



REPORT TO:	CABINET
DATE:	8 TH SEPTEMBER 2021
SUBJECT:	POLICY AND PROCEDURES ON THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)
KEY DECISION:	NO
PORTFOLIO HOLDER:	COUNCILLOR PAUL SKINNER
REPORT AUTHOR:	CHRISTIAN ALLEN (ASSISTANT DIRECTOR REGULATION AND RIPA CO-ORDINATOR/SRO)
WARD(S) AFFECTED:	All
EXEMPT REPORT?	No

SUMMARY

The purpose of this report is to provide the Cabinet with an opportunity to review and approve the Council's revised Policy and Procedures on the Regulation of Investigatory Powers Act 2000 (RIPA), and to be assured that it remains up to date and fit for purpose.

The Policy has been revised following an audit of the Council's activities by the Investigatory Powers Commissioners Office (IPCO) conducted in March 2021 and brings together joint working practices across the Strategic Alliance into one single policy document.

RECOMMENDATIONS

That the revised Policy and Procedures on the Regulation of Investigatory Powers Act 2000 (RIPA), set out at Appendix A, be approved.

REASONS FOR RECOMMENDATIONS

The RIPA Policy has undergone a review since the formation of the Strategic Alliance and following a joint audit of both Council's by IPCO in March 2021. The revised joint policy is being

submitted to the Cabinet/Executive Board at both Councils for approval as sovereign organisations with accountability and responsibility for compliance with RIPA.

OTHER OPTIONS CONSIDERED

Do nothing and maintain two separate polices.

REPORT

1. INTRODUCTION

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs public authorities' use of 'directed covert surveillance' and of 'covert human intelligence sources' (CHIS).
- 1.2 The legislation was introduced to ensure that an individual's human rights are protected whilst also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
- 1.3 RIPA requires that when a Council undertakes covert directed surveillance or uses a CHIS, these activities must be authorised in advance by an officer who must then seek, as from November 2012, the approval by a Magistrate/Justice of the Peace.
- 1.4 The Home Office's guidance reaffirms the recommendation that, to attain best practice:
"...elected members of a local authority should review the authority's use of the 2000 Act and set out the policy at least once a year. They should also consider internal reports on use of the 2000 Act on a regular basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose."

2. BACKGROUND

- 2.1 Councils, in common with all other Local Authorities, have powers granted to them by way of RIPA 2000 to carry out covert surveillance by way of direct surveillance and use of covert human intelligence source (CHIS).
- 2.2 To ensure the Council applies its powers lawfully and in accordance with RIPA and relevant Home Office guidance, the Policy has been revised to ensure it is up to date and reflects best practice across the Alliance.
- 2.3 The only purpose for which local authorities are able to rely on RIPA is where the authorisation is necessary *"for the purpose of preventing and detecting crime and disorder"*. Additionally, authorisation for directed covert surveillance is also subject to a 'crime threshold test' under which the crime is punishable by a maximum term of at least 6 months imprisonment. No Covert surveillance can be undertaken without the formal authority of a Magistrate.

- 2.4 This Authority will only ever be required to deal with matters relating to directed surveillance and covert human intelligence sources (CHIS). This Authority is not authorised to nor will it undertake any other forms of surveillance. Public bodies are required to formally establish arrangements and responsibilities for approving directed surveillance under RIPA and these arrangements are described in the Policy.
- 2.5 The Councils Assistant Director Regulation is designated under the Council's Constitution as Senior Responsible Officer (SRO) in relation to RIPA and thereby responsible for the integrity of the Councils processes, compliance with legislation and engagement with the Commissioners and Inspectors.
- 2.6 The Councils Assistant Director Regulation also performs the role of RIPA Co-ordinator, maintaining the required 'central record' of authorisations and for monitoring, reviewing, renewal and cancellation of authorisations. The Senior Responsible Officer together with the Chief Executive are responsible for monitoring and checking the quality of authorisations granted under RIPA.
- 2.7 The Council submits an annual report to the Audit and Governance Committee (or equivalent) at each Council. There has been no authorised use of RIPA in the last 12 months.

3. SUBJECT INFORMATION AND ISSUES/FACTS AND FIGURES

- 3.1 A copy of the Council's Policy and Procedures on the Regulation of Investigatory Powers Act (RIPA) 2000 is attached at **Appendix A** to this report

4. SUPPLEMENTARY FACTS

- 4.1 None

5. COUNCILLOR COMMENTS –

- 5.1. None

6. DISCUSSION / CONSIDERATION – ISSUES / CONCLUSION

- 6.1 Members are asked to note and approve the Council's Policy and Procedures on the Regulation of Investigatory Powers Act (RIPA) 2000; as attached at **Appendix A** to this report.

FINANCIAL IMPLICATIONS

None

LEGAL IMPLICATIONS

Non-compliance with the legislation associated with covert surveillance leaves the Authority open to reputational challenge and formal claims for compensation from individuals or corporate bodies should it be found that appropriate guidelines and procedures have not been followed. IPCO may also audit our compliance with RIPA and impose penalties where the authority is found to be in non-conformance.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

None

RISK IMPLICATIONS

There are reputational and legal risk implications if our RIPA policy is out of date and/or out of step with our legal obligations under the act or relevant Home Office Guidance. If we conduct surveillance which does not comply with the Act, Home Office guidance and/or best practice the Council is open to challenge under the Human Rights Act or may face sanctions being imposed by the Investigatory Powers Commissioners Office. Any evidence obtained from surveillance conducted outside of the RIPA Policy would be inadmissible or liable to fail challenge in any legal proceedings.

EQUALITY AND SAFEGUARDING IMPLICATIONS

None

OTHER IMPLICATIONS

None

CONSULTATION

With Leader Portfolio Holder Councillor Paul Skinner

APPENDICES

APPENDIX A

East Lindsey District Council and Boston Borough Council
Policy and Procedures on the Regulation of Investigatory
Powers Act (RIPA) 2000 (version 5 – July 2021)

BACKGROUND PAPERS

No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report.

CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.

REPORT APPROVAL

Report author:	Alison Sparks
Signed off by:	Christian Allen
Approved for publication:	Councillor Paul Skinner