

Report for: Cabinet – 11 September 2018

Title: The Regulation of Investigatory Powers Act (RIPA) – use of legislation and updated procedures

Report

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AD Corporate Governance

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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 a refreshed policy for approval.

2. Cabinet Member Introduction

2.1 The Regulation of Investigatory Powers Act 2000 (“RIPA”) provides a statutory framework for public authorities to use covert investigatory techniques such as surveillance, where necessary and proportionate, for the purpose of preventing or detecting crime.

2.2 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 (now called the Investigatory Powers Commissioner).

2.3 The changes to the policy contained in this report correspond with guidance issued by the Home Office and the Office of the Surveillance Commissioner in 2016. On that basis I recommend that Cabinet approve the policy.

3. Recommendations

3.1 The Cabinet notes the use of RIPA by the Council; and

3.2 The Cabinet approves the amended RIPA policy at Appendix 1.

4. Reasons for decision

4.1 The Protection of Freedoms Act 2012 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 Not applicable.

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, for the purpose of preventing and detecting crime. The information obtained as a result of surveillance operations can be relied upon in court proceedings, provided RIPA is complied with. The Home Office issues Codes of Practice for exercise of local authority powers.

6.2 Surveillance includes; monitoring, observing or listening to persons, monitoring or observing their movements, conversations or their other activities or communications, and the recording of anything monitored, observed or listened to in the course or surveillance. It also includes surveillance by or with the assistance of a surveillance device.

6.3 The acquisition and use by Local Authorities of certain telephone and other communications data (ACD) (not including content) is also regulated by the Act. The authority uses the services of the National Anti Fraud Network (NAFN) for this purpose.

6.4 The Act also regulates the use of Covert Human Intelligence Sources (CHIS).

6.5 Local authorities must obtain judicial approval before RIPA can be used. 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 acquisition of communications data.

6.6 Local authority use of RIPA is restricted to offences that carry a maximum sentence imprisonment for six months or more, with some exceptions relating to the sale of alcohol and tobacco to children.

6.7 The use and application of RIPA legislation is monitored by the Investigatory Powers Commissioner's Office (IPCO). Visits are made to local authorities to monitor compliance with RIPA legislation by IPCO and they require annual returns and performance information to be made.

6.8 The Codes of Practice state that elected members should review the authority's use of RIPA annually and approve its policy.

7. Operational Procedures in Haringey

7.1 The Home Office Code of Practice recommends 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 guidance 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 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 (including ACD) from 2014/15 to 2017/18 is detailed in Table 1 below.

Table 1

Year	2014/15 applications	2015/16 applications	2016/17 applications	2017/18 applications
Service area				
Community Safety & Regulatory Services	1	1	0	0
Total	1	1	0	0

- 7.5 Table 2 below provides details of the use made of RIPA during 2014/15 to 2017/18.

Table 2

Service area	Use applied for	Application authorised
Community Safety & Regulatory Services 2014/15	Covert surveillance to capture evidence of serious anti-social behaviour, including alleged drug dealing, within housing blocks	Yes
Community Safety & Regulatory Services 2015/16	Covert surveillance to capture evidence of the trade of illegally slaughtered sheep/goat carcasses.	Yes

- 7.6 The Council was last 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 infrequent 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 in 2014/15 and 2015/16 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 use of social media by staff 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. The Chief Surveillance Commissioner has been advised of the Council's acceptance and implementation of the recommendation by the SRO.
- 7.8 On 16 November 2017, the Home Office launched a public consultation on three revised codes of practice; Covert surveillance and property interference code, Protected electronic information code and CHIS (Covert Human Intelligence Sources) code. The consultation closed on 28 December 2017, and the Home Office has now considered the representations made regarding the revised codes of practice.
- 7.9 The revised codes were published on 15 August 2018, these will be considered by the RIPA Co-ordinator and where required, the Council's policy and procedures updated. The SRO and the officers able to authorise directed surveillance and the use of covert intelligence will be updated of the changes and provided training as appropriate.
- 8. Contribution to strategic outcomes**
- 8.1 The Council needs to comply with relevant legislation to ensure that directed surveillance is undertaken lawfully.
- 9. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**
- 9.1 Chief Finance Officer**
- 9.1.1 There are no direct financial implications arising from this report. The work within Audit & Risk Management and other services to undertake and manage RIPA in accordance with statutory requirements is contained and managed within the relevant services' revenue budgets.
- 9.2 Legal**
- 9.2.1 The Assistant Director, Corporate Governance has been consulted in the preparation of this report, and in noting that the RIPA procedures follow legislative requirements / industry guidance and best practice, has no comments.

9.3 Equality

9.3.1 The Council has a public sector equality duty under the Equalities 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.

9.3.2 The Council's RIPA policy actively seeks to promote transparency in decision-making. The Council ensures that requests for authorisation to use RIPA consider any potential impact on individuals and groups who share protected characteristics.

9.3.3 The report notes that the Protection of Freedoms Act 2012 strengthens existing Human Rights legislation, safeguarding individuals from inappropriate levels of covert surveillance.

10. Use of Appendices

Appendix 1 – RIPA Policy July 2018.

11. Local Government (Access to Information) Act 1985

N/A