

Report for: Cabinet – 12 November 2019

Title: Regulation of Investigatory Powers Act (RIPA) 2000: Use within the Council 2019/20 and review of to the Council's investigatory powers policies

**Report
Authorised by :** Bernie Ryan
AD Corporate Governance

Lead Officer: Terese Johansson
Business Manager for Corporate Governance
Ext: 3975
Email: terese.johansson@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 investigatory powers (under the Regulation of Investigatory Powers Act (RIPA) 2000 and Investigatory Powers Act (IPA) 2016) and provide a refreshed policy for approval.

2. Cabinet Member Introduction

2.1 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 is required to 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.

2.3 Changes brought in by the IPA provide a new framework for dealing with communications data; previously RIPA covered communications data. On this basis, I recommend that Cabinet approve the revised RIPA policy for covert surveillance and covert human intelligence sources and a new, separate policy specific to communications data under IPA 2016.

3. Recommendations
That Cabinet:

- 3.1 Notes the use of RIPA by the Council;
- 3.2 Approves the amended RIPA policy at Appendix 1; and
- 3.3 Approves the new IPA policy at Appendix 2.

4. Reasons for decision

- 4.1 The RIPA codes of practice state that members should review the Council's use of investigatory powers at least annually. Therefore, although the powers under RIPA have been used sparsely in recent years, it is nevertheless important for members to be aware of the extent of usage.
- 4.2 There have been multiple legislative changes for investigatory powers since 2018. Therefore, it is important that the existing policy is updated. The proposed new policies reflect the most recent law and codes of practice.

5. Alternative options considered

- 5.1 Not applicable. If the Council's use of investigatory powers was not noted, the Council would not be complying with the codes of practice and so this alternative has not been considered. Similarly, if the existing policy is not updated as suggested it will not account for changes in the law and codes of practice and so this alternative has not been considered.

6. Background information

RIPA

- 6.1 The Regulation of Investigatory Powers Act (RIPA) 2000 was brought in to force in England and Wales in 2000. The purpose of the Act was to ensure that investigatory powers are used in accordance with human rights.
- 6.2 RIPA enables local authorities to use certain investigatory powers for the purpose of preventing and detecting crime, as long as specified procedures are followed. The information obtained as a result of the use of investigatory powers can be relied upon in court proceedings, provided RIPA is complied with. The Home Office issues codes of practice for the use of these investigatory powers, which offer further guidance.
- 6.3 RIPA local authority investigatory powers comprise:
 - Covert surveillance including: monitoring, observing, or listening to persons, their movements, their conversations or other activities. Recording anything monitored, observed or listened to in the course of surveillance. Surveillance by, or with the assistance of, a surveillance device.
 - The use of Covert Human Intelligence Sources (CHIS).
- 6.5 Before a local authority can use these investigatory powers, officers must obtain:
 - Internal authorisation from a director or equivalent; and

- Independent, external authorisation from a Justice of the Peace at a Magistrates' Court.
- 6.6 Local authority use of RIPA is also restricted to the investigation of criminal offences:
- Carrying a minimum sentence of imprisonment for six months or more
 - Relating to the underage sale of alcohol, tobacco and nicotine inhaling products.
- 6.7 The Home Office published revised codes of practice for covert surveillance and covert human intelligence source in August 2018. The revised policy at Appendix 1 ensures compliance with the latest codes of practice.
- 6.8 There have been no substantive changes to the Council's powers to use covert surveillance and Covert Human Intelligence Sources (CHIS) under RIPA.

