



# EXECUTIVE MEMBER DECISION

<b>REPORT OF:</b>	Executive Member for Digital and Customer Services
<b>LEAD OFFICERS:</b>	Deputy Director Legal and Governance
<b>DATE:</b>	11 October 2023

<b>PORTFOLIO/S AFFECTED:</b>	Digital and Customer Services
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<b>WARD/S AFFECTED:</b>	(All Wards);
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<b>SUBJECT: EMD RIPA UPDATE REPORT</b>
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## 1. EXECUTIVE SUMMARY

This is a report to the Executive Member to request approval of the amendments of the corporate RIPA Procedure and Guidance which is compliant both with the latest Home Office Statutory Codes of Practice and with recommendations of the Investigatory Powers Commissioner's Office made after their inspection in November last year.

## 2. RECOMMENDATIONS

That the Executive Member:

- Agrees to the amendments to the Procedure and Guidance see Appendix 1 showing the amendments in red and Appendix 2 is the final version clean copy.
- Note that the recommendations of the last inspection have been followed.

## 3. BACKGROUND

3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) was introduced to provide a legal framework within which law enforcement agencies could undertake covert methods of investigation, namely, covert surveillance and the use of what are called 'covert human intelligence sources' (CHIS) lawfully. The main purpose of RIPA was to ensure that public authorities only interfered with an individual's human right to respect for their private and family life where it was necessary for the purposes of detection and prevention of crime and proportionate to their aims. This is a human right that is enshrined in the Human Rights Act 1998 and the European Convention on Human Rights. Examples of the types of offences that this Council investigates mainly for the purposes of public protection are trading standards offences (tobacco regulations, illegal puppy farming and trademarks infringements or underage sales), food safety and fly-tipping.

3.2 This legal framework consists of an internal system of authorisation. An investigating officer will complete an application form which is then submitted to the Authorising Officer appointed by

the Council who will decide whether or not to approve it. In the form the officer will set out why the proposed operation is lawful, necessary and proportionate. The law, definitions and guidance to enable this to be done, including the necessary forms to complete are set out in the Procedure and Guidance. This is then submitted to the Magistrates' Court for judicial approval.

- 3.3 This whole process is overseen by the Senior Responsible Officer (SRO) who is the Strategic Director of Resources and responsible for ensuring that corporate processes are being followed and also the RIPA Co-ordinator who is the Deputy Director Legal and Governance (Council Solicitor) who is responsible for ensuring compliance by ensuring the integrity of the processes whose duties include, organising training, overseeing the use of the powers internally and recording that use, error reporting and engagement with the IPCO for inspections.
- 3.4 There are quarterly meetings convened by the SRO of a group of officers who submit information as to whether any covert investigations have taken place or are likely to, and who assist to develop procedures and guidance in this area. The draft Procedure and Guidance was developed and worked up into this final form by the Group under the auspices of the SRO and the RIPA Co-ordinator.
- 3.5 On 17 July 2023 the Policy and Corporate Resources Overview and Scrutiny Committee (the Committee) was provided with an update on RIPA (Regulation of Investigatory Powers Act). The purpose of the report was to inform Members of any RIPA activity/applications, RIPA training delivered to officers, the compliance with recommendations of the Investigatory Powers Commissioner's Office (IPCO) and to approve the amendments of the latest Procedure and Guidance to ensure the compliance with the current RIPA Codes of Practice issued by the Home office and the Inspector's recommendations.
- 3.6 In November 2022 the Council was inspected by the IPCO – the Investigatory Powers Commissioner's Office. The Council's Strategic Director of Resources and Senior Responsible Officer (SRO), Principal Solicitor and RIPA Co-ordinating Officer (RCO), were interviewed by the Inspector using video conferencing facilities. Supporting documentation requested by the Inspector was supplied. Also present at the interview were Deputy Director, Legal and Governance and Service Lead, Public Protection and Environmental Health, one of the Council's Authorising Officers.
- 3.7 In his letter of 17 November 2022 the Inspector praised the Council's Procedure and Guidance and he suggested a some amendments which have now been made. The Inspector noted that whilst the Council had not exercised its RIPA powers for a significant period of time, he said it was 'pleasing' to hear that the authorising officer cadre, together with those officers most likely to engage the powers, received "desk top" training last year. This took place on 15 December 2021 and 27 January 2022 and was run by the Council's Service Lead Public Protection and Principal Solicitor – Litigation and Authorising Officer.
- 3.8 The Inspector was also informed that a web-based training video on the Council's intranet is under development and will assist to raise RIPA awareness.
- 3.9 The Inspector inspected the very last authorisation and stated that it had been completed to a high standard by Service Lead Public Protection the authorising officer.

3.10 The Council agreed to take the following steps to comply with the IPCO recommendations:

- to introduce a system whereby all social media and internet research is overseen by the RIPA Officer's Group every three months.
- to ensure material acquired under RIPA and the Investigatory Powers Act is properly retained, reviewed, and ultimately destroyed by all participants in the RIPA process including investigating officers, manager and authorising officers and
- to add appropriate wording to the RIPA Procedure and Guidance so that it provides practical guidance on the retention, review and destruction of RIPA authorisations.

3.11 It is to be noted that the Council normally prefers to employ the use of overt investigatory techniques but with local authorities in general the IPCO Inspector was mainly concerned that in not using these available powers Council employees would become unskilled in recognising when they may be inadvertently using covert human intelligence sources without the correct processes. The desk top training referred to above was designed to address this.

3.12 The RIPA Procedure and Guidance with its amendments in red is at Appendix 1 and the final version clean copy is at Appendix 2.

#### **4. KEY ISSUES & RISKS**

This Procedure and Guidance will assist to increase awareness amongst Council officers and ensure compliance with the Human Rights Act 1998. The Council is obliged to adopt the new RIPA Procedure and Guidance to ensure it is compliant with current Home Office Codes of Practice and to enable it to produce it to the IPCO at the next inspection which is likely to be this year. The Council needs to ensure its internet research and social media access activity, albeit limited, is monitored by the RIPA Group quarterly. It also needs to adopt the amendments to the RIPA Procedure and Guidance to ensure it is compliant with current guidance and to enable it to produce up to date documentation to the IPCO at the next inspection which is likely to be in 2025.

#### **5. POLICY IMPLICATIONS**

This Procedure and Guidance is being amended. It is not a change of policy.

#### **6. FINANCIAL IMPLICATIONS**

There are no financial implications.

#### **7. LEGAL IMPLICATIONS**

Adoption of the amendments of the Procedure and Guidance is essential in order to show compliance with the latest Home Office Codes of Practice.

#### **8. RESOURCE IMPLICATIONS**

There are no resource implications.

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## 9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. (*insert EIA link here*)

Option 3  In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. (*insert EIA attachment*)

## 10. CONSULTATIONS

Internal consultations have been carried out at the RIPA group meetings with departmental representatives and external consultations are not required.

## 11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

## 12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

<b>VERSION:</b>	<b>1</b>
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<b>CONTACT OFFICER:</b>	<b>Shelagh Lyth</b>
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<b>DATE:</b>	18 August 2023
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<b>BACKGROUND PAPER:</b>	Available on request
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