

Policy Committee

30 October 2023



Reading
Borough Council
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Title	RIPA & IPA Policy & Process 2023
Purpose of the report	To make a decision
Report status	Public report
Report author	Lindsay Weinstein, Senior Prosecutions Barrister Michael Graham, Assistant Director of Legal and Democratic Services
Lead Councillor	Cllr Liz Terry, Deputy Leader and Lead Councillor for Resources and Corporate Services
Corporate priority	Our Foundations
Recommendations	1. That the new RIPA & IPA Policy 2023 is adopted

1. Executive Summary

- 1.1 To consider and approve the updated Reading Borough Council's (RBC) RIPA & IPA Policy, governing the Council's lawful use of Covert Surveillance techniques and the lawful acquisition of Communications Data as investigative tools for investigations.
- 1.2. The Investigatory Powers Act 2016 was introduced as the new statutory framework governing the acquisition of Communications Data, which was previously incapsulated within the Regulation of Investigatory Powers Act 2000. RBC's previous RIPA Policy therefore required a comprehensive review and amendment to reflect the new statutory framework and mandatory processes for Local Authorities including but not limited to:
 - Commencement of Office for Communications Data (OCDA);
 - Cessation of mandatory requirement for local authorities to apply for Judicial Approval for all Communications Data (CD) applications;
 - Mandatory requirement for all local authority CD applications and renewals to be submitted to NAFN (National Anti-Fraud Network) for initial approval;
 - Mandatory requirement for all local authority CD applications and renewals which are approved by NAFN to then be submitted by NAFN to OCDA for its authorisation, replacing the former mandatory requirement for local authorities to apply for Judicial Approval for authorisations or renewals

2. Policy Context

- 2.1. Regulation Investigatory Powers Act 2000 (RIPA) Part II provides the statutory framework to enable covert surveillance to be lawfully authorised and conducted by public authorities including local authorities. As set out above, until 2016, RIPA was also the statutory framework for the lawful acquisition of Communications Data, but this investigative technique is now governed by the Investigatory Powers Act 2016 (IPA). Both RIPA and IPA are supported by Codes of Practice. The purpose of both statutory regimes is to provide the lawful basis for public authorities to ensure they do not infringe a person's Article 8 rights (Right to Privacy), except as may be permitted, to ensure a

public authority acts in a way which is compatible with the European Convention on Human Rights 1950 (ECHR) and Human Rights Act 1998 (HRA).

- 2.2. The Investigatory Powers Commissioner's Office (IPCO) is the governing body for both RIPA and IPA and who undertakes inspections of public authorities, including local authorities (LAs). Inspections of LA's acquisition of Communications Data (CD) is undertaken at NAFN (National Anti-Fraud Network) rather than at the LA as all LA CD applications post IPA must be submitted to NAFN. IPCO RIPA Inspections of LA's use of RIPA take place every 2-3 years.
- 2.3. RBC's Senior Responsible Officer (SRO) for both RIPA and CD is the Assistant Director of Legal and Democratic Services, Michael Graham, who has overall responsibility for the Council's lawful use of RIPA and IPA.
- 2.4. Prior to 2023, IPCO last undertook a remote RIPA Inspection of RBC in May 2020. IPCO's May 2020 RIPA Report contained three recommendations which, primarily due to the Covid pandemic were not actioned and/or factored into RBC's then RIPA Policy, nor was the change in the statutory regime for CD following the commencement of IPA.
- 2.5. The new RIPA & IPA Policy (**Appendix 1**) along with its 32 Appendices are presented with this report (**Appendix 2**). The 32 Appendices are procedural in nature but are presented for the sake of completeness. However, please note, all 32 Appendices are Confidential for operational reasons, thus are Private, whilst the Report is Public.
- 2.6. On 12 June 2023 RBC's Information Governance Board scrutinised the new RIPA & IPA Policy and no requests for amendments or additions were raised.
- 2.7. The strategic review of RBC's RIPA & IPA Policy and Process also encompassed the provision of a bespoke RIPA & IPA training programme for enforcement officers, authorising officers.
- 2.8. On 23 May 2023, RBC received IPCO's Pre-Inspection letter from Inspector Mr Horne, who undertook RBC's May 2020 Inspection. It should be noted IPCO has changed its approach to LA RIPA inspections, as rather than automatically undertake such inspections IPCO now serves the LA a Pre-Inspection letter, the response to which determines IPCO's next step, including whether an inspection is required and if so, whether it is undertaken remotely or in person.
- 2.9. On 22 June 2023, following the Information Governance Board's consideration of the new RIPA & CD Policy on 12 June 2023, the Council submitted a comprehensive reply to IPCO's Pre-Inspection Letter.
- 2.10. On 27 June 2023 The Rt. Hon. Sir Brian Leveson (The Investigatory Powers Commissioner) wrote to RBC's Chief Executive to confirm,
"I am satisfied that your reply provides assurance that ongoing compliance with RIPA 2000 and the Investigatory Powers Act 2016 will be maintained. As such, your Council will not require further inspection this year."
- 2.11. The letter further confirmed RBC's next inspection will take place in 2026.

