

AUDIT AND RISK COMMITTEE

20 April 2021

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) UPDATE

Report of the Strategic Director for Resources

Strategic Aim:	Delivering sustainable development	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr O Hemsley, Leader and Portfolio Holder for Rutland One Public Estate & Growth, Tourism & Economic Development, Property, Communications, Resources (other than Finance), Property and Planning.	
Contact Officer(s):	Saverio Della Rocca, Strategic Director for Resources (s.151 Officer)	01572 758159 sdrocca@rutland.gov.uk
	Sue Bingham, Business Support Manager	01572 758165 sbingham@rutland.gov.uk
Ward Councillors	N/A	

DECISION RECOMMENDATIONS

That the Committee note the content of this report. No further action is required.

1 PURPOSE OF THE REPORT

- 1.1 To inform the committee of the Investigatory Powers Commissioner's Office (IPCO) remote inspection which took place on 2 March 2021 and their findings.

2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) was enacted to provide a framework within which a public authority may use covert investigation for the purpose of preventing and detecting crime or of preventing disorder.
- 2.2 The Council could use RIPA for example for issues like checking on benefit claimants, monitoring of fly tipping or monitoring the sale of alcohol or tobacco to those underage. The Council has not exercised its RIPA powers for a considerable time which was noted in the inspection.

2.3 The inspection took place as part of the IPCO programme of inspections and covered the use of directed surveillance and covert human intelligence sources (CHIS) in accordance with the provisions of the Regulation of Investigatory Powers Act 2000 and the acquisition of communications data in accordance with the provisions of the Investigatory Powers Act 2016.

2.4 The full findings are contained within the Desktop Inspection Response letter that can be found at Appendix A.

2.5 A summary of these findings with the Councils planned actions is shown below:

- A review of the Councils RIPA Policy to incorporate the Investigatory Powers Act and reference to the revised Home Office Codes of Practice. It should also reflect the process adopted by officers when complying with the requirements laid out in the Protection of Freedoms Act 2012 and guidance on the investigative use of the Internet and Social Networking.

A refresh of the Policy will be completed by April 2022.

- A review of currently 'RIPA' trained staff to ensure those likely to be involved in the authorisation process have the appropriate knowledge and understanding.

These staff are to be identified and training to be arranged with completion by April 2022.

3 CONSULTATION

3.1 No formal consultation is required.

4 ALTERNATIVE OPTIONS

4.1 The Committee is asked to note the report. There are no alternatives.

5 FINANCIAL IMPLICATIONS

5.1 There are no financial implications arising from this report.

6 LEGAL AND GOVERNANCE CONSIDERATIONS

6.1 The Regulation of Investigatory Powers Act ensures that the Authority acts in a way that is consistent with the requirements of the Human Rights Act 1998.

7 DATA PROTECTION IMPLICATIONS

7.1 A Data Protection Impact Assessments (DPIA) has not been completed because the report does not represent the introduction of a new service.

8 EQUALITY IMPACT ASSESSMENT

- 8.1 An Equality Impact Assessment (EqIA) has not been completed because the report does not represent the introduction of a new service.

9 COMMUNITY SAFETY IMPLICATIONS

- 9.1 There are no community safety implications.

10 HEALTH AND WELLBEING IMPLICATIONS

- 10.1 There are no health and wellbeing implications.

11 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 11.1 To ensure the Committee is aware of this inspection and its findings.

12 APPENDICES

Appendix A - Desktop Inspection Response Letter

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.

Appendix A.



Investigatory Powers
Commissioner's Office

PO Box 29105,
London SW1V
1ZU

Mr M Andrews
Chief Executive
Rutland County Council
5 March 2021

Dear Chief Executive,

IPCO SURVEILLANCE AND CHIS INSPECTION OF RUTLAND COUNTY COUNCIL

Please be aware that IPCO is not a “public authority” for the purpose of the Freedom of Information Act (FOIA) and therefore falls outside the reach of the FOIA. It is appreciated that local authorities are subject to the FOIA and that they may receive requests for disclosure of our reports. In the first instance the SRO should bring the matter to the attention of the IPCO Data Protection Officer (at: info@ipco.org.uk), before making any disclosure. This is also the case if you wish to make the content of this letter publicly available.

