



# Report to Audit & Governance Committee

**Date:** 18 November 2020

**Title:** Outcome of Inspection from the Investigatory Powers Commissioner's Office (IPCO)

**Author and/or contact officer:** Nick Graham, Service Director – Legal and Democratic

**Ward(s) affected:** All

## **Recommendations:**

The Committee is asked: -

- 1. To note the successful outcome of the inspection of the Council's arrangements for its use of its powers under the Regulation of Investigatory Powers Act (RIPA).**
- 2. To note the additional recommendations from the IPCO inspection and to ask officers to implement those recommendations.**
- 3. To report back to the Committee with an update and on the use of the powers generally.**

**Reason for decision:** IPCO is charged with inspecting public authorities who have powers under RIPA and reporting on the arrangements in place. This reports sets out IPCO findings in relation to the Council's arrangements.

## **Background**

- 1.1. Upon the formation of the unitary Council the Cabinet received a report from officers and approved the new Council's arrangements for undertaking surveillance activities under RIPA including the approval of a revised and comprehensive RIPA policy.

On the 4 September 2020 the Council was notified that the IPCO wanted to undertake an inspection of the Council's arrangements and provided an outline of the issues that the Inspector wanted to consider together with a detailed list of questions and requests for information. (A copy of that request is provided at Appendix 2.)

- 1.2. Officers met with a Surveillance Inspector (name redacted) from the Investigatory Powers Commissioner's Office on the 17 September 2020 for the inspection.

On the 21 September 2020 the Council's Chief Executive was provided with a copy of the outcome of the inspection. (A copy of that report is attached at Appendix 1.)

The Committee will note that overall the Policy is commended but there is one change required relating to the authorisation period for covert surveillance for juvenile sources. This should be for a 4 month period with monthly reviews.

Although not in the report, the Commissioner was keen to hear if we do use RIPA powers in relation to the implementation and enforcement of local lockdown powers which have recently been granted to local authorities.

The Commissioner has found in other authorities that data obtained from surveillance activity has not been processed correctly, ie, not properly labelled, and not properly part of a retention arrangement. The Council's policy was considered to address this area, but we need to ensure that this is cross referred to other policies in the Council and if forms part of the officer training arrangements.

## **Other Options considered**

- 2.1 None

## **Legal and financial implications**

- 3.1 RIPA provides extensive powers for public authorities which are necessarily intrusive. It is an important part of the Council's governance arrangements that officers adhere to the Council's policies and the law when using these powers. An additional safeguard is a regular inspection by IPCO.

## **Corporate implications**

- 4.1 RIPA is only used as a last resort within the Council, but officers do need to be aware of these powers, and be appropriately trained in their use and authorisation. A training programme is in place to address this with relevant officers.

## **Next steps and review**

- 5.1 Officers will make the amendments as appropriate and update the Committee on those changes, and on the use of RIPA generally.

## Appendix 1

OFFICIAL - SENSITIVE



PO Box 29105, London  
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Rachael Shimmin  
Chief Executive  
Buckinghamshire Council  
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21 September 2020

Dear Ms. Shimmin,

### Inspection of Buckinghamshire Council

*Please be aware that IPCO is not a “public authority” for the purpose of the Freedom of Information Act (FOIA) and therefore falls outside the reach of the FOIA. It is appreciated that local authorities are subject to the FOIA and that they may receive requests for disclosure of our reports. In the first instance the SRO should bring the matter to the attention of the IPCO Data Protection Officer (at: [info@ipco.org.uk](mailto:info@ipco.org.uk)), before making any disclosure. This is also the case if you wish to make the content of this letter publicly available.*

Your council was recently the subject of a telephone-based inspection by one of my Inspectors, **name redacted**. Please pass on my gratitude to Nick Graham, your Service Director for Legal and Democratic Services and RIPA Senior Responsible Officer, and to

Jamie Hollis, your Head of Legal and Governance and RIPA coordinator. Mr Graham provided an excellent written overview, accompanied by all the required documentation which enabled a full and informative discussion. He was supported in that discussion by Mr Hollis and both provided helpful and relevant contributions.

The information provided has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection. As Chief Executive of the newly formed Buckinghamshire Council, you have taken on the significant challenge of merging a two-tier structure with four district councils with the previous Buckinghamshire County Council. The **Surveillance Inspector (name redacted)** was very impressed with the work you and your team have undertaken to implement a robust RIPA structure and management process with regard to surveillance activity.

The **Surveillance Inspector (name redacted)** has discharged all outstanding recommendations for the precursor councils who have all been the subject of previous inspections. He has focused on the new arrangements which are comprehensive and robust. You have developed an excellent RIPA Policy which reads well and incorporates recent legislative changes. It requires only one minor amendment regarding the period of authorisation for Juvenile sources which should fall in line with the current Home Office Code of Practice for Covert Human Intelligence Sources. The processes for application, authorisation and Judicial approval are clearly laid out and help and guidance is clearly signposted.

