

Appendices: 1



**NORTHAMPTON**  
BOROUGH COUNCIL

## CABINET REPORT

<b>Report Title</b>	<b>Regulation of Investigatory Powers Act 2000 – Policy Update</b>
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**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	8 <sup>th</sup> June 2016
<b>Key Decision:</b>	NO
<b>Within Policy:</b>	N/A
<b>Policy Document:</b>	YES
<b>Directorate:</b>	Borough Secretary
<b>Accountable Cabinet Member:</b>	Councillor Mary Markham
<b>Ward(s)</b>	All

### **1. Purpose**

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- 1.1 To seek Cabinet approval of a revised Regulation of Investigatory Powers Act Policy ('RIPA Policy').

### **2. Recommendations**

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That Cabinet:

- 2.1 note the update on the outcome of the Inspection carried out by the Office of Surveillance Commissioners on 1<sup>st</sup> December 2015;
- 2.2 approve the updated RIPA Policy attached at Appendix 1; and
- 2.3 delegate authority to the Borough Secretary and Monitoring Officer to:
- a) update the RIPA Policy to include the names and contact details of new Authorising Officers after they have been appointed; and
  - b) make such future amendments to the Policy which are in the opinion of the Borough Secretary and Monitoring Officer minor and are

necessary to reflect either legislative requirements, relevant guidance or current good practice.

### **3. Issues and Choices**

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#### **3.1 Report Background**

- 3.1.1 Local authorities are required to respect the private and family life of citizens, their homes and correspondence in accordance with the Human Rights Act 1998. This right is qualified where interference is necessary and proportionate and carried out in accordance with the law.
- 3.1.2 The Regulation of Investigatory Powers Act 2000 (RIPA) contains powers for various bodies to carry out covert surveillance. Certain covert surveillance powers under RIPA are available to local authorities and can be used in appropriate circumstances in accordance with the requirements of the Act to support the delivery of their functions.
- 3.1.3 The Office of Surveillance Commissioners oversees the use of covert surveillance powers under RIPA by local authorities.
- 3.1.4 The Council has a RIPA Policy in place that covers the use of directed surveillance and the use of covert human intelligence sources by the Council.
- 3.1.5 Directed surveillance is surveillance that is covert, is conducted for the purposes of a specific investigation or operation, is likely to result in the obtaining of private information about a person and is conducted otherwise than by way of an immediate response to events. In summary a person is a covert human intelligence source if they establish or maintain a personal or other relationship and they covertly use the relationship to obtain information or provide access to any information to another person, or they covertly disclose information obtained through that relationship or as a consequence of the existence of that relationship. While the Council's RIPA Policy clearly states that the use of covert human intelligence sources has not been identified as an investigative technique applied by the Council, the Policy still covers the processes that would need to be applied if a situation ever arose in the future where the Council did use a covert human intelligence source.
- 3.1.6 Only specific officers within the Council are able to authorise the use of RIPA powers. (The use of RIPA powers must also be judicially approved following approval by an Authorising Officer). Such officers have to be of a sufficient level of seniority, as defined by statute and must also be appointed internally as Authorising Officers.
- 3.1.7 The Council's use of RIPA powers is minimal. Since the Office of Surveillance Commissioners' inspection of the Council's policies and use of RIPA powers in May 2012, the Council has only authorised one use of RIPA powers (which was to enable officers to carry out directed surveillance). If there are lawful means other than using covert surveillance to obtain the required information, then those other means would be used by the Council.

#### **3.2 Issues**

3.2.1 Inspections are carried out by the Office of Surveillance Commissioners approximately once every three years. On 1<sup>st</sup> December 2015, the Office of Surveillance Commissioners carried out its most recent RIPA inspection at the Council. The Inspector, HH Brian Barker has formally reported on his conclusions.

3.2.2 While the Inspection Report made some suggestions for improvement, the outcome was positive. In summary the main recommendations and suggestions were as follows:

**a) The need to appoint new Authorising Officers**

There has been a significant amount of organisational change in the Council in recent years, following the outsourcing of environmental services, the transfer of support services to Local Government Shared Services and the transfer of housing management functions into an Arms Length Management Organisation. This has led to changes in the Council's Officer structure and has reduced the number of Authorising Officers.

Prospective Authorising Officers have been identified and will be appointed by the Monitoring Officer as soon as they have received detailed training about the role and duties of the Authorising Officer.

**b) Continued provision of regular RIPA training for Officers**

This will ensure that relevant Officers have an up-to-date understanding of RIPA and its practical application to the work of the Council.

It is currently intended to deliver a detailed training programme to a wide range of Officers across the Council in September 2016, using an external trainer with an expertise in RIPA.

**c) The need to raise awareness of the possible dangers of the use of social media as part of investigations**

There is a possibility that internet research to gather information for an operation, (for example looking at postings on social media), could cross over into being covert surveillance, and may amount to directed surveillance, depending on the activities being carried out. It is important that operational officers are aware of the human rights implications of this type of activity, and are aware of when the need may arise to consider a RIPA authorisation.

