

# Buckinghamshire & Milton Keynes Fire Authority



<b>MEETING</b>	Overview and Audit Committee
<b>DATE OF MEETING</b>	9 March 2016
<b>OFFICER</b>	Graham Britten, Director of Legal and Governance
<b>LEAD MEMBER</b>	Councillor David Watson
<b>SUBJECT OF THE REPORT</b>	<b>Annual Report on Regulation of Investigatory Powers Act 2000 (RIPA)</b>
<b>EXECUTIVE SUMMARY</b>	<p>The purpose of this report is to:</p> <ol style="list-style-type: none"> <li>1. update the committee on RIPA activity over the past year by confirming that the Authority has had no requirement to use RIPA for enforcing the Regulatory Reform (Fire Safety) Order 2005;</li> <li>2. apprise the committee of the inspection by the Assistant Surveillance Commissioner on 20 January 2016 (Inspection report not received as yet).</li> <li>3. obtain approval of a revised CHIS and Surveillance policy (<b>Appendix B</b>) which has the revisions highlighted for ease of reference; and</li> <li>4. apprise members of how the Investigatory Powers Bill will affect the Authority</li> </ol> <p>All previous annual RIPA policy reviews have been undertaken by the Authority. As the Assistant Surveillance Commissioner has recommended quarterly reporting in addition to annual reviews it is the intention that all RIPA related matters are now received by the Overview and Audit Committee.</p>
<b>ACTION</b>	Information/Decision.
<b>RECOMMENDATIONS</b>	<p>It is recommended that:</p> <ol style="list-style-type: none"> <li>1. The update report be noted.</li> <li>2. The CHIS and Surveillance policy (Appendix B) be approved.</li> </ol>
<b>RISK MANAGEMENT</b>	<p>Processes that are compliant with RIPA mitigate the risk sanctions for breaches of privacy law; and evidence obtained being inadmissible in proceedings. However, although the Authority remains subject to the Office of the Surveillance Commissioner (OSC) inspection regime it can undertake all of its functions without any need to use covert directed surveillance.</p>

<b>FINANCIAL IMPLICATIONS</b>	None directly arising from the recommendations. The refresher training for officers that has been recommended by the OSC for four employees will cost in the region of £49 per person (online) up to £250 per person (workshop).
<b>LEGAL IMPLICATIONS</b>	<p>The Authority has powers under RIPA to conduct covert surveillance in order to prevent and detect crime and in the interests of public safety.</p> <p>The statutory guidance requires that elected members review use of RIPA; set the policy at least once a year; and consider internal reports on a regular basis to ensure that it is being used consistently with the policy and that the policy remains fit for purpose.</p>
<b>CONSISTENCY WITH THE PRINCIPLES OF COLLABORATION</b>	Whilst each Authority is responsible for managing its own RIPA authorisation processes the potential to share resources with Royal Berkshire Fire Authority (RBFA) to build in resilience, is being explored by officers.
<b>HEALTH AND SAFETY</b>	None.
<b>EQUALITY AND DIVERSITY</b>	None.
<b>USE OF RESOURCES</b>	Maintaining a RIPA compliant policy and associated procedures involves periodic training for relevant staff to maintain competence.
<b>PROVENANCE SECTION &amp; BACKGROUND PAPERS</b>	<p><b>Background papers:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">BUCKINGHAMSHIRE AND MILTON KEYNES FIRE AUTHORITY WEDNESDAY 18 FEBRUARY 2015 Agenda Item 9, Annual Report on Regulation of Investigatory Powers Act 2000</a></li> <li>• <a href="#">EXECUTIVE COMMITTEE WEDNESDAY 8 AUGUST 2012 Agenda Item 15, Office of Surveillance Commissioner's Inspection Report 2012</a></li> <li>• <a href="#">Code of practice for the interception of communications</a> (Home Office, 8 September 2010)</li> <li>• <a href="#">Code of practice for investigation of protected electronic information</a> (Home Office, 8 September 2010)</li> <li>• <a href="#">Code of practice for the acquisition and disclosure of communications data</a> (8 September 2010)</li> <li>• <a href="#">Interception of communications: code of practice</a> (Home Office, 12 March 2010)</li> <li>• <a href="#">Covert Human Intelligence Source Code of Practice</a> (Home Office, 10 December 2014)</li> <li>• <a href="#">Fire and Rescue monthly bulletin: 60</a> (DCLG, 11</li> </ul>