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 @IPCOoffice



Roles and responsibilities are defined within your RIPA policy and Mr Graham and Mr Hollis work closely together as SRO and RIPA coordinator. As an authority you have been very proactive in ensuring training is up to date. Through recent targeted internal training, the development and circulation of an e-learning module and scheduled external training for authorising officers, you and your staff are well informed with regard to their responsibilities. I note your Trading Standards officers are in partnership with Surrey County Council and have received recent training as a result of that relationship.

I understand, following receipt of my correspondence outlining my expectations regarding handling of data, that you are well placed with regard to the required safeguarding measures. **The Surveillance Inspector (name redacted)** was reassured your SRO has a strong understanding of the requirements, and a number of appropriate measures are in place which are supported by the relevant corporate policies.

In conclusion, although your Council is a limited user of its surveillance powers, I take the opportunity here to reiterate to you the importance of regular, ongoing internal oversight of the actual or potential use of these powers. Mr Graham, as your Senior Responsible Officer, understands this sits with him and has provided clear reassurance that the integrity of your Council's processes and governance procedures will be maintained to ensure that high standards of compliance with the Act and relevant codes of practice are achieved.

I hope that you find this letter to be helpful and constructive. My Office is available to you should you have any queries following the recent inspection, or at any point in the future. Contact details are provided at the foot of this letter.

I shall be grateful if you would acknowledge receipt of the report within two months.

**SIGNATURE REDACTED**

**The Rt. Hon. Sir Brian Leveson**  
The Investigatory Powers Commissioner



## Appendix 2




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### Inspection Information Request Form

#### Inspection of

If RIPA/RIP(S)A powers have been used since the last inspection, please send a copy of the Central Record of Authorisation/Authorisations prior to phone call.

1. Contact details of the Senior Responsible Officer for RIPA/RIP(S)A matters: name, position, contact telephone, contact email.
2. Briefly outline internal RIPA/RIP(S)A oversight activity conducted by the Senior Responsible Officer and/or colleagues on their behalf, including a description of the processes used to ensure that no unauthorised surveillance or CHIS activity takes place.
3. Where applicable, detail the actions taken since the last inspection to secure compliance with all recommendations made (or items of note).
4. Discuss the Covert Investigations Policy confirming the date of the last review/revision. Does it include the latest codes/IPA/etc.
5. Advise how and when, as required by paragraph 4.47 of the Home Office Covert Surveillance and Property Interference Code of Practice, you have provided Elected Members with an annual report sufficient to enable them to determine that the Council's policy is fit for purpose.

6. Provide details of all RIPA/RIP(S)A related training/awareness raising/mentoring delivered within your organisation since the last inspection, including details of the position held by the recipients including Authorising Officers. When is your next training provision tabled for and who will be providing this?
  7. Provide details of those departments or staff who may currently, or in future, undertake surveillance-related duties (including Internet and open source research) as part of their professional role. This should include numbers of officers, a description of their role and any specialist training they have undertaken.
  8. Provide details of your organisation's approach to the monitoring of the Internet and/or social media sites as part of investigations or enforcement activity in compliance with the Code of Practice. This should include:
    - Reference to guidance provided to staff within relevant policy/operating procedure
    - Details of oversight activity conducted to ensure staff act in accordance with policy/procedures;
    - Whether staff are permitted to utilise covert profiles and if so, what arrangements exist to monitor their use and the information they collect.
  9. Does your authority have in place a policy/regime for the sanctioning of covert activity which is incapable of authorisation under the Acts (for example, where the crime definition or threshold is unlikely to be met)? Sometimes referred to as a "non-RIPA" process, please provide full details of how this is managed and internally overseen.
  10. Has the non-RIPA process been used since your last IPCO inspection? If so, please provide brief details and supply the associated documentation in relation to its "approval".
  11. Does your authority manage or own a community based CCTV system? If so, what shared protocol or service level agreement with third parties (such as the police) do you have regarding its use for covert purposes.
  12. Is your authority a member of NAFN (National Anti-Fraud Network) and have you used your powers under the Investigatory Powers Act 2016 in relation to the acquisition of communications data? If so, please provide details.
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13. Give details of any covert surveillance equipment retained by your organisation and provide details of the person responsible for the storage, administration and use of this equipment.

*In advance of your inspection, you may have received a letter from IPCO regarding the programme of work being undertaken in relation to compliance with the safeguarding measures in relation to material acquired under RIPA/RIP(S)A and the Investigatory Powers Act 2016. The following questions will assist the Inspector in making a preliminary assessment of your Council's level of compliance with these safeguards.*

14. What systems do you use for record keeping in relation to the RIPA/RIP(S)A authorisation process and maintaining the Central Record (IT system, hard copies)? Who has access to these records?

15. What systems do you use for handling material obtained via surveillance (photographs, surveillance logs)? What physical storage is in place for this material? Who has access?

16. Do you use removable media (memory sticks, flash drives)?

17. Does your Council have an internal safeguards policy for data retention, review, and destruction? If so, what are they?

18. What retention period(s) is set for material acquired through authorised covert activity and HOW is material scheduled for destruction?

19. How is material destroyed, and who is responsible for its destruction and ensuring this is done/documentated?