Your Council was recently the subject of a remote inspection by one of my Inspectors, This has been facilitated utilising MS teams, with your Senior Responsible Officer (SRO) Mr Phillip Horsfield, Deputy Director of Corporate Governance and Monitoring Officer. The information provided during the discussion has demonstrated a good level of compliance, with no formal recommendations required, albeit several observations were highlighted to Mr Horsfield.

There were two previous recommendations emanating from the 2018 inspection conducted by one of my Inspectors:

- *The current RIPA policy while well written would benefit from review. The revised document should incorporate the new IP Act and reference to the revised Home Office Codes of Practice. It should also reflect the process adopted by your officers when complying with the requirements laid out in the Protection of Freedoms Act 2012 and guidance on the investigative use of the Internet and Social Networking.* **Recommendation discharged.** Mr Horsfield assured my Inspector that the policy was revised shortly after the inspection and put before the Elected Members of the Audit and Risk Committee before being formally approved by Cabinet in February 2019. It should however be noted that due to the Coronavirus pandemic, no further approval has been

sought in line with paragraph 4.47 of the Codes. Mr Horsfield is alive to this omission and is keen to progress this once restrictions have been fully lifted.

- *A review of those currently 'RIPA' trained would also prove beneficial ensuring that those likely to be involved in the authorisation process have the appropriate knowledge and understanding. **Recommendation discharged.*** External training was provided to three members of the senior management team, including the SRO, in June 2019. There is also an online training module available on the Council intranet, of which all relevant staff are reminded to refresh their knowledge on an annual basis. This is fully auditable to ensure compliance.

It must be emphasised that your Council has not exercised its RIPA powers for a considerable period of time and it is unlikely that stance will alter in the near future. However, Mr Horsfield is very much alive to the fact that the powers are available, and has demonstrated a willingness to use them where necessary; therefore, it remains of great importance that officers engaged in investigatory or enforcement areas where RIPA considerations are not so immediately apparent, maintain their levels of knowledge and know whom to approach for guidance. The investment in the oversight role displayed by your SRO should therefore be applauded.

In the discussion it was clear the Council is alive to the possibility of online social media research being carried out, however due to the outsourcing of the majority of regulatory functions that may require an investigatory stance, this appears improbable. Although it is noted that a robust oversight regime, providing assurances that any research undertaken does not drift into surveillance territory, is in place. It should also be emphasised within the policy and reiterated regularly to staff that personal profiles should not be used for Council business, as it is incumbent on you to ensure the safety and security of your staff. The dangers aligned to using personal social media accounts for business purposes, especially those of a covert nature, should not be underestimated and all staff should be cognisant of their own personal online security and of the vulnerabilities attached to using any insecure or personal online platform.

There have been no authorisations for the use and conduct of a CHIS. This reflects the widespread practice common amongst local councils of never or rarely authorising CHIS. The possibility of status drift was discussed in relation to the monitoring of information provided by members of the public, as well as online activity. Mr Horsfield is confident that sufficient awareness exists amongst staff to be alert to any potential status drift.

It is understood that your Council is registered with the National Anti-Fraud Network (NAFN) for the purposes of obtaining communications data, although the service is not used. In addition, registration with NAFN also provides lawful access to other forms of data from the DVLA, Equifax and a variety of other financial/fraud check organisations, which may be of benefit to you.

As part of the inspection process the Council's stance on the review and destruction of documentation was also assessed. The Central Register comprises an Excel spreadsheet and a hard copy format. Whilst no information is contained within either document, my Inspector has advised against having two different formats, for fear of discrepancies should an authorisation be granted. Access to both is restricted to the SRO and the Data Protection Officer (DPO). My Inspector was assured that there are clearly defined data pathways should any product be obtained from the use of the legislation, with

a clear retention and destruction policy in place, however it would be pertinent to have a separate schedule appertaining to RIPA. Once stored, either electronically or physically, destruction dates are allocated to the material, which are reviewed and when reached, are flagged for destruction to the relevant Department Head. Spot checks are conducted by the DPO to ensure compliance.

The Inspector would like to thank Mr Horsfield for his engagement at a time of unprecedented demands on local authorities. I hope that this video-based inspection has proved to be helpful and constructive. My Office is available to you should you have any queries following the inspection, or at any point in the future. Contact details are provided at the foot of this letter.

I shall be grateful if you would acknowledge receipt of the report within two months.

Yours sincerely,

THE RT. HON. SIR BRIAN LEVESON

The Investigatory Powers Commissioner