the Council has sufficient oversight of its activities to ensure that any considered use is compliant with the subject's human rights, in particular Article 8 of the European Convention of Human Rights (right to privacy).
- 3.4 The Home Office publishes national Codes of Practice on the use of RIPA-regulated surveillance powers by public authorities. The Council must have regard to the relevant Code of Practice whenever exercising powers covered by RIPA. In addition, the Investigatory Powers Commissioners' Office (IPCO) conducts periodic inspections of all public authorities to ensure compliance with RIPA and the Codes of Practice.
- 3.5 The Council has adopted its own Policy to advise officers on RIPA obligations and to regulate any use of these powers.
- 3.6 Day to day oversight of the Council's internal compliance with RIPA rests with the RIPA Senior Responsible Officer (SRO) who also acts as the main source of legal advice to regulatory officers and keeps the Council's Policy up to date.
- 3.7 Under the Council's RIPA Policy, the use of any surveillance powers must first be approved by a suitably trained Authorising Officer. There is currently one such Authorising Officer at the Council. If the Authorising Officer gives approval, then an application must be made to the Magistrates Court for independent judicial approval before the activity takes place (the Office for

Communications Data Authorisations gives judicial approval in respect of accessing communications data). Any authorisations issued must also be internally reviewed and cancelled when no longer required.

- 3.8 The Home Office Code of Practice for Covert Surveillance and Property Interference recommends that elected members of a local authority should review the use of RIPA and set the policy at least once a year. In MCC, responsibility for member oversight of RIPA is divided between Cabinet and the Governance and Audit Committee.
- 3.9 Cabinet is the appropriate body to conduct an annual review and approval of the Policy as well as receive the outcome of any IPCO inspection. The Governance and Audit Committee is the appropriate body to receive an annual report from the SRO on the use of RIPA-regulated powers.
- 3.10 The policy was last reviewed and approved by Cabinet on 6 January 2021 following an IPCO inspection of MCC on 29 October 2020. The policy approved by Cabinet had been considered beforehand by the IPCO in its inspection, with the following comment from the Investigatory Powers Commissioner, the Right Honourable Sir Brian Leveson:

“I am aware that the revised RIPA policy is very soon to be presented to the Council Cabinet for approval and that my Inspectors, having reviewed the document, are satisfied that it is comprehensive in detail and addresses the key areas in RIPA. They are content that it will be meaningful to staff and should serve to ensure your authority remains compliant with the legislation and codes of practice.”

- 3.11 The attached policy for review and approval is at Appendix 1. The Acting SRO proposes that the contents the policy approved in 2021 be updated with the following minor amendments:
- at paragraph 14, delete “Audit and Governance Committee” and insert “Governance and Audit Committee”;
 - at paragraph 15, insert wording clarifying the appointment of SRO where the Chief Officer Law and Governance is unable to carry out the role;
 - at paragraphs 15(b) and 22, delete “Chapter 2 of RIPA” and insert “Part II of RIPA”;
 - at paragraph 16, delete the words “The current AOs are the Head of Public Protection and Head of People”;
 - at paragraph 17, delete “professional applicants” and insert “Professional Applicants”;
 - at paragraphs 21 and 79, update the references to Home Office CHIS Guidance to the latest CHIS Guidance issued in 2022;
 - at paragraph 78, delete “Twitter” and insert “X (formerly Twitter)”.

These amendments do not amount to a substantive alteration of the policy.

- 3.12 In addition, the IPCO conducted a further inspection earlier this year. This inspection was carried out remotely via correspondence. The inspection report outcome letter is at Appendix 2. The report confirms that MCC is compliant with RIPA and that the next inspection will be carried out in 2026. It also recommends that MCC continues to ensure that key compliance issues continue to receive necessary internal governance and oversight through the Chief Executive and SRO: policy refreshes; annual updates to members; ongoing training and awareness raising; internal compliance monitoring by lead managers within their business areas; and the retention, review and destruction of any product obtained through the use of covert powers.

4. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING)

- 4.1 Given the nature of this report no implications have been identified.

5. OPTIONS APPRAISAL

5.1 Any proposed amendments to the policy can be made as required where they are within the Home Office guidance.

6. RESOURCE IMPLICATIONS

6.1 Nil

7. CONSULTEES

7.1 SLT
David Jones (Head of Public Protection / RIPA Authorising Officer)

8. AUTHOR

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