A Monitoring Officer Briefing Note has been placed on the staff intranet. In addition, an amendment is proposed to the Council's RIPA Policy to cover the relevance of RIPA to the use of social media in the course of investigations.

**d) Minor amendments to the format of the RIPA Policy**

The Inspection Report stated that the Council's RIPA Policy is clear and thorough, although it did recommend some minor amendments to the format of the Policy, which are referred to in paragraph 3.2.3 below.

3.2.3 Cabinet is asked to approve adoption of the amended RIPA Policy at Appendix 1. The main proposed amendments are explained below (with reference to the section and page number of the draft Policy):

**a) Part 1B – Policy Summary (page 5)**

This new section is included in the Policy in response to the RIPA Inspector's suggestion that it may be advisable to create a headline, 'Policy on a Page'. This makes key information readily available to those Officers accessing the Policy, and places an emphasis on early consultation.

**b) Paragraph 3.2.3 (page 12) and Paragraph 4.1.5 (page 18)**

The amended Policy asks the person applying for the RIPA authorisation and the Authorising Officer to complete the RIPA forms in handwriting, as the Office of Surveillance Commissioners have advised that this is good practice.

**c) Paragraph 4.1.17 (page 20)**

Provision has been made in this part of the Policy for the contact details of Authorising Officers to be included. This was a suggestion of the Inspection Report.

Cabinet is asked to delegate authority to the Borough Secretary and Monitoring Officer to update the RIPA Policy to include the names and contact details of new Authorising Officers after they have been appointed. Authorising Officers will be appointed by the Monitoring Officer in accordance with paragraph 4.1.3 of the Policy and will be Officers with a sufficient level of seniority who have had training.

**d) Part 5 (page 25)**

The Policy has been amended to make specific reference to the use of social media because, it is important that there is an awareness that the use of social media in an investigation could, depending on how it is used and the type of information likely to be obtained, constitute covert activity that requires authorisation under RIPA.

**e) Appendices 5b, 5c and 7 - Flowcharts (pages 43, 44 and 46)**

In response to a suggestion in the Inspection Report, two new flow charts have been added at Appendices 5b and 5c, showing the Directed Surveillance authorisation procedures and the CHIS authorisation procedures. Further, an additional flow chart has been added at Appendix 7 illustrating the procedure that local authorities must follow when an application is made to a Justice of the Peace seeking an order to

approve the grant of a RIPA authorisation. (This flow chart is an extract from the relevant Home Office guidance).

3.2.4 Cabinet is asked to delegate authority to the Borough Secretary and Monitoring Officer to make such future amendments to the Policy which are in the opinion of the Borough Secretary and Monitoring Officer minor and are required only to reflect legislative requirements, relevant guidance or current good practice. It is important that Councillors are satisfied that the RIPA Policy is fit for purpose and are regularly involved in setting the Policy. Therefore any significant amendments to the Policy or changes in policy direction would only be made with Members' approval and not pursuant to powers delegated to an officer.

### **3.3 Choices (Options)**

3.3.1 Members are recommended to adopt the amended RIPA Policy attached at Appendix 1. Alternatively, Members may choose not to accept the amended RIPA Policy, but this course of action is not recommended because the amendments are being proposed largely in response to suggestions made by the Office of Surveillance Commissioners.

3.3.2 Members are recommended to delegate authority to the Borough Secretary and Monitoring Officer as set out in paragraph 2.3(b) to make minor changes to the RIPA Policy in the future. The alternative is not delegating this authority, which could lead to the impractical situation of all minor changes being brought before Cabinet for consideration.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

4.1.1 This report has implications for the Council's RIPA Policy 2000 as it recommends amendments to this Policy.

### **4.2 Resources and Risk**

4.2.1 There are no financial implications arising directly from this Report.

### **4.3 Legal**

4.3.1 The legal implications are set out in the body of the Report.

### **4.4 Equality and Health**

4.4.1 This is a policy update rather than a whole new policy. Having considered the equality impacts in relation to the policy changes the view is that there are no equality and health implications arising directly from this report.

### **4.5 Consultees (Internal and External)**

4.5.1 Given that changes to the report arose from a RIPA Inspection no internal consultations have taken place although Departments will be consulted and engaged with following Cabinet's consideration of the report.

#### **4.6 How the Proposals deliver Priority Outcomes**

4.6.1 The RIPA Policy links indirectly to the priority in the Corporate Plan to invest in safe, cleaner neighbourhoods because having a fit for purpose RIPA Policy provides the Council's officers with an additional tool that can be used in appropriate circumstances to support investigations carried out in relation to some of the Council's enforcement activities.

#### **4.7 Other Implications**

4.7.1 No other implications.

### **5. Background Papers**

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5.1 Post inspection report of the Office of Surveillance Commissioners dated 11<sup>th</sup> January 2016 - Confidential

5.2 Community Impact Assessment

**Francis Fernandes**  
**Borough Secretary and Monitoring Officer**