

Report for: Cabinet – 14 March 2017

Item number: 14

Title: RIPA – use of legislation and updated procedures

Report authorised by : Bernie Ryan
AD Corporate Governance

Lead Officer: Anne Woods
Head of Audit and Risk Management
Ext: 5973
Email: anne.woods@haringey.gov.uk

Ward(s) affected: All

**Report for Key/
Non-Key Decision:** Non-Key Decision

1. Describe the issue under consideration

- 1.1 To inform Cabinet about issues relevant to the use of the Regulation of Investigatory Powers Act (RIPA) 2000; and provide an updated policy for approval.

2. Cabinet Member Introduction

- 2.1 The Council uses RIPA infrequently, but needs to comply with legislation and report the use of directed surveillance to members. I am satisfied that the Council uses the powers afforded to it under the RIPA legislation appropriately, as signified by the approval of the requested directed surveillance applications and the feedback from the Office of the Surveillance Commissioner.
- 2.2 The updates to the policy with regard to the use of social media accord with guidance issued by the Home Office and the Office of the Surveillance Commissioner in 2016; and on that basis I recommend that Cabinet approve the policy.

3. Recommendations

- 3.1 The Cabinet notes the use of RIPA by the Council;
- 3.2 The Cabinet approves the amended RIPA policy at Appendix 1 (updated at Section 6 – Social Networking Sites and Internet Sites) and agrees that the officers listed in the appendix to Appendix 1 be permitted to authorise directed surveillance and the use of covert intelligence under s.28 and S.29 of RIPA 2000 prior to judicial approval; and
- 3.3 The Cabinet delegates responsibility for updating and maintaining operational procedures for RIPA, in line with the Council's approved RIPA policy, to the Assistant Director for Corporate Governance.

4. Reasons for decision

- 4.1 The Protection of Freedoms Act requires members to be advised about the use of powers under RIPA and to approve the Council's policy for the use of directed surveillance.

5. Alternative options considered

- 5.1 The Codes of Practice that cover RIPA require the Council to report the use of its powers under the Act and obtain member approval for its policy on the use of RIPA. This report fulfils the Council's requirements under the Codes of Practice. There are no alternative reporting or approval options available under the Codes of Practice.

6. Background information

- 6.1 On 25 September 2000 the Regulation of Investigatory Powers Act (RIPA) was brought into effect in England and Wales. The purpose of the Act was to ensure that all public authorities were able to carry out directed (covert) surveillance on a statutory basis without breaching The Human Rights Act 1998, Article 8, the right to privacy. RIPA enables local authorities to carry out certain types of surveillance activity as long as specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in court proceedings, provided RIPA is complied with. Under RIPA the Home Secretary issues Codes of Practice with which authorising authorities are expected to comply.
- 6.2 On 1 November 2012, the Protection of Freedoms Act 2012 came into effect. This legislation requires local authorities to obtain judicial approval before using RIPA. Since this date, all applications must also be authorised by a Justice of the Peace before they can take effect and the Council has to apply to the Magistrates Court to grant an order approving the authorisation. This requirement applies to all areas of RIPA, including directed surveillance, and communications data.
- 6.3 Other amendments to the RIPA regime made at the same time limit the use of RIPA to offences that have a custodial sentence of six months or more, with some exceptions relating to the sale of alcohol and tobacco to children.
- 6.4 The use and application of RIPA legislation is monitored by two government offices who both report to parliament and the Secretary of State. The Office of the Surveillance Commissioner (OSC) monitors the use of RIPA in relation to directed surveillance. The Interception of Communications Commissioner's Office (IOCCO) is responsible for monitoring the use of RIPA in relation to communications data. Visits are made to local authorities to monitor compliance with RIPA legislation by both the OSC and the IOCCO. Both organisations require annual returns and performance information to be made.
- 6.5 The Codes of Practice state that elected members should review the authority's RIPA policy; and its use of RIPA annually.

