

East Herts Council

Executive

Date of Meeting: 13 June 2023

Report by: Cllr Joseph Dumont, Executive Member for Corporate Services

Report title: Regulation of Investigatory Powers Act (RIPA) Policy Review

Ward(s) affected: All

Summary

This report updates the Executive on the Council's most recent IPCO inspection and seeks to implement recommended changes to the RIPA policy.

RECOMMENDATIONS FOR OVERVIEW AND SCRUTINY:

- (A) The Executive considers the content of the report and provides any observations to the Head of Legal and Democratic Services.**
- (B) The revised Regulation of Investigatory Powers Act (RIPA) Policy at Appendix B be adopted.**

1.0 Proposal(s)

- 1.1 To implement changes to the Council's RIPA Policy as suggested in the IPCO inspection report.

2.0 Background

- 2.1 The Investigatory Powers Commissioner's Office (IPCO) oversee the Council's use of investigatory powers, ensuring that they're used in accordance with the law and in the public interest. They do this by inspecting the Council on a three-yearly basis.
- 2.2 The Council was last inspected in 2019, meaning that the next scheduled inspection was due in 2022.
- 2.3 This inspection by the IPCO took place on 27th October 2022, with the resultant Inspection Report being provided to the Chief Executive on 16th November 2022.
- 2.4 The report was both positive and complimentary of the changes implemented by the Council since the last inspection in 2019, saying:

"The information provided has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection. [The Inspector] identified significant improvements since the previous inspection in 2019, and I am pleased to hear that all the action points arising from that earlier inspection have now been discharged... your Council is in a much stronger position should the need to exercise the powers arise.
- 2.5 The inspector did, however, make some suggested amendments to the Council's RIPA Policy in order to address some recent changes pertaining to Communications Data in the Investigatory Powers Act, as well as some additional changes to how information on social media was to be treated.
- 2.6 The changes are shown in track changes at Appendix A, with a clean version available at Appendix B.
- 2.7 The report was considered by the Overview & Scrutiny

Committee at its meeting on 21 March 2023. There were no comments.

3.0 Reason(s)

3.1 Whilst the Council does not actively make use of its RIPA powers, it is important that RIPA, the policy and its usage, or otherwise, are kept at the forefront of Members' minds.

3.2 Updating the policy to reflect the recommendations by the IPCO displays that the Council has taken heed of the advice and is actively taking steps to make sure its policy is fit for purpose.

Review by the Overview and Scrutiny Committee

3.3 At its meeting of 21st March 2023, the Overview and Scrutiny Committee was invited to review the revised policy and make any suggested additions or amendments for consideration by the Executive Member for Corporate Services prior to presenting the policy to the Executive.

3.4 No comments were made at this stage and the Overview & Scrutiny Committee was content that the revised policy should be sent to the Executive for adoption.

4.0 Options

4.1 To not implement the IPCO's recommended changes to the policy, this is NOT RECOMMENDED as to do so would inevitably lead to the policy becoming out of date and place the Council in a position where it was not meeting its legal obligations.

5.0 Risks

5.1 It is important that the Council continues to operate in accordance with RIPA to ensure that it is able to effectively

manage its reputational risk whilst also exercising its legitimate evidence gathering powers in connection with enforcement activity.

6.0 Implications/Consultations

6.1 The implications of not regularly reviewing the RIPA Policy are potentially quite serious, including potential breaches of criminal law.

Community Safety

Yes – Allows the Council to legally make use of investigatory practices governed by RIPA, which could be utilised to protect communities from illegal activities.

Data Protection

No

Equalities

Yes - No RIPA investigations have been conducted by the council and so there is no data against which to assess the potential equalities aspects of RIPA use. If the council sought to use RIPA powers at some point, the equalities aspects would be considered at that time. The risk of having a policy that is not fit-for-purpose could lead to unintended equalities issues or risk of the perception of this.

Environmental Sustainability

No

Financial

No

Health and Safety

No

Human Resources

No

Human Rights

Yes – The use of powers under RIPA directly affects a person’s right to respect for private and family life under Art 8 of the Human Rights Act. It is imperative that RIPA is utilised correctly so as to make legal those potential intrusions.

Legal

Yes – The Regulation of Investigatory Powers Act 2000 (“RIPA”) enables local authorities to carry out certain types of surveillance activity, as long as specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in court proceedings providing RIPA is complied with. The Investigatory Powers Act 2016 (“IPA”) is the main legislation governing the acquisition of communications data. The information obtained as a result of these acquisitions can also be relied upon in court proceedings providing IPA is complied with. Full details of the RIPA requirements and compliance are set out in the Policy, with relevant documents and guidance document available to relevant officers via the intranet should they consider it necessary to use these powers.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

7.1 Appendix A – Updated RIPA Policy with track changes.

7.2 Appendix B – Clean version of the updated RIPA Policy.

Contact Member

Councillor Joseph Dumont, Executive Member for Corporate Services

joseph.dumont@eastherts.gov.uk

Contact Officer

James Ellis, Head of Legal and Democratic Services,
Tel: 01279 502170
james.ellis@eastherts.gov.uk

Report Author

As above