

Scrutiny Report

Scrutiny Committee - Corporate and Resources

28 August 2024

Key Decision - Yes



Report Title – The Regulation of Investigatory Powers Act 2000 (RIPA)

Chair of Committee: Cllr Bob Filmer

Executive Member(s): Cllr Bill Revans – Leader and Lead Member for Governance and Communications

Local Member(s) and Division(s) affected: ALL

Executive Director: Alyn Jones – Executive Director Strategy Workforce and Localities

Senior Responsible Officer for RIPA – David Clark, Service Director Governance, Democratic and Legal Services (Monitoring Officer)

Executive Summary

The Regulation of Investigatory Powers Act 2000 (“RIPA”) governs the acquisition of communications data and the use of covert surveillance by local authorities.

The Council may use powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more or the offence is related to the underage sale of alcohol and/or tobacco.

RIPA powers cover the use of directed surveillance and the use of covert human intelligent sources (CHIS). The acquisition of communications data is now dealt with under the Investigatory Powers Act 2016 and is not covered within this report.

RIPA sets out the procedures that the Council must follow if it wishes to use surveillance techniques in order to support core function activities.

The Home Office Covert Surveillance and Property Interference Revised Code of Practice recommends that elected members, whilst not involved in making decisions or specific authorisations should review the Council’s use of the legislation and provide approval to its policies.

Public Authorities such as Somerset Council in respect of whom RIPA applies are subject to periodic inspections by the Investigatory Powers Commissioner’s Office (IPCO) who provide independent oversight on the use of investigatory powers, as outlined in the Regulation of Investigatory Powers Act 2000.

By conducting robust, evidence-based inspections of the use of investigatory powers, the Inspectorate ensures that those public bodies authorised to use investigatory powers are doing so lawfully and in line with best practice.

Somerset Council received an in-person inspection by one of the IPCO inspectors on the 03/04/2024 and subsequently online on the 10/05/2004.

The recommendations below flow from the IPCO Inspector's recommendations.

Recommendations

Scrutiny Committee is asked to: -

1. Note the contents of this report.
2. Note the outcome of the recent Inspection by the Investigatory Powers Commission.
3. Note the use of the Authorities' powers under RIPA for the period of 3 years prior to the formation of the unitary Council, for the period 2023/24 and thereafter that the use of the powers be reported to the Executive on an annual basis.
4. Recommend to the Executive that the former County Council's Covert Surveillance (RIPA) Policy attached to this Report be re-adopted as amended, as the RIPA Policy for Somerset Council.
5. Note that the Council's Policy at recommendation 4 above will be reviewed annually by the Executive.

Reasons for Proposals

To respond to a statutory requirement and to report and advise of action taken/to be taken in connection with the IPCO Inspector's recommendations.

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Main report and supporting information



Background and purpose of report

Regulation of Investigatory Powers Act 2000

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.
2. Where used, RIPA powers are usually undertaken by enforcement teams.
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.
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.
5. The Council is required to have a Covert Surveillance Policy and Procedure which governs the Council's use of RIPA.
6. Each of the former 5 authorities in Somerset had an adopted a RIPA policy and procedure documents which are very similar in content and wording. The authorities have been subject to triennial inspections by the IPCO and importantly their respective authorising and investigating officers have undertaken the necessary training to ensure that any enforcement activities undertaken comply with the statutory requirements. In the 3 years prior to the formation of the unitary Council no authorisations were sought or granted across the 5 authorities. In the year 2023/24 no authorisations were sought or granted for the Council. This reflects the fact that nearly all enforcement activity by Council Officers is overt and does not require prior authorisation.
7. The draft policy and procedure document (attached as Appendix 1) is based on the version that was previously adopted by Somerset County Council. This has been subject to a favourable assessment during the recent IPCO inspection. In the unitary structure the RIPA function sits under Governance, Legal and Democratic Services in the directorate of the Executive Director, Strategy,

Workforce and Localities. The Service Director, Governance, Legal and Democratic Services (Monitoring Officer) is the Senior Responsible Officer (SRO) for RIPA. The SRO has overall responsibility for the RIPA process and dealing with inspections by the IPCO. It is recommended that the SRO has authority to delegate day to day administration tasks to a senior legal officer who would act as a RIPA co-ordinating officer and would also organise any necessary training for authorising and investigating officers and liaise with the Magistrates 'Court to obtain judicial approval as and when necessary. A stakeholder analysis is to be undertaken the results of which will inform how many authorising officers will be required.

8. The Council is required to have a Senior Responsible Officer to maintain oversight of RIPA arrangements, procedures and operations. Somerset Council's Senior Responsible Officer is the Service Director, Governance Democratic & Legal Services. Monitoring Officer).

Investigatory Powers Commissioner's Office (IPCO)

9. The Investigatory Powers Commissioner has a statutory responsibility for reviewing the use of investigatory powers by public authorities throughout the United Kingdom.
10. 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.
11. On the 11 August 2023 and subsequently on the 10 January 2024 the Council was notified that the IPCO wanted to undertake an Inspection of the Council's arrangements and provided an outline of matters the Inspector wanted to consider together with a detailed list of questions and requests for information. (A copy of the IPCO request is provided at Appendix 2).
12. Officers met with the Surveillance Inspector in person on the 03/04/2024 and subsequently online on the 10/05/2024.
13. In May 2004 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 3).
14. In summary, the inspection report recognises that since the amalgamation of the former District Councils and the County Council in April 2023, significant financial constraints have necessitated a continued programme of reorganisation which has meant that RIPA policy and oversight arrangements for Somerset Council remain incomplete.

