

# FAREHAM

## BOROUGH COUNCIL

### Report to the Executive for Decision 07 October 2019

<b>Portfolio:</b>	Policy and Resources
<b>Subject:</b>	<b>Update to Regulation of Investigatory Powers (RIPA) Policy</b>
<b>Report of:</b>	Head of Finance and Audit
<b>Corporate Priorities:</b>	A dynamic, prudent and progressive Council

**Purpose:**

To seek approval for the adoption of a revised corporate policy for the use of the powers available under the Regulation of Investigatory Powers Act 2000 (RIPA). The revisions take into account changes specified in the Investigatory Powers Act 2016, and address suggestions made by the Investigatory Powers Commissioner's Office.

**Executive summary:**

Changes proposed in the revised policy include:

- a) the communications data applications no longer need judicial approval; instead they will be approved by a new national body: The Office of Communications Data Authorisations (OCDA);
- b) local authorities can now apply for "events" communication data which includes the times and locations when communications were sent: these can only be lawfully obtained when investigating a serious crime where the offence is punishable by a maximum sentence of 12 months or more;
- c) the new Investigatory Powers Commissioner's Office (IPCO) now head up oversight of all use of RIPA powers;
- d) some wording has been added to emphasise some aspects of the policy as suggested by the new Investigatory Powers Commissioner's Office during their inspection in 2018;
- e) the policy has been reformatted in the corporate style.

**Recommendation/Recommended Option:**

It is recommended that the Executive agrees that the revised Regulation of Investigatory Powers Act 2000 (RIPA) – Corporate Policy and Procedures attached at Appendix 1 to this report be approved.

**Reason:**

To update the policy in accordance with the latest legislation, guidance and practice at the Council.

**Cost of proposals:**

There are no cost implications from the changes to the policy.

**Appendices:**

**Appendix 1:** Revised RIPA Corporate Policy and Procedures v7 (2019)

**Background papers:**

IPCO Inspection report and covering letter – March 2018

**Reference papers:**

Report to the Executive February 2015 - Review of Corporate Regulation of Investigatory Powers Act 2000 (RIPA) Policy

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### Executive Briefing Paper

<b>Date:</b>	07 October 2019
<b>Subject:</b>	Update to Regulation of Investigatory Powers (RIPA) Policy
<b>Briefing by:</b>	Head of Finance and Audit
<b>Portfolio:</b>	Policy and Resources

#### INTRODUCTION

1. The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework under which investigation activity, which might otherwise be considered to infringe article 8 of the Human Rights Act 1998, may be authorised. The activities available to a Council under RIPA are:
  - (a) directed covert surveillance of a member of the public;
  - (b) the use of a covert human intelligence source (CHIS) to gather information from a member of the public; and
  - (c) the acquisition and disclosure of data relating to communications.
2. The Council makes use of these powers for the prevention or detection of crime or the prevention of disorder. Since the Protection of Freedoms Act 2012, activities a) and b) can only be carried out for the prevention or detection of a criminal offence which is punishable on summary conviction or on indictment, by a maximum term of at least six months imprisonment.
3. The Corporate RIPA Policy and Procedures document sets out how the Council can use powers in compliance with the RIPA Act, The Protection of Freedoms Act 2012 and any codes of practice issued.
4. The policy was last updated in February 2015 and is reviewed periodically to keep it up to date. The latest review has identified a few changes that are needed to reflect recent changes in legislation and corporate responsibilities. This includes the Investigator Powers Act 2016 which changes the way and what communications data can be acquired. The Council was also visited by an inspector of the Investigatory Powers Commissioner's Office in February 2018 who made a few some suggestions, in relation to the policy content.
5. This report therefore brings a revised policy for member approval. Adherence to the policy will then be monitored by the Audit and Governance Committee.

## CHANGES PROPOSED

6. The revised policy is attached as Appendix 1 and the changes are highlighted in the document. The main changes are also summarised below.
7. **Investigatory Powers Act 2016 – Approval Process:** The new legislation stipulates the latest requirements in relation to Communications Data. Communications data is postal and electronic communications which includes, email, telephone calls, website site interactions and server provision (including Cloud servers). Under the new legislation, Councils can now make applications to obtain *Event data* (such as details of when and who received a communication), as well as *Entity data* (such as who is the registered owner of a web site). They still cannot lawfully intercept communications during their transmission.
8. The approval of communications data applications is no longer to be carried out by a Magistrate. Instead these will be sent to and approved by a new body: the Office of Communications Data Authorisation (OCDA).
9. Local authorities are only able to obtain communications data if they are party to a collaboration agreement as certified by the Secretary of State. The Council currently uses the National Anti-Fraud Network (NAFN) as a shared Single Point of Contact (SPoC) service.
10. Applications still require authorisation by someone of at least the rank of service manager first before submission to the SPoC and subsequently the OCDA. The SPoC service then liaise with the communication companies to obtain data for approved applications.
11. **Data Retention and Acquisition Regulations 2018 – Serious Crime Threshold:** From November 2018 an amendment to RIPA came into force which stipulated that *Event data* can only be requested to assist an investigation where the maximum sentence for an offence is 12 months or more. This is higher than the standard RIPA threshold of 6 months or more and so applies to Local Authority requests for *Event data* under the Investigatory Powers Act 2016.
12. **Investigatory Powers Act 2016 - New Commissioners:** Oversight of the RIPA powers was previously split between the Office of the Surveillance Commissioner (OSC) and the Interception of Communications Commissioner (IOCCO). The new act replaces these with the Investigatory Powers Commissioner's Office (IPCO).
13. **IPCO Inspection:** The inspector in his report in March 2018 did not make any recommendations for implementation and the Commissioner concluded that "your authority continues to take these important responsibilities seriously and that your usage and standards are an example to all".
14. However, the inspector did make some minor suggestions for some text that could be added to the beginning sections of the policy which included emphasising that covert procedures are used as a last resort, and that powers can only be used when investigating crimes and disorder over the prescribed seriousness.
15. **Other Changes:** The opportunity has been taken during this revision to also:
  - a) change the policy to the corporate style;
  - b) add a Glossary for some of the terms used in the policy;

- c) add a new role of RIPA Co-ordinator to identify the work carried out by this post as part of the procedures.

## **CONCLUSION**

16. The proposed revised Policy will demonstrate that the Council continues to follow best practice in accordance with all legislation and the national Codes of Practice, in its use of powers afforded under the Regulation of Investigatory Powers Act 2000.

### **Enquiries:**

For further information on this report please contact Elaine Hammell. (Ext 4344)