



**CABINET**

**12 JULY 2016**

**CORPORATE DIRECTOR FOR PLACE COMMISSIONING: TONY CIABURRO**

**CABINET MEMBER WITH RESPONSIBILITY FOR STRATEGIC INFRASTRUCTURE,  
ECONOMIC GROWTH & PUBLIC PROTECTION: COUNCILLOR ANDRE GONZALEZ  
DE SAVAGE**

<b>Subject:</b>	Annual Approval of the Council policy on the Regulation of Investigatory Powers Act 2000 (RIPA) in relation to the Council’s use of surveillance powers and acquisition of communications data
<b>Recommendations:</b>	That Cabinet approves the policy (Appendix 1) on the Regulation of Investigatory Powers Act 2000 (RIPA)

**1. Purpose of Report**

- 1.1 The purpose of the report is to ensure that Northamptonshire County Council complies with the requirements of the Regulation of Investigatory Powers Act 2000 (“RIPA”). The Policy to be adopted is documented at Appendix 1.
- 1.2 Under the Council’s Constitution, the Cabinet has responsibility for policy formulation in respect of matters which do not form part of the policy framework.

**2. How this decision contributes to the Council Plan**

The Council’s vision is to make Northamptonshire a great place to live and work. This is achieved through increasing the wellbeing of your county’s communities and/or safeguarding the county’s communities.

<p>This initiative specifically delivers increased wellbeing and safeguarding by:</p> <ul style="list-style-type: none"> <li>• Contributing to creating safer communities</li> <li>• Contributing to creating prosperous communities</li> </ul>
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**3. Background**

3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides for, and regulates the use of, a range of investigative powers, by a variety of public authorities. RIPA is consistent with the Human Rights Act 1998 and creates a system of safeguards, reflecting the requirements of Article 8 of the European Convention on Human Rights (ECHR) which states that any interference by a public authority with the right to respect for a person’s private and family life, his home or his correspondence, are carried out in accordance with law. It contains five parts providing for powers in relation to specific investigative techniques or establishing systems of scrutiny, oversight and redress.

- 3.2 Part I of the Act relates to the interception of communications and the acquisition and disclosure of communications data. Part II relates to the use of covert surveillance, agents, informants and undercover officers. Part III covers the investigation of electronic data protected by encryption. Part IV provides for independent judicial oversight of the powers in the Act. Part V covers miscellaneous and supplemental matters such as consequential amendments, repeals and interpretation.
- 3.3 The Council enforces a number of statutory functions which involve officers investigating the conduct of others with a view to potentially taking legal action against them. These functions include investigating planning contraventions, contraventions of trading standards, education welfare issues, youth offending issues, fire safety enforcement, rights of way issues, and any other similar enforcement roles where criminal offences may be committed.
- 3.4 Whilst the majority of investigations are carried out overtly, some investigations inevitably require the use of covert surveillance techniques or involve the acquisition of communications data to properly investigate the relevant issues.
- 3.5 The Trading Standards Service is the only current user of the RIPA regulatory framework and they only do so in a small number of cases.
- 3.6 On 1 November 2012 two significant changes took effect governing how local authorities use RIPA:

- **Approval of Local Authority Authorisations under RIPA by a Justice of the Peace:** The amendments in the Protection of Freedoms Act 2012 meant that local authority authorisations and notices under RIPA can only be given effect once an order approving the authorisation or notice has been granted by a Justice of the Peace (JP).
- **Directed surveillance crime threshold:** Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 ("the 2010 Order") meant that a local authority can now only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.

Trading Standards have sought 12 approvals from a JP since that date, all in relation to the acquisition of communications data. The applications have all been approved by a JP. No authorisations/approvals have been sought in the last 12 months.

- 3.7 There are statutory codes of practice that have been issued under RIPA that detail the responsibilities of public authorities in respect of the use of covert surveillance and covert human intelligence sources:
- i) Within every relevant public authority it is considered good practice for a senior responsible officer to be made responsible for:
- the integrity of the process the public authority for the management of RIPA;
  - compliance with the Act and with the Codes;

- oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
  - engagement with the OSC inspectors when they conduct their inspections, where applicable; and
  - where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner.
  - within local authorities, the senior responsible officer should be a member of the corporate leadership team and should be responsible for ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the Office of the Surveillance Commissioner. Where an inspection report highlights concerns about the standards of authorising officers, this individual will be responsible for ensuring the concerns are addressed.
- ii) Elected members in a local authority should review the authority's use of RIPA and set the policy at least once a year;

3.8 Elected members in a local authority should also consider internal reports on use of RIPA on at least a quarterly basis to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.

3.9 There is also a statutory code of practice regarding the acquisition and disclosure of communications data that places similar but lesser demands on a local authority. The policy at Appendix 1 applies the higher demands of the codes of practice on the use of covert surveillance and covert human intelligence sources in respect of all uses of RIPA.