3. The Proposal

- 3.1. The Council is lawfully permitted to undertake covert surveillance and/or acquire CD, as investigatory tools for enforcement investigations which satisfy the relevant statutory criteria. Therefore, there may be circumstances where it is both necessary and proportionate for the Council to utilise RIPA for the purpose of preventing and/or detecting crime or disorder and/or IPA as it is necessary for the applicable crime purpose¹ and is proportionate. The proposed Policy covers the use of the powers.

¹ See RIPA & IPA Policy paragraphs 189-192

- 3.2. If the Council wishes to undertake covert surveillance it first requires internal authorisation from one of the Council's RIPA Authorising Officers (AOs) before submitting a mandatory application for Judicial Approval to Reading Magistrates' Court. The Application must be granted by a Magistrate before and in order for the covert surveillance to lawfully permitted.
- 3.3. Prior to 2016, LAs also required Judicial Approval from a Magistrate for the grant of all CD applications. IPA removed this mandatory requirement and replaced it with the mandatory requirement for all LA CD Applications to be submitted to NAFN via its online portal. The process requires the Applicant to upload the application to NAFN, notify a RBC's Designated Senior Officer (DSO) of the application and the DSO must then confirm notification of the application. If the application is accepted by NAFN with or without having first requested clarification or a rework of the application, the application is then submitted by NAFN to the Office of Communications Data (OCDA) for consideration as to whether the application should be granted. If the application is granted by OCDA it is submitted to the Telecommunications Operator² (TO) or Partial Telecommunications Operator³ (PTO) for processing. The requested CD is provided by the TO or PTO to OCDA for its onward submission to NAFN who then notify and make available the CD to the Applicant.

Recent regulatory activity

- 3.4. Prior to August 2023, the Council had made infrequent use of RIPA to undertake covert surveillance but had submitted CD applications to NAFN. In August 2023, RBC's SRO authorised in advance of the new RIPA & IPA Policy being approved, Trading Standards Team to submit a Directed Surveillance Application for authorisation of a Test Purchase operation for the underage sale of alcohol and nicotine inhaling products (vapes) at Reading Festival 2023, as it was deemed necessary and proportionate in accordance with RIPA. This application was therefore a test case for the new RIPA procedures introduced by the new RIPA & IPA Policy & Process.
- 3.5. The Applicant officer obtained internal authorisation from one of RBC's RIPA Authorising Officers then submitted an Application for Judicial Approval to Reading Magistrates' Court, using the Judicial Approval Protocol.⁴ Judicial Approval was successfully granted by a District for a pre-planned collaborative operation with Thames Valley Police, which took place and resulted in two test purchases for underage sales of vapes taking place. RBC's Trading Standard's took immediate enforcement action by requesting the market inspector expel the stall holder from the event and prohibit their return; a follow up warning letter was also sent to the stall holder and the stall holder's resident LA was notified of the fact and outcome of the two underage sales and enforcement action taken, so as to ensure the LA is on notice, if the person is responsible for any further underage sale of vapes or age restricted products within their LA.
- 3.6. On 15 August 2023, RBC was notified via email by NAFN that IPCO was to undertake its annual review and audit of all IPA CD requests processed by NAFN on behalf of its members, for the period November 2022 – August 2023. The Inspection was scheduled to take place between 11-14 September 2023 and if necessary, the inspectors would contact RBC if they required further information or clarification regarding any of its applications during the specified period.
- 3.7. Further, NAFN advised that the inspectors would be looking for examples of how CD had been successfully used in investigations and requested examples to be provided by 4 September 2023. RBC submitted two applications during the specified period for the same investigation both of which are still active, hence there is available feedback to be provided. On 12 September 2023 RBC replied confirming the status of the two CD applications submitted within the relevant period.