7. Operational Procedures in Haringey

- 7.1 The Home Office Codes of Practice recommend that a member of the organisation's corporate leadership team should be the Senior Responsible Officer for oversight of RIPA. Within Haringey, the Senior Responsible Officer (SRO) is the Assistant Director of Corporate Governance, who has been provided with guidance on the SRO role and its responsibilities.
- 7.2 It is proposed that the officers listed in the appendix to Appendix 1 approve RIPA forms prior to seeking judicial approval. These officers have been trained in the use and application of RIPA. Refresher training is provided on a regular basis to ensure all officers are kept up to date with their roles and responsibilities.
- 7.3 Haringey has produced its own local operational guidance and procedure notes for RIPA, which are in accordance with the Home Office's requirements; and these are circulated to all officers involved in RIPA when updates to the legislation or standard forms are issued. These operational guidance and procedure notes are also published on the Council's intranet site.
- 7.4 Haringey makes very limited use of RIPA legislation and the Council has always complied fully with the legislative requirements. A summary of the total number of applications to use RIPA from 2014/15 to 2015/16 is detailed in Table 1 below. There have been no applications by the Council to use RIPA in 2016/17.

Table 1

Year	2014/15 applications	2015/16 applications
Service area		
Community Safety & Regulatory Services	1	1
Total	1	1

- 7.5 Table 2 below provides details of the use made of RIPA during 2014/15 and 2015/16. All requirements of RIPA have been fulfilled and relevant statutory annual returns have been completed.

Table 2

Service area	Use applied for	Application authorised
Community Safety & Regulatory Services	Covert surveillance to capture evidence of serious anti-social behaviour, including alleged drug dealing, within housing blocks	Yes
Community Safety & Regulatory Services	Covert surveillance to capture evidence of the trade of illegally slaughtered sheep/ goat carcasses.	Yes

- 7.6 The Council was subject to an inspection visit from the Office of the Surveillance Commissioner during November 2016. The main points reported by the inspector were:
- The single recommendation made in the previous inspection (2013) – to ensure necessity and proportionality were appropriately considered by authorising officers – was confirmed as being implemented;
 - The Council makes extremely modest use of the statutory powers;

- There is a well structured training arrangement in place to ensure knowledge of the legislation and continuity for authorising officers;
- The Council's policy and procedures comply with relevant legislation and guidance;
- The review of the two applications for directed surveillance completed since the previous inspection were both approved. Some minor procedural points were raised in relation to ensuring that dates of approval, expiry and cancellation were correctly stated;
- Although the Council's policy referenced the monitoring by staff of social media to further investigations and the consideration of whether this needed a RIPA authorisation in accordance with guidance issued, the inspector recommended that further training and guidance should be considered for those services who may use social media as part of their routine processes to ensure that there is a full understanding of the circumstances of the use. This was the only recommendation made.

7.7 The recommendation made by the inspector has been accepted by the SRO and will be implemented during 2017. It is reflected in the revised draft policy at Appendix 1. The Chief Surveillance Commissioner has been advised of this by the SRO.

7.8 The amendments to the Council's policy are contained in Section 6 – Social Networking Sites and Internet Sites. The previous version of the policy contained information on the use of social media (Facebook, Twitter, Whatsapp, Snapchat etc), but Section 6 now provides more detailed guidance on how to use social media within RIPA guidelines, at paragraph 6.2.

8. Contribution to strategic outcomes

8.1 The Council needs to comply with relevant legislation to ensure that it can demonstrate that directed surveillance is undertaken lawfully.

9. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

8.1 Chief Finance Officer

8.1.1 There are no direct financial or procurement implications arising from this report. The work within Audit & Risk Management and other services to undertake directed surveillance and comply with RIPA legislation is contained and managed within the relevant services' revenue budgets.

8.2 Legal

8.2.1 The Assistant Director Corporate Governance has been consulted in the preparation of this report. The Legal issues have been set out in the body of the report.

8.3 Equality

8.3.1 The Council has a public sector equality duty under the Equality Act (2010) to have due regard to:

- tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil

partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;

- advance equality of opportunity between people who share those protected characteristics and people who do not; and
- foster good relations between people who share those characteristics and people who do not.

When using RIPA legislation, the Council will be required to demonstrate a strong commitment to equality and fairness in their actions and work practices, and adherence to the Equality Act 2010.

10. Use of Appendices

Appendix 1 – RIPA Policy 2017.

11. Local Government (Access to Information) Act 1985

N/A