

<b>REPORT REFERENCE NO.</b>	<b>APRC/18/9</b>
<b>MEETING</b>	<b>AUDIT &amp; PERFORMANCE REVIEW COMMITTEE</b>
<b>DATE OF MEETING</b>	<b>26 APRIL 2018</b>
<b>SUBJECT OF REPORT</b>	<b>AUTHORITY POLICY FOR REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) – OUTCOME OF RECENT INSPECTION</b>
<b>LEAD OFFICER</b>	<b>Director of Corporate Services</b>
<b>RECOMMENDATIONS</b>	<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 reviewing the current RIPA policy be submitted to this Committee in twelve months' time; and</i></p> <p><i>(c). that, subject to (a) and (b) above, the report be noted.</i></p>
<b>EXECUTIVE SUMMARY</b>	<p>At its meeting on 12 September 2017 the Committee received a report on the Authority's policy and processes in relation to the Regulation of Investigatory Powers Act 2000 (RIPA). While this Authority has never used, nor envisages a situation where it is ever likely to use, the types of covert techniques governed by RIPA, it is nonetheless required to have appropriate policies and procedures in place given that the legislation currently applies to the Authority.</p> <p>The earlier report also advised of a forthcoming "light touch" inspection (i.e. via completion of a questionnaire and submission of relevant documentation, rather than a formal inspection visit) of the Authority's existing RIPA policy and procedures by the Office of the Surveillance Commissioner. This report now advises on the outcome of this "light touch" inspection.</p>
<b>RESOURCE IMPLICATIONS</b>	<p>There is a requirement to ensure that relevant officers receive appropriate training and that sufficient awareness-raising is undertaken to promote understanding of the processes to be followed to obtain RIPA authorisation. Any costs associated with the above will be met from within existing resources.</p>
<b>EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)</b>	<p>The contents of this report are considered compatible with existing equalities and human rights legislation.</p>
<b>APPENDICES</b>	A. Draft revised Authority RIPA Policy

**LIST OF BACKGROUND PAPERS**

- A. 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).
- B. 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).
- C. Report APRC/17/18 (Authority Policy for Regulation of Investigatory Powers Act 2000 [RIPA]) to the Audit & Performance Review Committee meeting held on 12 September 2017 (and the Minutes of that meeting).

## 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. Oversight of the Authority's RIPA policy is delegated to this Committee. At its meeting on 12 September 2017 the Committee approved a revised Policy implementing recommendations stemming from a previous inspection of the Authority's RIPA procedures conducted by the Officer of the Surveillance Commissioner (OSC) (Minute \*APRC/14 refers).
- 1.5. At that time, the Committee was also advised of further, forthcoming, "light touch" inspection to be conducted by the OSC. In the first instance, this inspection entailed completion of a questionnaire and submission of relevant documentation (including the existing RIPA Policy; the Central Register of RIPA Authorisations) for assessment by the OSC which would then determine either:
  - that no visit by an inspector was necessary; or
  - that further information or documentation was required before a final decision about a visit was made; or
  - that a visit should be undertaken.In this respect, the Committee resolved to receive a further report as necessary on any recommendations stemming from the "light touch" inspection.
- 1.6. In the event, the completed questionnaire and submitted information, coupled with information imparted following a subsequent telephone conversation between the RIPA Co-ordinator and the designated Assistant Surveillance Commissioner, was felt sufficiently comprehensive as to not require a formal inspection visit. A report has been received following the inspection setting out a number of recommendations, the response to which is set out below.

## 2. “LIGHT-TOUCH” INSPECTION REPORT AND FINDINGS

- 2.1. The report received following the “light touch” inspection notes that the Devon & Somerset Fire & Rescue Service (“the Service”) continues to have no recourse to covert surveillance and that no authorisations had been granted since the last inspection. The report also notes that the Service recognises its obligation to retain the capability to conduct (if circumstances so demand) authorised covert surveillance lawfully and consequently to remain compliant with the requirements of RIPA and the associated regulatory framework.
- 2.2. The report acknowledges that each of the nine amendments to the Service Policy identified in the last inspection report had been made and that the Central Record of Authorisations were wholly compliant with existing Codes of Practice, with a separate tab to record details associated with the authorisation of Covert Human Intelligence Sources (CHIS) included (as recommended in the last inspection report).
- 2.3. The most recent inspection report does make five new recommendations. These are identified in the table below, together with a commentary on action either undertaken or proposed by the Service to address these recommendations.