	November 2015)
<b>APPENDICES</b>	Appendix A: RIPA report. Appendix B: BMKFA CHIS and Surveillance Policy.
<b>TIME REQUIRED</b>	5 minutes.
<b>REPORT ORIGINATOR AND CONTACT</b>	Gerry Barry, Information Governance and Compliance Manager <a href="mailto:gbarry@bucksfire.gov.uk">gbarry@bucksfire.gov.uk</a> 01296 744442 or 07920 710637

## **Appendix A RIPA Report**

### *1. Background*

- 1.1 RIPA regulates a number of investigative procedures including covert surveillance, the acquisition of communications data (to obtain information about the times of calls and the location and identity of callers - but not the content of the calls).
- 1.2 Fire and Rescue Authorities have powers under RIPA to prevent and detect crime and to protect public safety which enables the use of covert surveillance and the acquisition of communications data during the course of investigations into alleged breaches of the Regulatory Reform (Fire Safety) Order 2005 and in relation to hoax or nuisance calls for emergency assistance. However to date no investigative procedures covered under RIPA have been authorised or undertaken.
- 1.3 By having these powers the Authority is required to have robust procedures in place governing the use and authorisation of RIPA applications so that, if the powers were to be used and the privacy of an individual was invaded, the Authority would be able to demonstrate that the intrusion is lawful, necessary and proportionate.
- 1.4 The statutory guidance requires that the Authority review its use of RIPA, set the policy at least once a year, and considers internal reports on a regular basis to ensure that it is being used consistently with the policy and that the policy remains fit for purpose.

### *2. Office of Surveillance Commissioners(OSC) inspection*

- 2.1 On 20 January 2016 the Authority was subject to an RIPA inspection by the OSC, which is responsible for overseeing the use of covert surveillance by designated public authorities. The Authority is subject to a triennial inspection. This inspection was delayed from 2015 due to resourcing issues at the OSC.
- 2.2 The previous OSC inspection was on 1 May 2012 by His Honour (HH) Norman Jones QC – Deputy Surveillance Commissioner who also conducted the 2016 inspection. HH met with the director of Legal and Governance, Graham Britten in his role as Senior Responsible Officer (SRO) and Gerry Barry RIPA Single Point of Contact (SPoC) and RIPA Co-ordinating Officer.
- 2.3 At this time the findings of the report have not been received but initial findings are likely to be as follows:
  - 2.3.1 As found in 2012 Buckinghamshire Fire and Rescue Service (BFRS) does not have recourse to covert surveillance therefore there were no RIPA authorisations to examine. BFRS does not anticipate using covert surveillance at any future date as it has adequate powers to meet its needs. – For example BFRS and Royal Berkshire Fire and Rescue Service (RBFRS) continue to use the services of an ex-police officer who engages with the police for arson investigations.
  - 2.3.2 Changes to RIPA that came into effect in December 2014 led to a rework of the policy which was approved by the Authority in February 2015. The Inspector has suggested additions to the policy to reflect the RIPA roles and responsibilities of Authority employees and these have been incorporated.

2.3.2 The Inspector also advised that, whilst BFRS did not anticipate using its RIPA covert surveillance powers it is important that there sufficient trained staff available to support its covert surveillance authorisation processes and that this training is refreshed periodically.

2.3.3 When considering resilience the Inspector advised that the RIPA Co-ordinating Officer cannot be an Authorising Officer as this could be a conflict of interests. Currently BFRS have two trained Authorising Officers and the Inspector suggested that the SRO could also act as an Authorising Officer in exceptional circumstances but must receive appropriate training.

2.3.4 To ensure that the Authority is aware of any authorisations a quarterly report should be made to members.

2.3.5 That the Director of Legal & Governance publishes guidance on the Intranet to raise awareness of RIPA requirements.

### 3. *Investigatory Powers Bill*

In the draft Investigatory Powers Bill published on 4 November 2015, the Government plans to restrict the power of fire and rescue services to acquire communications data to only 'threat to life' situations.

Currently, under RIPA powers, fire and rescue authorities can acquire communications data for three purposes:

1. for the purpose of preventing or detecting crime or of preventing disorder;
2. in the interests of public safety; and,
3. for the purpose, in an emergency, of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health.

However, data from the Home Office and from information collected from fire and rescue authorities in 2013 and more recently from Chief Fire Officers by the Department for Communities and Local Government, shows low use of these powers over the last five years. On this basis it is intended to limit fire and rescue authorities' investigatory powers to those described in 3 (above). Where fire and rescue authorities identify the need for data in respect of purposes 1 and 2 above, it is expected that fire and rescues services will work closely with the police to acquire such data.

The new Bill continues to allow a "first hour" exemption (the 'golden hour') for investigation of 999 calls typically used to seek information on hoax callers.

*If the changes to powers affect the policy, the changes will be made for approval by the Overview and Audit Committee*