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| Agenda Item No: | 10  |  |
| Committee:      | Audit and Risk Management Committee                         |  |
| Date:           | 12 <sup>th</sup> May 2025                                   |  |
| Report Title:   | Regulation of Investigatory Powers Act (RIPA) Annual Report |  |

### **Purpose / Summary**

This report is intended to provide members of the Audit and Risk Management Committee with an annual update on Fenland District Council's use of the Regulation of Investigatory Powers Act 2000 (RIPA).

### **Key issues**

- Good practice suggests that the Councils Audit and Risk Management Committee (ARMC) should review the operational use of RIPA as well as undertaking any updates and amendments to the Council's RIPA Policy.
- The Council has not used RIPA since its activities were last reported to the ARMC on 12<sup>th</sup> February 2024.
- The Council completed a review of its RIPA Policy in 2023/24 and this was presented to and approved by the AMRC on 12<sup>th</sup> February 2024.

### **Recommendations**

That the Audit and Risk Management Committee is requested to note this annual report on the Council's use of RIPA.

|                             |  |
|-----------------------------|--|
| <b>Portfolio Holder(s)</b>  | Cllr Chris Boden – Portfolio Holder for Finance      |
| <b>Report Originator(s)</b> | Peter Catchpole – Corporate Director & s.151 Officer |
| <b>Contact Officer(s)</b>   | Amy Brown – Assistant Director                       |
| <b>Background Paper(s)</b>  | None   |

## **1. BACKGROUND**

- 1.1 Local authorities exercise criminal investigation powers for numerous reasons e.g. fly tipping and planning enforcement. Officers are required to gather evidence to support their investigations and sometimes, it is necessary to do this via the use of surveillance.
- 1.2 RIPA and the Investigatory Powers Act 2016 (IPA2016) regulate the use of surveillance powers by public authorities including directed surveillance, the use of covert human intelligence sources (CHIS) and access to communications data.
- 1.3 Fenland District Council is a very rare user of these powers however, it is important that it has sufficient oversight of its activities to ensure that any considered use is compliant with the subject's human rights. Such surveillance is only lawful if the actions are necessary (to the required standard), proportionate, non-discriminatory, lawful and properly approved.
- 1.4 The types of activity regulated by RIPA and the IPA2016 include:

### **1.4.1 Directed Surveillance**

This is covert surveillance conducted for the purpose of a particular investigation (which meets the relevant thresholds) or operation that is likely to result in the obtaining of private information about a person (and is not in immediate response to relevant events).

The relevant thresholds will be met if the covert surveillance is carried out for the purpose of preventing or detecting a criminal offence and it meets the serious crime test i.e. that the criminal offences which are sought to be prevented or detected are:

- Punishable whether on summary conviction or on indictment by a maximum term of at least 6 months of imprisonment; or
- Would constitute an offence under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933.

Private information includes any aspect of a person's private or personal relationships with others including family and professional or business relationships. For example, covert surveillance might mean the use of CCTV to monitor an individual's movement or their actions. Whilst the CCTV camera itself is overt, it is the use of the camera to track that specific individual's actions without them knowing which makes it covert.

Directed surveillance is only permitted if authorised by a Justice of the Peace.

### **1.4.2 Covert Human Intelligence Sources**

This is the practice of using an officer or 3<sup>rd</sup> party (such as adults and/or children in certain circumstances) for the purposes of establishing and maintaining a personal or other relationship with a person for the covert purpose of obtaining information. This could be an officer who builds a relationship with an individual operating a business in order to gain evidence of an offence by that individual. It may also be the use of underage volunteers to purchase age restricted products.

The required criteria for the use of a CHIS to be authorised is for the 'prevention and detection of crime and the prevention of disorder'. The serious crime criteria do not apply to CHIS however their use also has to be approved by a Justice of the Peace at Magistrates Court.

### **1.4.3 Communications Data**

Via the National Anti-Fraud Network (NAFN), the Council can require the release of communications data from communications service providers ("CSP") where appropriate circumstances exist. CSPs are anyone who provide a postal or telecommunications service e.g. Royal Mail, British Telecom, Vodafone etc.

