

## East Herts Council

### Executive

**Date of Meeting:** 12<sup>th</sup> July 2022

**Report by:** Cllr George Cutting, Executive Member for Corporate Services

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

**Ward(s) affected:** ALL

### Summary

The Regulation of Investigatory Powers Act regulates the manner in which certain public bodies, including Local Authorities, may conduct surveillance and access a person's electronic communications. The Council must have an up to date policy governing its use of RIPA.

### RECOMMENDATIONS THAT:

- (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 A be adopted.**

### 1.0 Proposal(s)

1.1 This Report updates on the Council's current use of RIPA and reports on a minor change to the policy since it was last reviewed.

### 2.0 Background

2.1 The Council is required to have suitable arrangements and an up to date RIPA Policy in place. The current policy was last

approved by Executive on 7<sup>th</sup> July 2020<sup>1</sup> (updated together with the Social Media in Investigations Policy).

- 2.2 A minor change to the policy is required in line with paragraphs 2.4 to 2.7 below, however the current policy remains fit for purpose in all other regards.
- 2.3 There have been no new RIPA authorisations since the last annual report went to Overview & Scrutiny on 8<sup>th</sup> June 2021<sup>2</sup>.

## **General Update**

- 2.4 The [Covert Human Intelligence Sources \(Criminal Conduct\) Act 2021](#)(CHIS(CC)A) received Royal Assent on 1 March 2021 and went live for the police on 15 September 2021
- 2.5 CHIS(CC)A amends the Regulation of Investigatory Powers Act 2000 and provides an express power to authorise a Cover Human Intelligence Source (CHIS) to participate in conduct which would otherwise constitute a criminal offence. This power is known as a Criminal Conduct Authorisation (CCA).
- 2.6 It is important to note that local authorities have *not* been given these powers and the information is merely included in the updated policy (at paragraph 5.4) for the avoidance of doubt should the matter come up at a future point.
- 2.7 The public authorities able to authorise the use of a CHIS are the intelligence agencies, police, HMRC, HM Forces, the Serious Fraud Office, the Environment Agency, the Financial Conduct Authority, the Food Standards Agency, the Gambling Commission, the Home Office, the Ministry of Justice, the Department of Health and Social Care, the National Crime Agency and the Competition and Market Authority.

## **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.

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<sup>1</sup> <http://democracy.eastherts.gov.uk/ieListDocuments.aspx?CId=119&MId=3752&Ver=4&J=3>

<sup>2</sup> <http://democracy.eastherts.gov.uk/ieListDocuments.aspx?CId=515&MId=3913&Ver=4&J=4>

- 3.2 Updating the policy to reflect the new CHIS(CC)A displays that the Council is aware of the new legislation and the Members have applied their minds to its existence.

### **Review by the Overview and Scrutiny Committee**

- 3.3 At its meeting of 21<sup>st</sup> June 2022, 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 review the policy or implement the identified changes, this is NOT RECOMMENDED as to do so would inevitably lead to the policy eventually 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 legal 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 report with track changes.

### **Contact Member**

Cllr George Cutting, Executive Member for  
Corporate Services

[george.cutting@eastherts.gov.uk](mailto:george.cutting@eastherts.gov.uk)

### **Contact Officer**

James Ellis, Head of Legal and Democratic  
Services

Contact Tel No 01279 502170

[james.ellis@eastherts.gov.uk](mailto:james.ellis@eastherts.gov.uk)

### **Report Author**

As above