

**REVISION OF THE COVERT SURVEILLANCE AND ACCESS TO  
COMMUNICATIONS DATA POLICY AND GUIDANCE NOTES**

<b>Final Decision-Maker</b>	Audit, Governance and Standards Committee
<b>Lead Head of Service</b>	Patricia Narebor, Head of Legal Partnership
<b>Lead Officer and Report Author</b>	Gary Rowland, Trainee Lawyer Corporate Governance
<b>Classification</b>	Public
<b>Wards affected</b>	All

**Executive Summary**

Following the approval of the Corporate Leadership Team on 20 August 2019, this report seeks the approval of the Audit, Governance and Standards Committee for the revised policy and guidance notes on Covert Surveillance and Access to Communications Data. This follows the inspection of the Investigatory Powers Commissioner's Office ("IPCO") in June 2018. The revised policy incorporates the up to date guidance produced by the Surveillance Commission and also the amendment to the Regulation of Investigatory Powers Act (RIPA) in relation to communications data.

**This report makes the following recommendations to this Committee:**

1. That the Audit, Governance and Standards Committee, approve the revised Covert Surveillance and Access to Communications Data Policy and Guidance Notes ("the policy") in order to meet the recommendations set out in the IPCO's report, specifically;
  - a) the addition at section 4.2 of the Policy that urgent oral authorisations can no longer be relied upon;
  - b) the update at 2.7.3 of the Policy to remove reference to urgency provisions and add the requirement to record the date that any authorisations are given;
  - c) the addition at section 1.8 of the Policy highlighting the requirement for the Co-ordinating officer to ensure training is carried out at regular intervals; and
  - d) the addition at section 1.39 of the Policy that a register shall be kept in the Central Record containing a list of all online Council profiles utilised and a record of their use when carrying out surveillance of social media sites.

<b>Timetable</b>	
<b><i>Meeting</i></b>	<b><i>Date</i></b>
Audit, Governance and Standards Committee	16 September 2019

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## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, they support the Council's overall achievement of its aims by updating the Council's approach to RIPA as required by legislation and IPCO.	Principal Solicitor, Governance
<b>Cross Cutting Objectives</b>	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> <li>• Heritage is Respected</li> <li>• Health Inequalities are Addressed and Reduced</li> <li>• Deprivation and Social Mobility is Improved</li> <li>• Biodiversity and Environmental Sustainability is respected</li> </ul> <p>The report recommendation(s) supports the overall achievement(s) of all the cross cutting objectives by ensuring that the Council is complying with statutory requirements when undertaking investigations and surveillance.</p>	Principal Solicitor, Governance
<b>Risk Management</b>	The risk implications are set out in section 5 of the report.	Principal Solicitor, Governance
<b>Financial</b>	The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.	Interim Head of Finance
<b>Staffing</b>	No additional staffing.	Principal Solicitor, Governance
<b>Legal</b>	Accepting the recommendations will fulfil the Council's duties under Regulation of Investigatory Powers Act 2000 and meets the requirements of IPCO.	Principal Solicitor, Governance

<b>Privacy and Data Protection</b>	No implications.	Principal Solicitor, Governance
<b>Equalities</b>	No implications.	Principal Solicitor, Governance
<b>Public Health</b>	No implications.	Principal Solicitor, Governance
<b>Crime and Disorder</b>	Accepting the recommendations ensures that the Council complies with its obligations under RIPA, which are important in the Council's role in controlling crime and disorder.	Principal Solicitor, Governance
<b>Procurement</b>	No implications.	Principal Solicitor, Governance

## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Home Office Covert Surveillance and Property Interference Revised Code of Practice 2010 requires that the Council reviews its use of RIPA and reviews the policy at least once a year.
- 2.2 Following the IPCO's inspection, which was carried out in June 2018 and subsequently followed up with a report, it became apparent that the guidance was in need of updating.
- 2.3 The IPCO's report made 4 recommendations following their inspection:
- 1) The Central Record should be updated to ensure that all references to 'urgent oral authorisations' are removed. There has been no provision for Local Authorities to use urgent oral applications since 2012;
  - 2) The Central Record should be updated to ensure the correct headings are being used, as referenced in the policy at 2.7.3. Any references to 'urgency provisions' must be removed and the date should be recorded for all court authorisations;
  - 3) The Senior Responsible Officer should ensure that RIPA training is refreshed for all relevant officers undertaking the role of applicant or Authorising Officer, at regular intervals. Such training should include discussion of Covert Human Intelligence Sources ("CHIS") recognition and management issues and the use of the internet and social media during investigations. It is only usually the Police who use CHIS, however Local Authorities do have the option; and

