

## **REPORT TO AUDIT AND GOVERNANCE**

Date of Meeting: 19 March 2025

Report of: Head of Legal and Democratic Services & Monitoring Officer

Title: Update on the use of investigatory powers and the Regulation of Investigatory Powers Act 2000 Joint Policy and Procedure.

### **Is this a Key Decision?**

No

### **Is this an Executive or Council Function?**

Neither. This report is for consideration by the Council's Audit and governance Committee.

### **1. What is the report about?**

This report provides an update on the application of the Regulation of Investigatory Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016. The legislation concerns the use by local authorities of covert methods of surveillance and information gathering to assist in the detection and prevention of crime in relation to the Council's functions.

A copy of the Council's policy, 'Regulation of Investigatory Powers Act 2000 Joint Policy and Procedure' (update February 2025) is attached to this report.

The Investigatory Powers Commissioner's Office (IPCO) is responsible for the oversight of covert surveillance by public authorities in the United Kingdom.

### **2. Recommendations:**

2.1 That Members consider this report and in particular note that the powers of surveillance under the Regulation of Investigatory Powers Act 2000 have not been exercised for the period 1 April 2023 to 31 March 2024;

2.2 That Audit and Governance Committee recommend to Council that the attached updated Council policy, the 'Regulation of Investigatory Powers Act 2000 Joint Policy and Procedure' is noted and approved.

### **3. Reasons for the recommendation:**

3.1 To ensure that Members are aware of the Council's policy and the extent to which statutory powers of surveillance have been used by Exeter City Council.

### **4. What are the resource implications including non financial resources**

There are no resource implications raised by this report.

### **5. Section 151 Officer comments:**

5.1 There are no financial implications contained in the report.

## **6. What are the legal aspects?**

6.1 Members will note the report details set out at paragraph 8 below together with the Council's policy attached to this report.

## **7. Monitoring Officer's comments:**

7.1 The use of covert surveillance methods is a sensitive issue. Its use is strictly regulated in order to uphold the right of individuals concerning respect for their private and family life, home and correspondence as set out in Article 8 of the European Convention on Human Rights and applied in domestic law through the Human Rights Act 1998. The legislation concerning powers of covert surveillance is primarily set out in the Regulation of Investigatory Powers Act 2000 which sets out strict criteria which must be satisfied in order for interference with the Article 8 rights to be justified as a matter of law. The use of the statutory powers is carefully supervised and must only be applied in accordance with statutory provisions.

## **8. Report details:**

This report provides an update to Members concerning the Council's use of the powers of covert surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA) for the period 1 April 2023 to 31 March 2024. Members will note that the Council has not exercised these powers for this period.

Members will also note the attached 'Regulation of Investigatory Powers Act 2000 Joint Policy and Procedure'. The policy was last reviewed in May 2023. It has been updated to reflect the new appointment to the post of Senior Responsible Officer (Simon Copper: Head of Legal & Democratic Services and Monitoring Officer). In addition to the existing Authorising Officer (Matthew Hall: Team Lead - ECL, Contracts and Licensing) an additional Authorising Officer has been appointed (Danny Damarell: Team Lead - Housing and Litigation). The post of RIPA Co-ordinating Officer is to be filled. The post was previously held by a member of the internal audit team. This came to an end when the internal audit function was transferred to the South West Audit Partnership in 2024.

Local authorities have the power, subject to stringent safeguards, to use powers of directed covert surveillance, Covert Human Intelligence Sources and to intercept communications data.

The provisions of the European Convention on Human Rights were incorporated into domestic law by the Human Rights Act 1998 which incorporated the Convention rights from October 2000.

Members will note the protection afforded by Article 8(1) of the European Convention on Human Rights that '[e]veryone has the right to respect for his private and family life, his home and his correspondence'. This is a qualified and not an absolute right. Article 8(2) provides the following qualification to Article 8(1):

'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the

prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’.

In order to comply with Article 8 of the Convention, the Regulation of Investigatory Powers Act 2000 (RIPA 2000) and subsequently the Investigatory Powers Act 2016 were established to govern the use of directed surveillance, the use of covert human intelligence sources (CHIS) and the interception of communications by public bodies, including local authorities, in the UK.

