



Buckinghamshire & Milton Keynes Fire Authority

MEETING	Overview & Audit Committee
DATE OF MEETING	11 November 2020
OFFICER	Graham Britten, Director of Legal & Governance
LEAD MEMBER	Councillor Keith McLean
SUBJECT OF THE REPORT	Changes to the Investigatory Powers Act 2016
EXECUTIVE SUMMARY	Appendix A to this report advises of a legislative change which came into force on 22 July 2020 removing fire and rescue authorities as relevant authorities for the purposes of the Investigatory Powers Act (IPA). The IPA provides the legal basis under which public authorities may exercise powers to obtain communications data.
ACTION	Noting.
RECOMMENDATIONS	That the report is noted.
RISK MANAGEMENT	<p>There are no risks associated with the paper. The powers that are being removed from the Buckinghamshire & Milton Keynes Fire Authority (the Authority) under schedule 4 of the IPA, are not being used. The requirements to maintain corollary prescribed internal governance arrangements are simultaneously removed.</p> <p>There are no privacy or security implications associated with this paper.</p>
FINANCIAL IMPLICATIONS	There are no cost implications associated with this paper.
LEGAL IMPLICATIONS	The Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) (No. 2) Regulations 2020 which have amended the IPA, will have no impact on the Authority.
CONSISTENCY WITH THE PRINCIPLES OF THE DUTY TO COLLABORATE	The powers and constraints removed by the legislation from a fire and rescue authority to obtain communications data are still in place under the IPA for ambulance trusts in England with the authorised officer being a duty manager of an Ambulance Trust control room. The police have wider powers under the IPA and can obtain communications data for more purposes than could fire and rescue authorities.

HEALTH AND SAFETY	There are no health and safety issues.
EQUALITY AND DIVERSITY	There are no equality and diversity issues.
USE OF RESOURCES	N/A
PROVENANCE SECTION & BACKGROUND PAPERS	<p>Prior to the amendment to remove fire and rescue authorities from Schedule 4 of the IPA, fire and rescue authorities could have made an application to the Investigatory Powers Commissioner, (IPC) under section 60A of the IPA, to seek authorisation intercept communications data. However, the National Fire Chiefs Council (NFCC) lobbied for these powers to be removed, which has led to the change in the legislation.</p> <p>Following the Regulation of Investigatory Powers Act 2000 (RIPA) inspection by the Authority on behalf of the Office of the Surveillance Commissioner (OSC) on the 20 January 2016, a report was received by the Overview and Audit Committee at which it approved a revised Covert Human Intelligence Sources (CHIS) and Surveillance Policy.</p> <p>Annual Report on Regulation of Investigatory Powers Act 2000 (RIPA) Item 11 9 March 2016 (Pages 119 - 121)</p> <p>Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) (No. 2) Regulations 2020</p>
APPENDICES	Appendix A
TIME REQUIRED	5 minutes
REPORT ORIGINATOR AND CONTACT	<p>Gerry Barry</p> <p>gbarry@bucksfire.gov.uk</p> <p>01296 744442</p>

Appendix A

Changes to the Investigatory Powers Act 2016 ('IPA')

Background

The IPA was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively. The IPA had a phased introduction and, from 5 February 2019, has regulated the acquisition and disclosure of communications data from communication service providers to a number of bodies, including fire and rescue authorities. This enabled fire and rescue authorities to access the who, where, when, how, and with whom of a communication but not what is written or said.

Fire and rescue authorities had been included in a specific and limited way under the IPA, if a) it is necessary to obtain the data for the purpose 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; and b) the fire and rescue authority complied with prescribed internal governance arrangements.

If both of those criteria were met, the IPA designated the relevant officer as lawfully authorised to obtain the communications data. For fire and rescue authorities the IPA designated 'Watch Manager (Control)' as an authorised officer.

Representations by the National Fire Chief's Council

Representations have been made by the NFCC to the Investigatory Powers Commissioner ('IPC') seeking to remove fire and rescue authorities from the regulatory regimes for: (a) direct surveillance and covert human intelligence sources under the Regulation of Investigatory Powers Act 2000 (RIPA); and (b) the acquisition of communications data (IPA) on the basis that these provisions are not required or used by fire and rescue authorities.

The IPC has responded to the NFCC to advise that any change to the RIPA regime would require a decision from the Office for Security and Counter Terrorism but that, pending such a decision, the RIPA inspection regime¹ would be suspended for fire and rescue authorities subject to such authorities not using these provisions.

The Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) (No. 2) Regulations 2020 came into force on 22 July 2020. These Regulations remove Fire and rescue authorities as relevant authorities for the purposes of the Investigatory Powers Act 2016, which deals with the acquisition of communications data.

However, it should be noted that the Communications Act 2003 requires certain telecommunications operators to provide communications data to the emergency

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services following a “999” emergency call. IPA and its associated Codes of Practice are not intended to regulate the handling of such emergency calls and a period of one hour after termination of an emergency call (referred to as “the golden hour”) falls outside the provisions of IPA in relation to the disclosure of communications data to emergency services.

Conclusion

Whilst the amendments to the IPA means fire and rescue authorities can no longer authorise interception of communications data, the Authority’s ability under RIPA to conduct directed surveillance or use ‘covert human intelligence sources’ is unaffected, as fire and rescue authorities are still covered by the RIPA.

The NFCC has signalled its intent to request government to remove fire and rescue authorities from RIPA, but this will require a further statutory instrument.

The Authority has never used either direct surveillance or covert human intelligence sources for any of its enforcement activities and it is not envisaged that there would ever be a requirement for these techniques to be used.

Nonetheless, pending any further legislative change the RIPA regime continues to apply to the Authority albeit that the associated inspection program remains suspended.

It is therefore likely that the RIPA inspection of the Authority in January 2016, which was reported to the Overview and Audit Committee in March 2016, will be its last.

The Committee will be advised of any further changes.