- 4) Changes should be made to the Covert Surveillance and Access to Communication Data Policy and Guidance Note with regards to the monitoring of social networking sites at section 1.39, as no control measures are currently outlined or any direction given as to whether the Council wishes to permit such activity.

The full Inspector's report is attached at Appendix A. The refreshed policy is at Appendix B.

- 2.4 To give effect to recommendation 1, all references to 'urgent oral authorisations' shall be removed from the Central Record.
- 2.5 To give effect to recommendation 2, all references to 'urgency provisions' shall be removed from the Central Record and the need to ensure court authorisation dates are recorded shall be highlighted with the appropriate forms.
- 2.6 To give effect to recommendation 3, it is proposed that the RIPA Co-ordinating Officer shall ensure external training (carried out in-house) continues to be provided to key officers on a biennial basis. It shall be mandatory for all RIPA Authorising Officers to attend the training. A record of all training undertaken shall be held in the Central Record along with a list of attendees. Training was last carried out by Act Now Training on 1 April 2019.
- 2.7 To give effect to recommendation 4 regarding the monitoring of social media sites, a register of the number of times the Council's profile is used to monitor social media sites should be stored in the Central Record.
- 2.8 The Committee is also asked to consider the inclusion of non-RIPA surveillance within the policy. Where the criminal threshold for surveillance is not met because the offence is low level, e.g. littering, surveillance can still be considered as a last resort if it is deemed to be both necessary and proportionate. In such cases, a similar procedure used for the authorisation (as set out on pages 15 -19 of the policy) is to be followed; however the relevant non-RIPA form is to be used. For non-RIPA applications there is no requirement to obtain approval from the Magistrates Court.

The table below sets out examples of how the process applies in relation to the various criminal thresholds:

<b>Threshold</b>	<b>Example of criminal activity</b>	<b>Court Approval Required?</b>	<b>Data Available</b>
Minimum 12 month imprisonment "serious crime"	Illegal waste business. Repeat incidents of fly tipping	Yes	<u>Category B Data</u> <ul style="list-style-type: none"> <li>• Itemised Billing</li> <li>• Call Diversion</li> <li>• Data Download</li> <li>• Outgoing Call Data</li> </ul> <u>Category C Data</u> <ul style="list-style-type: none"> <li>• Name &amp; Address</li> <li>• Method of Payments</li> <li>• Customer Info</li> </ul>
Minimum 6 month imprisonment or underage sales of alcohol or tobacco	Single incident of fly tipping	Yes	Category C Data
Less than 6 month imprisonment / monetary fine	Littering	No	Category C Data

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### **3. AVAILABLE OPTIONS**

- 3.1 To approve the actions proposed as set out in the recommendations of this report. This will address the recommendations within the IPCO's report and meets the Inspector's requirements. This option also proposes accepting the non-RIPA process.
- 3.2 The Committee could approve such additional or alternative actions that it deems appropriate, provided such actions meet the Inspector's requirements.
- 3.3 Do nothing. This option would result in the recommendations not being implemented. This is likely to result in an adverse critical report following the next IPCO inspection.

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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 Option 1 is the preferred option as it would implement the Inspector's recommendations.

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## **5. RISK**

5.1 Currently the risk implications are low as the Council has not authorised any activity under RIPA since 2012. However, there is risk of litigation and challenge if authorisations are incorrectly given in the future without proper understanding of the current requirements. The actions set out in the Inspector's report and recommended in this report will mitigate any such risks.

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## **6. REPORT APPENDICES**

The following documents are to be published with this report and form part of the report:

- Appendix A: Inspector's Report
  - Appendix B: Draft Covert Surveillance and Access to Communications Data Policy and Guidance Notes
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