

REPORT REFERENCE NO.	APRC/17/18
MEETING	AUDIT & PERFORMANCE REVIEW COMMITTEE
DATE OF MEETING	12 SEPTEMBER 2017
SUBJECT OF REPORT	AUTHORITY POLICY FOR REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)
LEAD OFFICER	Director of Corporate Services
RECOMMENDATIONS	<p><i>(a). That the revised Authority Policy for the Regulation of Investigatory Powers Act (RIPA), as set out at Appendix B to this report, be approved;</i></p> <p><i>(b). That a report be submitted to a future meeting as necessary on any recommendations stemming from the forthcoming RIPA inspection to be undertaken by the Office of the Surveillance Commissioners (OSC);</i></p> <p><i>(c). That, notwithstanding (b), a report reviewing the current RIPA policy be submitted to this Committee in twelve months' time; and</i></p> <p><i>(d). That, subject to (a) to (c) above, the report be noted.</i></p>
EXECUTIVE SUMMARY	<p>The Regulation of Investigative Powers Act 2000 (RIPA) requires the Authority to have in place an approved policy on procedures and processes to be followed in the event of wishing to use certain covert investigatory techniques. The Authority approved an initial policy at its meeting on 17 December 2014, when it also delegated responsibility for the policy to this Committee (Minute DSFRA/36 refers).</p> <p>Subsequently, new Codes of Practice were published and a revised Policy, reflecting these and comments made in the most recent Annual Report by the Office of the Surveillance Commissioners, approved by this Committee at its meeting on 6 February 2015 (Minute *APRC/18 refers).</p> <p>Following adoption of the revised Policy, the Service was subject to an OSC inspection to assess its RIPA policy and procedures. The recommendations from this inspection (see Appendix A to this report) have now been incorporated into a revised policy, the draft of which is attached at Appendix B for consideration with a view to approval.</p>

RESOURCE IMPLICATIONS	<p>There is a requirement to ensure:</p> <ul style="list-style-type: none"> • that officers involved in the formal RIPA process (including applicants and authorising officers) receive appropriate training relevant to this task; and • that sufficient, Service-wide awareness-raising is undertaken to promote understanding of the correct processes to be followed to obtain RIPA authorisation, should this be required. <p>Any costs associated with the above will be met from within existing resources.</p>
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	<p>The contents of this report are considered compatible with existing human rights and equalities legislation.</p>
APPENDICES	<ol style="list-style-type: none"> 1. Summary of recommendations and Advisory Comments from 2015 Office of the Surveillance Commissioners RIPA Inspection of the Authority. 2. Draft Revised Authority RIPA Policy.
LIST OF BACKGROUND PAPERS	<p>Report DSFRA/14/21 (Regulation of Investigatory Powers Act [RIPA] 2000 – Revised Authority Policy) to the full Authority meeting held on 17 December 2014 (and the Minutes of that meeting).</p> <p>Report APRC/15/1 (Regulation of Investigatory Powers Act [RIPA] 2000 – Revised Authority Policy) to the Audit & Performance Review Committee meeting held on 6 February 2015 (and the Minutes of that meeting).</p>

1. BACKGROUND

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) sets out a regulatory framework for the use by specified public authorities (including combined fire and rescue authorities such as the Devon & Somerset Fire & Rescue Authority) of covert investigatory techniques which might otherwise infringe legal rights to privacy and respect for family life. RIPA limits authorities to using three, defined covert techniques. Use of any one of these techniques is subject to prior authorisation by an authorising officer or other designated person.
- 1.2 This Authority has no history of using the covert investigatory techniques covered by RIPA and there is no expectation that there will be a need to use them in the future. Instead, it is anticipated that the Authority will invariably be able to gather all the information required for its statutory functions without covert information gathering.
- 1.3 Nonetheless, the Authority is still required to have in place a policy setting out minimum requirements to be complied with in the unlikely event that it is necessary to use RIPA provisions. The policy is intended to provide protection for the Authority, individual officers using RIPA provisions and those subject to or otherwise affected by the process. The terms of the protection are based on necessity, proportionality and the authorisation given in relation to a particular investigation.
- 1.4 At its meeting on 17 December 2014, the Authority approved a revised RIPA policy reflecting certain legislative changes. At the same time, the Authority resolved to delegate ongoing responsibility to this Committee (Minute DSFRA/36 refers). In turn, this Committee approved a further, revised policy (amended to reflect new Codes of Practice and the contents of the most recent annual report from the Office of the Surveillance Commissioner [OSC]) at its meeting on 6 February 2015.
- 1.5 Since that time, the Authority has been subject to an inspection of its RIPA policy and procedures by the Office of the Surveillance Commissioner (OSC). The OSC oversees the conduct of covert surveillance and covert human intelligence sources by public authorities in accordance with the Police Act 1997 and the Regulation of Investigatory Powers Act 2000 (RIPA). As part of this role, the OSC undertakes periodic inspections of public authorities (including this Authority).

2. OUTCOME OF LAST INSPECTION AND REVISIONS TO AUTHORITY POLICY

- 2.1 The OSC last inspected the Authority early in 2015. The OSC report resulting from that inspection identified that recommendations from the previous inspection (conducted in 2012), which included, amongst other things, revisions to the [then] policy and the appointment (designation) and training of relevant officers to discharge roles required by the process (applicants and authorising officers) had all been implemented satisfactorily and as such were considered as “discharged”.
- 2.2 The OSC inspection report from 2015 commented:
- “The RIPA policy document was reviewed in January 2015. It is well composed and informative. A number of issues were identified during the inspection in relation to the document which requires further amendment to ensure that it is fully in accordance with the Covert Surveillance and Property Interference Code of Practice and the extant OSC Procedures and Guidance 2014”.*

- 2.3 The OSC comments that the Authority's policy was "well composed and informative" are to be welcomed – particularly in the context that this is something in which the Authority has no history of using and would not anticipate ever having to do so.
- 2.4 Appendix A sets out the "further amendments" either recommended or advised in respect of the policy and associated procedures, together with commentary on how these issues have been addressed. It should also be noted that, in undertaking appropriate revisions to the policy, consideration has been given to the extant (2016) version of the OSC Procedures and Guidance.
- 2.5 In addition to responding to the recommended/advisory aspects from the last OSC inspection, the opportunity has also been taken to clarify the section of the policy dealing with the acquisition of communications data to indicate, amongst other things, that this is subject to pending legislative change. A copy of the draft revised Policy is attached at Appendix B for consideration and approval.
- 2.6 The OSC has recently written to the Authority advising that, for a several reasons including reduced resources and that certain authorities (such as this Authority) have not needed to utilise RIPA procedures over the last three years (if at all), the Chief Surveillance Commissioner had decided to adopt a more flexible approach to inspection arrangements. In the first instance this will entail completion of a questionnaire and submission of relevant documentation, via e-mail, to the OSC. The OSC will then assess this return and determine either:
- that no visit by an inspector is necessary; or
 - that further information or documentation is required before a final decision about a visit is made, or
 - that a visit should be undertaken.
- 2.7 It is proposed that, following any decisions taken at this meeting, the questionnaire and relevant documentation (i.e. the Authority's RIPA policy) will be forwarded to the OSC. The outcome of this will be reported in due course to a future meeting of this Committee and it is also intended that, notwithstanding this, a report reviewing the policy and its application be submitted to this Committee in twelve months' time.

MIKE PEARSON
Director of Corporate Services