² See RIPA & IPA Policy paragraph 200

³ See RIPA & IPA Policy paragraph 201

⁴ RIPA & IPA Policy Appendices 6,7,15-17

- 3.8. Following the conclusion of the RIPA & IPA Policy and process strategic review and as a result of IPCO's RIPA Pre-Inspection positive outcome, no remedial action was required regarding RBC's new RIPA & IPA Policy. Accordingly, the new RIPA & IPA Policy is ready for submission to and consideration by Policy Committee.
- 3.9. It should be noted, if the Policy Committee approves the RIPA & IPA Policy, RBC's Social Media and HR Policies will be updated to factor in the RIPA & IPA Policy requirements regarding "*Online Overt & Covert Surveillance including Social Media/Networking Sites*⁵," undertaken by RBC staff, to ensure all policies are consistent with each other. The process to implement these additional policy changes has commenced and will be completed if this Policy is approved.
- 3.10. Further, RBC's CCTV Policy will also requires updating to factor in the requirements of the RIPA & IPA Policy, to ensure third party CCTV requests either for the use of RBC's surveillance cameras to undertake covert surveillance or for third parties to request footage from RBC surveillance cameras are lawfully submitted and processed.⁶

4. Contribution to Strategic Aims

- 4.1. Consideration and review by Policy Committee of the Council's RIPA & IPA Policy will assist the council's lawful use of covert surveillance and the acquisition of CD by ensuring the Council does not misuse its powers and generally assist to promote resident's confidence in the Council's knowledge and use of both the RIPA and IPA statutory regimes, in order to prevent and/or detect crime and/or disorder.

5. Environmental and Climate Implications

- 5.1. There are no environmental and/or climate implications arising from the Council's RIPA & IPA Policy and/or the Council's lawful use of covert surveillance and/or the acquisition of CD.

6. Community Engagement

- 6.1. Consideration and the approval of RBC's RIPA & IPA Policy does not require any consultation, community engagement or information to be provided. This draft policy has already undergone both internal and external scrutiny.

7. Equality Implications

- 7.1. As set out above, the statutory regimes applicable to lawful use of covert surveillance and/or acquisition of CD are RIPA and IPA. Therefore, neither the Equality Act 2010 and/or an Equality Impact Assessment (EIA) are relevant to the Policy Committee's decision as to whether it approves the new RIPA & IPA Policy.

8. Other Relevant Considerations

- 8.1. There are no other issues relevant to this Report and/or its purpose.

9. Legal Implications

- 9.1. As set out in paragraph 2.1. above, in the absence of complying with both statutory regimes for the lawful use covert surveillance and the acquisition of CD, the Council as a public authority would be acting in a way that was not compatible with an individual's Article 8 Right to Privacy under ECHR, HRA and Codes of Practice. The Policy therefore provides guidance for and the implementation of both statutory regimes to ensure compliance whilst utilising the bespoke processes and internal oversight contained within the Policy.

10. Financial Implications

⁵ See RIPA & IPA Policy paragraphs 60-76

⁶ See RIPA & IPA Policy paragraphs 134-136

- 10.1. There are no specific financial implications to this Report. However, a failure by the Council to comply with the relevant statutory regime as contained within RBC's RIPA & IPA Policy and process could result in:
- i) Evidence obtained being rendered inadmissible and excluded from criminal proceedings (resulting in wasted time and costs);
 - ii) Application for Judicial Review by the person whose Article 8 Right to Privacy is alleged to have been breached (entailing exposure to litigation costs);
 - iii) Complaint to the Investigatory Powers Tribunal who has the power to award compensation to the complainant as well as other remedies (unnecessary financial costs);

11. Timetable for Implementation

- 11.1. It is intended for the RIPA & IPA Policy to have immediate effect and to be complied with by all RBC staff from 31 October 2023.

12. Background Papers

- 12.1. There are none.

Appendices

1. RIPA & IPA Policy
2. RIPA & IPA Appendices 1-32