3.10 The Council last approved the policy on RIPA in July 2015.

3.11 In January 2016 the Council was inspected by the Office of Surveillance Commissioners (OSC) in relation to surveillance and use of covert human intelligence sources. The subsequent report was broadly positive and recognised that the powers are very rarely used. It was stated that the Authorising Officer has a clear understanding of his responsibilities and that previous recommendations had been addressed. The OSC were satisfied that elected members are kept properly updated. Refresher training on RIPA will need to be organised to reflect the Next Generation Model for the Council. There was a single recommendation relating to updating and improving the guidance notes to officers that is being addressed.

#### **4. Consultation and Scrutiny**

4.1 Internal consultation has taken place between Trading Standards and LGSS Law.

4.2 On a quarterly basis any use of the RIPA framework has been reported to a County Councillor and an internal report provided to the Environment, Development & Transport Scrutiny Committee. On each occasion in the last 12 months it has been reported that the powers have not been used. If the powers had been used, the County Councillor would have reviewed the use of them and reported as to whether it was necessary and proportionate to have done so.

4.3 LGSS Law also audit Trading Standards use of RIPA on a quarterly basis.

4.4 There has not been any wider consultation as the policy relates to legal requirements.

## 5. Equality Screening

5.1 The proposal has had an Equality Impact Assessment undertaken.

See - *Environment, Development & Transport*:

<http://www.northamptonshire.gov.uk/en/councilservices/Council/equalities/Documents/PDF%20Documents/EDT%20EqIAs/EqIA%20RIPA%202016.pdf>

## 6. Alternative Options Considered

6.1 As a public authority the Council should comply with RIPA (see risks below). Therefore no alternative options have been considered.

## 7. Financial Implications

7.1 The financial implications resulting from the approving of the policy are in relation to its implementation. The most significant cost is in relation to training for the officers involved or potentially involved in the RIPA processes and this only amounts to about £500 per annum on average. This is funded from within the Trading Standards Service budget.

## 8. Risk and Business Continuity Management

8.1 Failure to authorise relevant activity in accordance with RIPA could lead to a legal action against the Council for acting in a way that is incompatible with a person's human rights. A court may refuse to admit evidence that has been obtained as a result of unauthorised conduct.

8.2 Non-compliance with RIPA could also expose the Council to the risk of civil action, complaints being made to the Investigatory Powers Tribunal or adverse publicity.

7.3 a) Risk(s) associated with the proposal

Risk	Mitigation	Residual Risk
None		

b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
Adverse publicity / evidence ruled as inadmissible / breach of Human Rights Act / civil action / complaint to the Investigatory Powers Tribunal or Ombudsman	Amber

## 9. List of Appendices

- Appendix 1 – Proposed Corporate Policy on the Regulation of Investigatory Powers Act 2000

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Background Papers:	Regulation of Investigatory Powers Act 2000 Codes of Practice (see <a href="https://www.gov.uk/government/collections/rip-a-codes">https://www.gov.uk/government/collections/rip-a-codes</a> )
Does the report propose a key decision is taken?	NO
If yes, is the decision in the Forward Plan?	n/a
Will further decisions be required? If so, please outline the timetable here	NO
Is this report proposing an amendment to the budget and/or policy framework?	NO
Have the financial implications been cleared by the Strategic Finance Manager (SFM)? Have any capital spend implications been cleared by the Capital Investment Board (CIB)	YES Name of SFM: Rosemary Pallot  n/a
Has the report been cleared by the relevant Director?	YES Name of Director: Tony Ciaburro
Has the relevant Cabinet Member been consulted?	YES Cabinet Member: Councillor Andre Gonzalez De Savage
Has the relevant scrutiny committee been consulted?	YES - the EDT Scrutiny Committee has reviewed the implementation of the current policy and has been satisfied that the operational use of RIPA was appropriate where used in the past. Scrutiny Committee: Environment, Development and Transport.
Has the report been cleared by Legal Services?	YES Name of solicitor: Shahin Ismail  Solicitor's comments:
Have any communications issues been cleared by Communications and Marketing?	YES Name of officer: Joni Ager
Have any property issues been cleared by Property and Asset Management?	n/a Name of officer:
Has an Equalities Impact Assessment been carried out in relation to this report?	Yes
Are there any community safety implications?	The policy as proposed will assist the Council in its statutory duty to tackle crime and disorder by ensuring compliance with the requirements of RIPA when conducting investigations into rogue trading etc.

Are there any environmental implications:	NO
Are there any Health & Safety Implications:	NO – not in terms of approving the policy. There are health and safety risks in carrying out the activities regulated by RIPA but these are managed at an operational level.
Are there any Human Resources Implications:	NO
Are there any human rights implications:	YES - RIPA is consistent with the Human Rights Act 1998 and creates a system of safeguards, reflecting the requirements of Article 8 or the European Convention on Human Rights (ECHR) which states that any interference by a public authority with the right to respect for a person's private and family life, his home or his correspondence, are carried out in accordance with law.
Constituency Interest:	ALL