

Executive Report

Delegated Decisions – 14 November 2023

REVIEW OF REGULATION OF INVESTIGATORY POWERS POLICY

Name of Cabinet Member	Councillor Rob Middleton Cabinet member for Resources
Report sponsor	Sharon Bridglalsingh Director of Law and Governance
Report author	Catherine Stephens Head of Legal Services catherine.stephens@milton-keynes.gov.uk / 07443204584 Katrina Reynolds Principal Lawyer katrina.reynolds@milton-keynes.gov.uk / 07979828053

Exempt / confidential / not for publication	No
Council Plan reference	Ref number / Not in Council Plan
Wards affected	All wards / list individual wards

Executive summary

The Regulation of Investigatory Powers Act 2000 (RIPA) sets out the regulation of covert surveillance by public bodies in furtherance of relevant prosecutions. Where a local authority seeks to rely on evidence obtained by means of regulated surveillance an application to the magistrates' court is required to authorise such activity. No authorisations have been sought in this period – which is not unique across the sector.

The authorisation process is set out in the RIPA policy, which should be approved and reviewed by the Executive every 12 months.

There is a process of external inspection via IPCO Investigatory Powers Commissioner's Officer, who regularly inspect Local Authorities to ensure compliance with regulation of surveillance. MKCC had an arm's length inspection in 2023 and is not due another until 2026.

In addition to the policy, regular training is devised and delivered, by external and internal trainers, the most recent having taken place on 13 October 2023.

1. Proposed Decision(s)

- 1.1 That the Council's policy on the use of surveillance powers under the Regulation of Investigatory Powers Act 2000 (RIPA) be reviewed and approved (attached at Annexe A).
- 1.2 That authority be delegated to the Director of Law and Governance to make:
 - a) amendments required by legislation prior to annual review; and
 - b) other minor amendments.

2. Reasons for the decision?

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is designed to ensure that public bodies respect the privacy of the public when carrying out investigations, and that any interference with that privacy is strictly in accordance with Regulation and where there is a clear public interest for so doing.
- 2.2 RIPA regulates the use of surveillance and control of human information sources, and to ensure MKCC operate within the law, a policy setting out the requirements of officers and the process of authorising actions is required. Such policy has been in place in MKCC for some time, but there is no recent record of this being reviewed.

3. Background to the decision

- 3.1 There are two types of Surveillance under the Act the Council may be involved in:
 - Directed Covert Surveillance a – the observation of a person with the intention of gathering information which would otherwise be private, and
 - the use of Covert Human Intelligence Sources (CHIS) to gather such information.
- 3.2 In practice the use of regulated surveillance will include use of concealed cameras to gather evidence of eg Environmental Crime, Antisocial behaviour planning enforcement actions etc.
- 3.3 A CHIS may be someone who volunteers information to the council as a complainant, who is then used as a an intelligence source to gather information about a possible crime which MKCC would prosecute. In reality the use of Human Intelligence Sources by the council will be extremely rare.
- 3.4 The policy sets out the procedure for proper authorisation of regulated Surveillance and this will be subject to audit both internally and externally by the Investigatory Powers Commissioner's Office.
- 3.5 All directed surveillance must be properly authorised. Failure to so do could lead to evidence being excluded by courts, and could be a potential source of legal action against MKCC.

3.6 The Authorisation process requires officers to set out the surveillance they wish to conduct, their reasons for that in written form which must be approved by an Authorising Officer

3.7 Authorising Officers are:

- The Senior Responsible Officer for Milton Keynes City Council: Sharon Bridglalsingh, Director of Law and Governance.
- Chief Executive: Michael Bracey
- Head of Legal Services and Deputy Monitoring Officer: Catherine Stephens
- Head of Regulatory Services: Neil Allen
- Chief Internal Auditor: Jacinta Fru

4. Implications of the decision

Financial		Human rights, equalities, diversity	Y
Legal	Y	Policies or Council Plan	Y
Communication		Procurement	
Energy Efficiency		Subsidy	
Workforce		Other	

a) Financial implications

There are no financial implications arising from this decision.

b) Legal implications

A Recent inspection of MKCC practices in this area resulted in a positive review, which included noting a review of RIPA Policy, RIPA training (September 2023) as well as submission of the RIPA Policy to elected members. Best practice recommends that the necessary internal governance and oversight is conducted consisting of:

- policy refreshes;
- annual updates to Councillors;
- ongoing training and awareness raising;
- internal compliance monitoring by lead managers within their business areas; and
- the retention, review and destruction (RRD) of any product obtained through the use of covert powers (Records and Product Management in accordance with the Safeguards Chapters of the relevant Codes of Practice).

A programme is in place to ensure that internal governance of the RIPA process is robust, and as a result the policy will be brought to members annually as part of this programme.

5. Alternatives Considered

5.1 Do nothing – this is not viable because we are required to comply with regulations and therefore it is necessary to set this out in Policy.

6. Timetable for implementation

6.1 The Policy will be implemented immediately on adoption, and reviewed annually, with any significant changes subject to a further delegated decision.

6.2 Compliance and use of RIPA powers during the year will be reported to Audit Committee.

List of annexes

Annex A – Regulation of Investigatory Powers Act 2000 Policy

List of background papers

None