

REPORT REFERENCE NO.	AGC/21/5
MEETING	AUDIT & GOVERNANCE COMMITTEE
DATE OF MEETING	30 JULY 2021
SUBJECT OF REPORT	AUTHORITY POLICY FOR REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) – REVIEW
LEAD OFFICER	Director of Governance & Digital Services
RECOMMENDATIONS	<i>That the report be noted.</i>
EXECUTIVE SUMMARY	<p>The Regulation of Investigatory Powers Act 2000 (RIPA) governs the use by public 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. While this Authority has never used, nor envisages ever using, the types of covert techniques governed by RIPA, it is nonetheless required to have appropriate policies and procedures in place should the use of such techniques ever be required.</p> <p>The Authority is also required, under the various codes of practice in place, to review its policies and procedures for RIPA at least annually and to report on (in anonymised form) any use of RIPA over the last twelve months</p> <p>The Committee last received a report on these issues at its meeting on 4 March 2020. This paper now sets out the findings of the most recent review.</p>
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 authorisation. Any costs associated with the above will be met from within existing resources.
EQUALITY RISKS AND BENEFITS ANALYSIS	The contents of this report are considered compatible with existing equalities and human rights legislation.
APPENDICES	Nil (NOTE: a copy of the Authority RIPA policy can be a made available on request)

BACKGROUND PAPERS

- A. Regulation of Investigatory Powers Act 2000.
- B. Investigatory Powers Act 2016.
- C. Report APRC/20/7 (Authority Policy for Regulation of Investigatory Powers Act 2000 [RIPA] – Review) to the [then] Audit & Performance Review Committee meeting held on 4 March 2020 (and the Minutes of that meeting).
- D. Report APRC/20/13 (Acquisition of Communications Data under the Investigatory Powers Act [IPA] 2016) to the [then] Audit & Performance Review Committee meeting held on 7 September 2020 (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 ever be a need to use. Instead, it is considered that all information required by the Authority to discharge its statutory functions can be gathered by non-covert means.
- 1.3. Nonetheless, the Authority is still required to have in place a policy setting out the 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 the [then] Audit & Performance Review Committee on 4 March 2020, there has been no use of RIPA by the Authority.

3. REVIEW OF AUTHORITY POLICY

- 3.1. At its meeting on 7 September 2020, the [then] Audit & Performance Review Committee was advised of the requirement to remove references on the acquisition of communications data from the Authority's RIPA policy as the Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) (No. 2) Regulations 2020 had removed fire and rescue authorities as relevant authorities for the purposes of the Investigatory Powers Act 2016 ("the 2016 Act").

- 3.2. The Authority's RIPA policy was subsequently amended accordingly. 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. The 2016 Act 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 the 2016 Act in relation to the disclosure of communications data to emergency services.
- 3.3. Other than the change referred to in the above paragraphs, it has not been necessary to amend the Authority's Policy in any respect. The Committee is also reminded that, following the review in 2019 and in response to representations made by the National Fire Chiefs Council (NFCC), the Investigatory Powers Commissioner's Office suspended RIPA inspections of fire and rescue authorities pending a decision by the Office for Security and Counter Terrorism (OSCT) on amending the RIPA schedule to remove fire and rescue authorities from the list of public bodies able to use RIPA powers. The RIPA inspection regime remains suspended but as yet there has been no confirmation from the OSCT on the removal of fire and rescue authorities from the RIPA schedule.

4. CONCLUSION

- 4.1. 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.
- 4.2. This commitment of the Authority has been recognised in reports from the former Office of the Surveillance Commissioners following previous inspections. Additionally, any recommendations from the previous reports have been actioned and the RIPA policy updated as required to reflect legislative changes.
- 4.3. The outcome of the most recent review has not highlighted any changes required to the policy. The Authority's current 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.
- 4.4. The policy will be subject to another review in twelve months' time (as required) and any changes required in the meantime (as might arise from a change in the RIPA regime) will be reported to the Committee as required.

MIKE PEARSON
Director of Governance & Digital Services