

# FAREHAM

## BOROUGH COUNCIL

### Report to the Executive for Decision 01 July 2024

<b>Portfolio:</b>	Policy and Resources
<b>Subject:</b>	<b>Update to Regulation of Investigatory Powers Policy (RIPA)</b>
<b>Report of:</b>	Assistant Director (Finance & ICT)
<b>Corporate Priorities:</b>	Responsive, inclusive and innovative 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) and the Investigatory Powers Act 2016. The revisions consider the restructure of departments and senior officers at the Council and further clarification received from the National Anti-Fraud Network in relation to the processes for obtaining communications data.

#### **Executive summary:**

Changes proposed in the revised policy include:

- a) The role of Senior Responsible Officer is assigned to the Assistant Director (Finance and ICT) and role of RIPA Co-Ordinator is assigned to the Audit Manager.
- b) The list of officers able to make applications and to be Authorising Officers has been updated. Officers from within the Enforcement, Environmental Health and Community Safety teams have now been removed from the policy to reflect current working practices.
- c) Additional guidance is provided in relation to the Use of Social Media in investigations in response to this focus by the Investigatory Practices Commissioner's Officer (IPCO).
- d) The terminology in relation to Communications Data now reflects the latest guidance received from the National Anti-Fraud Network.

**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 A to this report be approved.

**Reason:**

To update the policy in accordance with the latest legislation, guidance and practice at the Council; and to reflect the current officer structure at the Council.

**Cost of proposals:**

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

**Appendices:**                    **A:** Revised RIPA Corporate Policy and Procedures v8 (2024)

**Background papers:** IPCO Surveillance and CHIS Inspection report and covering letter – February 2022

Southampton City Council – Corporate Surveillance  
Guidance The Regulation of Investigatory Powers Act 2000 –  
October 2023

**Reference papers:**        Report to the Executive October 2019 - Review of Corporate  
Regulation of Investigatory Powers Act 2000 (RIPA) Policy

# FAREHAM

## BOROUGH COUNCIL

### Executive Briefing Paper

<b>Date:</b>	01 July 2024
<b>Subject:</b>	Update to Regulation of Investigatory Powers Policy (RIPA)
<b>Briefing by:</b>	Assistant Director (Finance & ICT)
<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, the Investigatory Powers Act 2016 and any codes of practice issued.
4. The policy was last updated in October 2019 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. Further guidance on these process have been received from the National Anti-Fraud Network and the policy has been updated accordingly.
5. This report therefore brings a revised policy for member approval. It should be noted that the changes have drawn heavily on the latest RIPA policy in place at Southampton City Council which is overseen by their legal services team.

## COUNCIL USE OF THE POWERS

6. The Council only uses these powers as a last resort when undertaking an investigation. The numbers of times used in the last 3 years are shown below. However, this trend is likely to increase in coming months as joint working with the Department of Works and Pension is set to be reintroduced.

**Number of Times Powers Used in last 3 years**

Year	Number of Times
2023/24	1
2022/23	1
2021/22	0

7. Adherence to the policy is monitored by the Audit and Governance Committee as part of the Annual Counter Fraud report.
8. The Council was last visited by an inspector of the Investigatory Powers Commissioner's Office (IPCO) in February 2022. The inspection report was very positive and no recommendations were made in relation to the policy content. The Council was also cited as an example of good practice in the 2022 Annual IPCO Report.

## CHANGES PROPOSED

9. The revised policy is attached as Appendix A and the changes are highlighted in the document. The main changes are also summarised below.
10. **Roles and Responsibilities:** Appendix B of the revised policy details the roles recognised in the policy and which officers have been appointed to those roles. It is proposed that the Assistant Director (Finance and ICT) be assigned the Senior Responsible Officer role and the Audit Manager be assigned the RIPA Co-Ordinator role.
11. The Senior Responsible Officer has delegated authority to then make changes to the other Appointed Officers in the Policy. The latest appointments are shown in Appendix B and come from the investigations, audit, housing, revenues and benefits teams. Officers from the Enforcement, Environmental Health and Community Safety teams are no longer listed as it is considered that they no longer carry out the sort of investigations where these powers are utilised. In cases where they are used it will usually be in conjunction with the police and the Council's role is to confirm that the police have the necessary authorisations in place.
12. **Confidential Material:** A new entry has been added in section 3 to give clearer emphasis that a higher-level authorisation is required if the investigation may involve confidential material. This is defined as: matters subject to legal privilege, confidential personal information, confidential journalistic material and communications between an MP and a constituent. The higher-level authorisers are also shown in Appendix B and are the Chief Executive Officer and Assistant Chief Executive Officer.
13. **High-Level Authoriser - CHIS:** Changes have been made to the wording in section 4 to clarify that high level authorisers can approve an application involving the use of vulnerable individuals and juvenile sources.

14. **Social Media:** The policy has been reformatted and expanded to give a standalone section 5 covering Social Media requirements and some examples of activity that needs to be considered. This activity has been a focus of guidance and coverage by the Investigatory Powers Commissioners Office in recent years.
15. A new entry has also been added to make it explicit that officers should not use personal social network logins to view individuals under investigation.
16. **Communications “Event and Entity Data”:** Section 6 has reworded to clarify that the serious crime threshold only relates to event data (and not entity data) and that there are more definitions of what constitutes a serious crime.
17. **Communications Data Process:** Section 7 has been expanded in relation to the role of the Office for Communications Data Authorisations, the National Anti-Fraud Network and IPCO Judicial Commissioner (in relation to journalistic sources).
18. **Communications Data Approved Rank:** Updating the policy for the new terminology for the authorising officer for communications data (previously Designated Officer).

## **ENVIRONMENTAL CONSIDERATIONS /CARBON IMPACT ASSESSMENT**

19. There are no environmental considerations in relation to this report.

### **Enquiries:**

For further information on this report please contact Elaine Hammell on 01329 824344.