Communications data is generated in the provision, delivery and maintenance of postal or telecommunications services but it does not include the content of the communication. For example, it is possible to obtain information which identifies the subscriber to a mobile phone and see the call history however, it is not possible to gain access to the actual content of the calls.

Councils only have the power to acquire the following data from CSP's:

- Billing, delivery and installation address;
- Contact telephone numbers;
- Periods of subscription use;
- Itemised telephone call records;
- Itemised records of connections to internet services;
- Provision, and use of forwarding/redirection services;
- Records of postal items, e.g. registered, recorded or special delivery postal items;
- Top up details for mobile phones, credit/debit card details and voucher top up details.

CSP's will only respond to requests from Council's via designated contacts who must have undertaken and passed a Home Office approved course. NAFN is a designated contact however, Fenland District Council does not currently subscribe to it and does not therefore directly acquire communications data however, the Anglian Revenues Partnership is a member of NAFN and can obtain data on our behalf in appropriate circumstances.

The ARP are required to report on their usage in support of this annual Report and in compliance with the Council's general record keeping requirements.

## **2 FENLAND DISTRICT COUNCIL AUTHORISED ACTIVITY**

- 2.1 Details of the applications that Fenland District Council have made over the last 5 years are as follows:

2.1.1 **Directed Surveillance or Covert Human Intelligence Sources**

| Description                               | 2024/25 | 2020/2024 |
|---|---------|-----------|
| Number of Applications made               | 0       | 1         |
| Number of Applications granted            | 0       | 1         |
| Number of authorisations cancelled        | 0       | 1         |
| Number of ongoing authorisations 2023/24. | 0       | 0         |

2.1.2 **Use of Acquisition and Disclosure of Communications Data**

No applications for the disclosure of communications data were made during the municipal years 2020/21, 2021/22, 2022/23 and 2024/25. One application was made during 2023/2024 as previously reported.

- 2.2 There have been no reported instances of Fenland District Council having misused its powers under the relevant Acts or any use of RIPA over the last municipal year.

## **3 INSPECTION AND REPORTING**

- 3.1.1 The Council continues to receive regular inspections from the Investigatory Powers Commissioner's Office (IPCO). The last inspection was carried out in 2024 and the next inspection is due in 2027. The outcome of the inspection was successful with some useful procedural pointers for implementation in relation to future applications. There were no major/immediate issues to address.

- 3.1.2 In addition to inspections, IPCO require the submission of annual statistical data each year for the purpose of compiling their annual report as well as for the Council to arrange for training to be carried out once in every three-year period:

- 3.1.2.1 IPCO's Annual Report is published on its website via the following link: [Annual Reports - IPCO](#) (the last report at the time of writing published 26 March 2024). Part 15 provides the findings in relation to local authorities.

- 3.1.2.2 At the time of last reporting, updated training had been provided to all relevant officers. In that regard, training was provided to enforcement officers and heads of service during Autumn 2022 and SIRO/Authorising Officer took place on 15<sup>th</sup> March 2023. Further training will be provided to all groups during the current municipal year.

## **4 REASONS FOR RECOMMENDATIONS**

- 4.1 It is requested that members of the Audit and Risk Management Committee agree the recommendations set out in this Report in order to ensure that Fenland District Council is compliant with its responsibilities under the relevant legislation, associated Codes and guidance and IPCO inspection requirements.

## **5 CONSULTATION**

- 5.1 There are no specific consultation requirements connected with the recommendations comprised within this Report.

## **6 ALTERNATIVE OPTIONS CONSIDERED**

- 6.1 It is a constitutional requirement reflecting recommended best practice for the Audit and Risk Management Committee to receive an annual report relating to the Council's activity under the relevant Acts as well as any proposed updates to the RIPA Policy and updated training etc. There are therefore no recommended alternatives to this requirement.

## **7 IMPLICATIONS**

### **7.1 Legal Implications**

- 7.1.1 The legal implications are as set out in the main body of this Report and the associated RIPA Policy.

### **7.2 Financial Implications**

- 7.2.1.1 There are no significant financial implications associated with the recommendations set out within this Report. The RIPA Policy requires an ongoing financial commitment to resourcing its operation by relevant officers and the associated training.

### **7.3 Equality Implications**

- 7.3.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

7.3.2 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.