The use of such powers is regulated by statute so that such actions must be authorised by a statutorily authorised person. The use of covert directed surveillance can only take place provided authorisation is secured. This is a robust two-stage process. Initially, the authorisation must be granted by a designated Authorising Officer within the Council. The Authorising Officer must be satisfied that the surveillance is necessary for the purposes of preventing or detecting crime and that the surveillance is proportionate to what is sought to be achieved by carrying it out. Additionally, local authorities are only able to authorise directed surveillance for the purpose of preventing or detecting conduct which would constitute an offence punishable whether on summary conviction or indictment by a maximum term of at least six months imprisonment. The authorisation must specify the nature of the surveillance and the circumstances under which it will be conducted. Once the internal authorisation is obtained, the local authority must seek judicial approval. This requires the presentation of the authorisation to a magistrate who will review the application to ensure it meets the requisite legal requirements. The magistrate must be satisfied that the surveillance is necessary and proportionate, and that it meets the seriousness threshold, which generally requires that the crime being investigated is punishable by a maximum term of at least six months imprisonment. The process ensures that the use of covert directed surveillance by local authorities is subject to stringent oversight with the aim of safeguarding the Article 8 rights of individuals.

The provisions related to CHIS concern the use of individuals who establish or maintain personal relationships for the covert purpose of obtaining information. Similar grounds are set out in RIPA concerning the use of CHIS. The authorisation of the use of CHIS must be necessary for the purpose of preventing and detecting crime and that the authorised conduct or use must be proportionate to what is sought to be achieved by that conduct and use. Arrangements for managing and controlling the CHIS must also be in place.

The Investigatory Powers Act 2016 (IPA 2016) has largely replaced RIPA 2000 in areas such as the interception and acquisition of communications data. IPA 2016 provides the statutory basis for the acquisition of communications data.

The Investigatory Powers Commissioner plays a central role in authorising the interception or release of communications data to local authorities under the IPA 2016. The Commissioner can grant authorisations to obtain communications data if it is deemed necessary and proportionate for specific purposes, such as preventing or detecting crime. In practice, the Office for Communications Data Authorisations (OCDA) handles these applications on behalf of the Commissioner. The OCDA plays a central role in overseeing and granting authorisations for obtaining communications data. The OCDA handles requests from public authorities (and law enforcement agencies) for access to communications data.

It is responsible for ensuring that the requests meet the necessary and proportionate criteria. The Investigatory Powers Commissioner may authorise the acquisition of communications data if it is necessary for purposes such as national security, preventing or detecting serious crime, or public safety. The National Anti-Fraud Network (NAFN) acts as a 'gatekeeper' for local authorities seeking to acquire communications data. Local authorities must access the OCDA via the NAFN, which provides advice and ensures compliance with the legal requirements. Specifically, local authorities do not authorise their own applications. This process is designed to ensure that the acquisition of communications data is conducted lawfully and proportionately, and with the statutory oversight of the Investigatory Powers Commissioner.

The Investigatory Powers Commissioner's Office has oversight functions in relation to covert surveillance, covert human intelligence sources and the use of acquisition and use of communications data, including auditing, inspecting, and investigating the exercise of statutory functions by public authorities. This ensures compliance with legal requirements and safeguards to protect privacy in accordance with the Article 8 convention right set out above.

## **9. How does the decision contribute to the Council's Corporate Plan?**

The updates in this report contribute to the corporate objective of 'leading a well-run Council' by providing a policy on investigatory powers and controlling the use of covert surveillance and other forms of investigatory powers and having a policy to control these activities. This ensures that the Council complies with the strategic priority of upholding good governance.

## **10. What risks are there and how can they be reduced?**

The purpose of the policy is designed to give effect to legislation safeguarding privacy rights of individuals. By complying with the policy, the risk of non-compliance with the legislation is reduced.

## **11. Equality Act 2010 (The Act)**

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and

new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on individuals with protected characteristics as determined by the Act because the policy applies equally to all individuals.

## **12. Carbon Footprint (Environmental) Implications:**

12.1 No direct carbon/environmental impacts arising from the recommendations.

## **13. Are there any other options?**

13.1 No. In order to comply with the statutory provisions, it is necessary to have a policy in place and to report to Members on the use of surveillance powers

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## **Local Government (Access to Information) Act 1972 (as amended)**

Background papers used in compiling this report:

None

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