

<b>REPORT REFERENCE NO.</b>	<b>APRC/19/9</b>
<b>MEETING</b>	<b>AUDIT &amp; PERFORMANCE REVIEW COMMITTEE</b>
<b>DATE OF MEETING</b>	<b>10 MAY 2019</b>
<b>SUBJECT OF REPORT</b>	<b>AUTHORITY POLICY FOR REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) – REVIEW</b>
<b>LEAD OFFICER</b>	<b>Director of Corporate Services</b>
<b>RECOMMENDATIONS</b>	<p><i>(a). that the amendments to the Authority RIPA policy as set out in Section 3 of this report be endorsed;</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 6 April 2018 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 Authority is also required, under the various codes of practice in place for RIPA, to review its policies and procedures annually and to report on (in anonymised form) any use of RIPA over the last twelve months. This paper sets out the findings of the most recent review.</p>
<b>RESOURCE IMPLICATIONS</b>	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.
<b>EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)</b>	The contents of this report are considered compatible with existing equalities and human rights legislation.
<b>APPENDICES</b>	Nil ( <b>NOTE:</b> a copy of the revised Authority RIPA policy can be a made available on request)

**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).
- D. Report APRC/18/9 (Authority Policy for Regulation of Investigatory Powers Act 2000 [RIPA] – outcome of recent inspection) to the Audit & Performance Review Committee meeting held on 26 April 2018 (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. In doing so, the Committee is required (by virtue of the various Codes of Practice relating to use of RIPA and associated legislation) to keep the policies and procedures under review and to receive an anonymised report on the use of RIPA during the last twelve months. This report now sets out that information.

## **2. RIPA AUTHORISATIONS SINCE LAST REVIEW**

- 2.1. Since the last report to this Committee (at its meeting on 26 April 2018), there has been no use of RIPA.

## **3. REVIEW OF AUTHORITY POLICY**

- 3.1. Since the last review (as reported to the meeting of the Committee in April of last year), the following changes have been made to the Policy:
  - (a). references to the former Office of the Surveillance Commissioner (OSC) and the Interception of Communications Commissioners Office (IoCCO) have been replaced by a reference to the Investigatory Powers Commissioner Office (IPCO) which now has oversight of all investigatory powers;
  - (b). references in the Policy to the acquisition of communications data and the Policy Section dealing specifically with this have been annotated to indicate that the RIPA regime for this is currently in transition to a new regime under the Investigatory Powers Act 2016. It is anticipated that the new regime will be fully in force and the former RIPA regime repealed by the end of 2019. The annotations indicate that, once the new regime is fully in force, the Policy will be amended to reflect the new processes and that, in the meantime, advice should be sought from the Senior Responsible Officer as to the process to be used prior to seeking to acquire any communications data;

- (c). The hyperlinks in Appendix A to the Policy have been updated to direct to the most recent versions of the various codes of practice for RIPA and the Investigatory Powers Act
- (d). The list of Designated Officers (for the purposes of RIPA oversight, applications and authorisations) as set out at Appendix B of the Policy has been updated to list officers currently in place. The Authority is required to have a Single Point of Contact (SPoC) in relation to the process for the acquisition of communications data. Anyone who is to act as the SPoC has to have undertaken appropriate training accredited by, and obtained a PIN reference from, the Home Office. The PIN reference is used to confirm to a communications service provider (CSP) that the SPoC is lawfully entitled to acquire communications data. The former SPoC has recently left the Service, which is currently in the process of sourcing appropriate training provision for a new SPoC.

3.2. These changes are not considered to be material but rather are consequential to changes to the national regime and legislation rather than material. The Committee is therefore invited to endorse the changes. A full copy of the revised Policy can be made available on request.

#### **4. EXTERNAL INSPECTION OF PROCESSES**

4.1. As stated at paragraph 3.1, the Investigatory Powers Commissioner's Office now has responsibility for overseeing the use of investigatory powers by public authorities and in discharging this responsibility can undertake inspections to ascertain that appropriate policies and procedures are in place and are being correctly applied.

4.2. This Authority has twice been inspected by the (former) Office of the Surveillance Commissioner – once in early 2015 (involving a physical visit) and a “light touch” inspection (involving submission of a completed questionnaire and a subsequent telephone conversation for clarification purposes) towards the end of 2017. Recommendations stemming from both inspections were subsequently addressed by revisions to the Authority's RIPA policy (Minutes \*APRC/14 and \*APRC/33 of the meetings of this Committee held on 12 September 2017 and 26 April 2018, respectively, refer). Additionally, the “light touch” inspection commented on the need for appropriate training for all officers involved in the RIPA process. Substantive training was delivered by an external provider in July 2018 and it is intended that proportionate, “light touch” refresher training (utilising provided training materials) will be undertaken later this year.

4.3. Both previous inspections commented specifically that the Authority had never had recourse to use RIPA. This is not uncommon amongst fire and rescue authorities and consequently the National Fire Chiefs Council (NFCC) has written to the Investigatory Powers Commissioner's Office (IPCO) requesting that fire and rescue services be removed from the list of public bodies to which the RIPA powers apply. In responding to the NFCC, the Investigatory Powers Commissioner (the Rt. Hon. Lord Justice Fulford) advises that, while changes to the RIPA schedule lies with the Office for Security and Counter Terrorism (OSCT), the IPCO will suspend all inspections of fire and rescue authorities pending a decision by OSCT. Chief Fire Officers have also been asked, however, to inform the IPCO if they commence using RIPA powers to enable the IPCO to review its need to inspect fire and rescue services.

## **5. CONCLUSION**

- 5.1. 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.
- 5.2. This commitment of the Authority has been recognised in reports from the former Office of the Surveillance Commissioners following previous inspections. This report now sets out amendments to the Authority's RIPA policy and procedures which in the main are as a consequence of changes either in legislation or responsibility for national oversight of investigatory powers. Subject to incorporation of these amendments, it is considered that the Authority's RIPA policy and procedures are robust and will ensure that the Authority is fully compliant with RIPA requirements should it ever prove necessary to employ covert surveillance techniques.
- 5.3. On this basis, the Committee is asked to:
- endorse the changes to the RIPA policy as set out in Section 3 of this report;
  - review the policy in twelve months' time; and
  - otherwise note the contents of this report.

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