

REPORT REFERENCE NO.	APRC/20/13
MEETING	AUDIT & PERFORMANCE REVIEW COMMITTEE
DATE OF MEETING	7 SEPTEMBER 2020
SUBJECT OF REPORT	ACQUISITION OF COMMUNICATIONS DATA UNDER THE INVESTIGATORY POWERS ACT [IPA] 2016
LEAD OFFICER	Director of Governance & Digital Services
RECOMMENDATIONS	<i>That the report be noted.</i>
EXECUTIVE SUMMARY	This paper advises of a legislative change removing fire and rescue authorities as relevant authorities for the purposes of the Investigatory Powers Act 2017 (dealing with the acquisition of communications data) and a consequential amendment to the Authority's RIPA/IPA policy.
RESOURCE IMPLICATIONS	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 authorisations. Any costs associated with the above will be met from within existing resources.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing equalities and human rights legislation.
APPENDICES	Nil.
LIST OF BACKGROUND PAPERS	<p>A. Report APRC/20/7 (Authority Policy for Regulation of Investigatory Powers Act 2000 (RIPA) – Review) to Audit & Performance Review Committee meeting held on 4 March 2020 (and the Minutes of that meeting).</p> <p>B. Report APRC/20/9(a) (Authority Policy for Regulation of Investigatory Powers Act 2000 (RIPA) – Further Considerations (Acquisition of Communications Data under the Investigatory Powers Act [IPA] 2016)) to Audit & Performance Review Committee meeting held on 4 March 2020 (and the Minutes of that meeting).</p> <p>C. The Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) (No. 2) Regulations 2020.</p>

1. BACKGROUND

- 1.1. At its meeting on 4 March 2020, the Committee considered, amongst other things, a report reviewing the Authority's policy in relation to the Regulation of Investigatory Powers Act (RIPA) 2000 and a supplementary report advising of the need to amend this policy to reflect provisions introduced by the Investigatory Powers Act (IPA) 2016 in relation to the acquisition of communications data.
- 1.2. At that time, the Committee was also advised of representations made by the National Fire Chief's Council (NFCC) to the Office of the Investigatory Powers Commissioner (IPC) seeking to remove fire and rescue authorities from regulatory regimes for:
 - (a). direct surveillance and covert human intelligence sources (RIPA); and
 - (b). the acquisition of communications data (IPA)on the basis that these provisions were not required or used by fire and rescue authorities.
- 1.3. The IPC had responded to the NFCC to advise that any change to the regimes would require a decision from the Office for Security and Counter Terrorism but that, pending such a decision, the RIPA inspection regime would be suspended for fire and rescue authorities subject to such authorities not using these provisions.

2. CURRENT POSITION

- 2.1. The Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) (No. 2) Regulations 2020 came into force on 22 July 2020. Amongst other things, these Regulations remove fire and rescue authorities as relevant authorities for the purposes of the Investigatory Powers Act 2016, which deals with the acquisition of communications data.
- 2.2. In light of this, the Authority's RIPA/IPA policy will be amended to remove that section dealing with the acquisition of communications data (as this is no longer relevant to the Authority). It should also be noted, however, that the Communications Act 2003 requires certain telecommunications operators to provide communications data to the emergency services following a "999" emergency call. IPA and its associated Codes of Practice are not intended to regulate the handling of such emergency calls and a period of one hour after termination of an emergency call (referred to as "the golden hour") falls outside the provisions of IPA in relation to the disclosure of communications data to emergency services.
- 2.3. The Authority has, historically, never used either direct surveillance or covert human intelligence sources for any of its functional activities and it is not envisaged that there would ever be a requirement for these techniques to be used. Nonetheless, pending any further legislative change the RIPA regime continues to apply to the Authority albeit that the associated inspection regime remains suspended. The Committee will be advised of any further changes.

MIKE PEARSON

Director of Governance & Digital Services