15. Following the online inspection on the 10/05/2024, in terms of taking the former County Council RIPA policy forward as a starting point for the new policy, the Inspector advised that that policy was fine, but it would require attention as follows -

“Somerset CC Policy

Section 3 – reference to 2014 OSC Procedure and guidance document is now obsolete, the document has been withdrawn

Page 5 – reference to OCS within Proportionality considerations – Now IPCO

AO considerations particularly Q2 – Proportionality, and Q3 Collateral Intrusion minimisation are well written

Policy on page at start is nice and concise

Appendix 3 - non-RIPA section is well drafted

CHIS authorisations are valid for 12 months and not 1 month as stated”

16. The required changes have been incorporated into the revised policy (presented at Appendix 1).
17. In addition to the amendments outlined above, the Inspector’s main concerns, expressed to the SRO during the online meeting on the 10/05/2024 were about what the Council doesn’t know. Whilst the Council is not a frequent user of the powers under the Act, it does need to gain assurance that there is no activity taking place within the Authority that needs to be regulated pursuant to RIPA. Confirming this should be a priority - a stakeholder analysis needs to be undertaken to establish
- who is likely to use the powers
 - are they using the powers
 - is the online space adequately monitored is the online space adequately monitored e.g. online enquiries/background checks where staff may have felt emboldened without being aware that this activity may be crossing into regulated activity, especially around areas such as social care and safeguarding where the motivation may be well intended.
18. The analysis should not be over engineered and should take the form of a simple questionnaire of 4 or 5 questions to department leads in order to identify risk areas. This analysis is to commence week commencing 19/08/2024.
- The results of the stakeholder analysis will inform the number of Authorised Officers that will be required and thereby the targeted training beyond basic awareness raising would also be identified.
19. The stakeholder analysis will be fed into the final draft policy being presented to the Executive on the 02/09/2024.

20. The inspection identified that the Council has a blind spot in terms of the former Somerset West and Taunton District Council due to loss of corporate knowledge and no familiarity with historic procedures.
21. The Inspector was particularly impressed with the mandatory RIPA induction training now in place and delivered through The Learning Centre (TLC) for all staff but recommends that there needs to be a plan to keep ongoing awareness levels amongst staff high. It is proposed that there will be regular publications regarding RIPA in Dragons Pen.
22. The recommendations in this report flow from the Inspector's recommendations.

Other options considered

23. None

Key considerations for the Council

Scrutiny comments / recommendations:

24. Any comments/recommendations from Scrutiny will be noted in the report going to Executive.

Consultation and feedback

25. An internal stakeholder review will be undertaken, and this will inform the required changes to the Policy.

Financial and Risk Implications

26. There are no resource implications associated with the matters contained within this report. The preparation of this report has been undertaken by officers as part of their normal duties. The review of the RIPA Policy has also been undertaken as part the normal duties of officers. Should it be necessary to use RIPA powers this will be undertaken by officers as part of their normal duties. If the Council had to seek judicial authorisation to use RIPA powers, there is currently no fee payable.
27. The cost of training identified in this report will be supported from internal budgets.

Legal and Procurement Implications

28. Legal Implications are provided within the body of this report. 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 regular inspection by IPCO.

HR/Workforce implications

29. RIPA is only used as 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 mandatory online module has been introduced via the Learning Centre for all staff and more targeted training is proposed for authorising officers and the SRO.

Equalities Implications

30. RIPA policy is for criminal investigations to ensure that covert surveillance is conducted lawfully and proportionately. This policy safeguards citizens as it puts in place a clear procedure to ensure that all surveillance is only conducted where it is lawful to do so. A test of necessity, proportionality and collateral intrusion are carried out as part of the process.

Community Safety Implications

31. The Council may use powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more or the offence is related to the underage sale of alcohol and/or tobacco. Use of the powers in criminal investigation will provide comfort to the community that the Council has available the necessary tools to detect and prevent crime.
32. Authorised use of RIPA powers will ensure that any intrusion into private life will be necessary and proportionate.

Climate change and Sustainability Implications

33. There are no direct climate and sustainability implications as a result of the submission of this report.

Health and Safety Implications

34. There are no direct health and safety implications as a result of the submission of this report.

Health and Wellbeing implications

35. There are no direct health and wellbeing implications as a result of the submission of this report.

Social Value

36. There are no direct social value implications as a result of the submission of this report.

Background papers

37. None

Appendices

Appendix 1 – Proposed Revised Policy – To follow

Appendix 2 – Notification of proposed inspection detailing matters for discussion with the Inspector together with a detailed list of questions and requests for information.

Appendix 3 – Outcome Report (May 2024)

Report assurance checklist ahead of report publication (for Audit, Executive, Full Council and Scrutiny Committees)

| | Officer Name | Date Completed |
|---------------------------------|----------------------------------|----------------|
| Legal & Governance Implications | Jill Byron | Y |
| Finance & Procurement | Nicola Hix | Y |
| Workforce (*) | Dawn Bettridge | Y |
| Asset Management (*) | Oliver Woodhams | N |
| Executive Director | Alyn Jones | Y |
| Executive Lead Member | Cllr Bill Revans | Y |
| Consulted: | Councillor Name | |
| Local Division Members | List local members | |
| Opposition Spokesperson(s) | Relevant Opposition Spokesperson | |
| Relevant Scrutiny Chair(s) | Cllr. Bob Filmer | Y |

Note:

Directors may nominate additional officers to act on their behalf

(*) – these areas only need to be consulted on proposals if the proposals have workforce or asset management implications

Reports will not be published if assurance checklist has not been adequately completed – report author to liaise with Democratic Services well ahead of publication deadlines