	<b><i>Recommendation</i></b>	<b><i>Commentary</i></b>
<b>1</b>	Provide a more robust oversight procedure (providing for applications to be submitted to one or both of the RIPA officer prior to and following authorisation to enable those officers to exercise quality control and oversight at the relevant stages)	Attached at Appendix A to this report is revised RIPA policy. Paragraphs 4.6 and 4.9 (as highlighted) have been inserted into this policy to address this recommendation.
<b>2</b>	Raise RIPA awareness throughout the FRS (provision of basic information on platforms regularly viewed by all officers).	The Service Policy is readily available to all staff on the Service Intranet. Additionally, the Service produces a weekly “Service Update”, circulated to all staff via e-mail. The Update for 12 March 2018 included a brief section on the significance of RIPA, with a link to the Service Policy and advising all staff to familiarise themselves with its contents. The intention is that this briefing should be included bi-annually in the Service Update.
<b>3</b>	Ensuring all authorising officers are of appropriate rank and consider appointing the SRO as an authorising officer (though only to authorise in exceptional circumstances).	The Service Policy as attached at Appendix A provides for a total of seven authorising officers (four for directed surveillance and acquisition of communications data; three for covert human intelligence sources [CHIS]).

	<b>Recommendation</b>	<b>Commentary</b>
		<p>Each of these complies fully with the requirements for authorising officers as specified in the relevant regulations<sup>1</sup>.</p> <p>As previously mentioned, this Service has never had recourse to use RIPA and does not envisage any situation where this would ever be necessary. The inspection report comments that "...it must be recognised that there could be conflict between the act of authorisation and his [the SROs] overall responsibility for oversight...". In light of this (coupled with the existing number of authorised officers which is considered more than adequate in light of the Service history and anticipation of RIPA usage), it is not felt appropriate that the SRO be an authorising officer.</p>
4	<p>Ensure that all authorising officers and officers who may be involved in the RIPA process receive appropriate regular training within a training programme</p>	<p>The inspection report comments that, while it has never had recourse to use RIPA, the Service nonetheless recognises the importance of securing legal compliance in the event that RIPA usage should ever be necessary.</p> <p>The report also references that, since the time of the last inspection, there has been considerable change in terms of staff associated with the roles involved in the RIPA process. Additionally, there have been further changes still since the time of the "light touch" inspection.</p> <p>The Service is in the process of commissioning on-site training for all relevant officers and it is intended that this training should be delivered in the summer of 2018. Thereafter, it is proposed to introduce a face-to-face in-house training every two years, with refresher e-learning to be undertaken in the intervening year.</p>

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<sup>1</sup> The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 and the Regulation of Investigatory Powers (Communications Data) Order 2010

	<b><i>Recommendation</i></b>	<b><i>Commentary</i></b>
<b>5</b>	Create a more clearly defined social media policy (inclusion of a “rule of thumb” guide on reviewing/use of open source (e.g. social media) sites	The inspection report sets out an indicative “rule of thumb” which has been incorporated into the Service Social Media Policy.

### **3. CONCLUSION**

- 3.1 While the Authority has never had recourse to use the type of covert surveillance techniques regulated by RIPA and does not envisage any situation where this would be necessary, it nonetheless takes seriously its commitment to ensuring that, should this ever be necessary, the activities are undertaken in legally compliant manner.
- 3.2 This commitment of the Authority is recognised in the latest “light touch” inspection report from the Office of the Surveillance Commissioner. The report also proposes a number of recommendations to further safeguard the Authority in the event that RIPA authorisation should ever prove necessary. The response these recommendations, as identified in the table at Section 2 of this report, are considered sufficiently robust to ensure that the Authority will be fully compliant with RIPA requirements should it ever prove necessary to employ covert surveillance techniques.
- 3.3 On this basis, the Committee is asked to:
- to approve the revised RIPA policy as set out at Appendix A to this report;
  - review the policy in twelve months’ time; and
  - note the actions taken or proposed in response to the other recommendations contained in the “light touch” inspection report.

**MIKE PEARSON**  
**Director of Corporate Services**