



# Report to Audit and Governance Committee

**Date:** 6 March 2024

**Title:** Annual RIPA and Communications Data Report

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**Ward(s) affected:** All

**Recommendations:** The Committee is asked:

- 1. To note the contents of the Report**
- 2. To approve and adopt the updates to the Buckinghamshire Council Covert Surveillance Policy**

**Reason for decision:** Member oversight of the use of RIPA powers and policies are part of governance arrangements in relation to exercise of the Council's functions.

## **1. Background**

### **Regulation of Investigatory Powers Act 2000**

- 1.1** The Council can only use powers under RIPA to support its core functions for the purpose of prevention and detection of crime. RIPA procedures must be used where there is any covert surveillance in relation to an investigation of an offence punishable by a custodial sentence of 6 months or more or the offence is related to the underage sale of alcohol and/or tobacco.
- 1.2** Where used, RIPA powers are usually undertaken by enforcement teams and Trading Standards.
- 1.3** Covert surveillance can include but is not limited to monitoring of social media, audio or visual recording of individuals either by CCTV or by officers, test purchases or other surveillance.
- 1.4** RIPA procedures require an internal approval by an Authorised Officer to ensure the proposed use of RIPA powers is 'necessary and proportionate'. A judicial approval is then required by the Magistrates Court before surveillance can be carried out. There

are strict time limits for how long surveillance can continue, renewal of authorisations and requirements for record keeping.

- 1.5 The Council has a Covert Surveillance Policy and Procedure which governs the Council's use of RIPA. This is available on the Council's website.
- 1.6 The Council is required to have a Senior Responsible Officer to maintain oversight of RIPA arrangements, procedures and operations. Buckinghamshire Council's Senior Responsible Officer is the Service Director, Legal and Democratic Services.

#### **Investigatory Powers Act 2016**

- 1.7 The Council can only use IPA powers for the prevention or detection of an offence punishable by a custodial sentence of 12 months or more (serious crime). If however the data sought only relates to an entity such as a subscriber details the powers can be used for the prevention or detection of any crime or of preventing disorder.
- 1.8 IPA powers are usually used by enforcement teams.
- 1.9 Procedures for obtaining communications data require internal notifications and all applications to be approved by the Office for Communications Data Authorisations (OCDA). The process is co-ordinated by the National Anti Fraud Network (nafn) on behalf of relevant public authorities with both OCDA and telecommunications providers.
- 1.10 As the authorisation process is co-ordinated by nafn there are specific portals and procedures which have to be followed. The Council therefore follows the nafn Workflow requirements.
- 1.11 The Council officer designated as the Approved Rank for supervision is Head of Legal Services (Non-Contentious).

#### **Investigatory Powers Commissioner**

- 1.12 The Investigatory Powers Commissioner has a statutory responsibility for reviewing the use of investigatory powers by public authorities throughout the United Kingdom.
- 1.13 As part of this oversight IPCO carry out regular inspections, usually every 3 years, to ensure compliance with surveillance powers. This will involve consideration of both the arrangements in place, governance and use of the powers. Feedback and recommendations for improvement will be made where considered appropriate.
- 1.14 As part of IPCO's inspections of nafn the Council's applications under IPA may be considered.

- 1.15 In addition IPCO require annual statistical data each year. The Annual Report is published on the IPCO website at the following link  
<https://www.ipco.org.uk/publications/annual-reports/>

## **2. Matters to Consider**

### **Exercise of Powers**

- 2.1 Since the last report to the Committee relating to RIPA (27 November 2023) there have been no applications to use RIPA powers and no applications under IPA.
- 2.2 The annual statistics report was provided to IPCO at the end of January 2024. This was a nil return in respect of the use of RIPA powers for the previous year.

### **Review of Procedures**

- 2.3 A review of the Council's Covert Surveillance Policy has been carried out and Appendix A sets out the Policy with suggested amendments as tracked changes. The amendments are suggested for clarification, further guidance or as updates as a result of guidance issued in 2022. The reasons for the amendments are set out in square brackets and capitals for ease within the policy.

### **Training and awareness**

- 2.4 Training for Authorising Officers and relevant applicant officers has now been identified, however due to the change of the Responsible Officer this was delayed to allow all appropriate officers to be part of the training and this will take place in the coming year.

## **3. Other options considered**

- 3.1 None.

## **4. Legal and financial implications**

- 4.1 RIPA and IPA 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 regular inspection by IPCO.

## **5. Corporate implications**

- 5.1 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.

## **6. Local councillors & community boards consultation & views**

6.1 Not applicable.

## **7. Communication, engagement & further consultation**

7.1 Not applicable.

## **8. Next steps and review**

8.1 If approved the Policy will be updated. The annual review of the Policy will be undertaken and a report will be brought back to the Committee on any recommended changes together with use of RIPA and IPA powers which have been used in the next annual report to the Committee.

## **9. Background papers**

9.1 None.