IPA

- 6.9 The Investigatory Powers Act (IPA) 2016 provides a new legal framework for the acquisition of communication data. Communication data was previously dealt with under RIPA 2000.
- 6.10 Under IPA, local authorities can access certain communications data. Communications data is defined as the 'who', 'when', 'where' and 'how' of communication, but not the content of it. For example, information regarding the timing, sender and recipient of a message but not the actual content of the message.
- 6.11 The Council's powers remain broadly the same under IPA as under RIPA. It is still the case that the Council can only obtain communications data for preventing or detecting criminal offences or preventing disorder, and independent, external authorisation must be given before such data can be obtained.
- 6.12 However, there are five key changes from the treatment of communications data in the Council's policy approved in August 2018:
- 1) The external, independent authorisation must now be given by the Investigatory Powers Commission (IPC) via its staff in the Office for Communications Data Acquisition (OCDA). Previously, authorisation was given by a Justice of the Peace in a Magistrates' Court.
 - 2) When seeking authorisation, the Council must now use the services of the National Anti-Fraud Network (NAFN), who will submit the application to OCDA on the Council's behalf. The NAFN will scrutinise applications independently and provide advice to ensure the Council acts in an informed and lawful manner.

- 3) Communications data is now defined as falling into two categories: entity data and events data.
- 4) Entity data is information about a person or a thing (such as a device) or information linking them. For example, information about which person is the account holder of email account example@example.co.uk. Entity data can now be obtained when seeking to prevent or detect any crime (irrespective of its seriousness) or to prevent disorder.
- 5) Events data concerns specific communications. For example, information about who sent a particular email or the location of a mobile phone when a call was made. Events data has a higher threshold than entity data. Events data can now only be obtained when seeking to prevent or detect *serious* crime. This includes criminal offences carrying a maximum sentence of at least 12 months' imprisonment, offences committed by corporate bodies and offences involving (as an integral part) the sending of a communication or breach of a person's privacy.

6.13 The majority of the IPA 2016 powers do not apply to the Council. For example, the Council cannot intercept communications, obtain internet connection records or obtain bulk data.

Oversight

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

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 The officers listed in Appendix 1 – RIPA Policy October 2019, Annex B may provide internal approval of RIPA forms prior to seeking judicial approval. The officers listed in Appendix 2 – IPA Policy October 2019, Annex A may provide internal approval of IPA forms prior to seeing independent authorisation. These officers have been trained in the use and application of RIPA and IPA. 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 procedure notes for RIPA and IPA, 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 procedure notes are also available on the Council's intranet site.

- 7.4 Haringey makes very limited use of RIPA and has always complied fully with the legislative requirements. A summary of the total number of applications to use RIPA (including communications data prior to the IPA 2016 coming into force) from 2015/16 to September 2018/19 is given in Table 1 below.

Table 1

Year	2015/16 applications	2016/17 applications	2017/18 applications	2018/19 applications
Service area				
Community Safety & Regulatory Services	1	0	0	0
Total	1	0	0	0

- 7.5 Table 2 below provides details of the use made of RIPA during 2015/16 to 2018/19.

Table 2

Service area	Use applied for	Application authorised
Community Safety & Regulatory Services 2015/16	Covert surveillance to capture evidence of the trade of illegally slaughtered sheep/goat carcasses.	Yes

- 7.6 There has been one application for covert surveillance so far in the financial year 2019/20, relating to social housing fraud matter which is being investigated by the Council's Fraud Team.
- 7.7 The Council was last subject to an inspection visit from the Office of the Surveillance Commissioner during November 2016 and the Council reported nil usage of its powers during 2018 to the Investigatory Powers Commissioner's Office.

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 Finance

- 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 of Corporate Governance has been consulted in the preparation of this report, and in noting that the RIPA and IPA procedures follow legislative requirements / industry guidance and best practice, has no comments. The relevant legislation is referred to in the main body of the report.

9.3 Equality

9.3.1 The Council has a public sector equality duty under the Equality Act 2010 to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

9.3.2 The proposal seeks to separate one policy into two, in order to reflect changes to national legislation. The underlying principles, purpose and application of the policy has not been altered. There are no known implications on individuals or groups with protected characteristics. The policies provide the framework for authorising and conducting of surveillance and the retention of records and this does not adversely impact on any particular group. The Council's investigatory powers policies actively seek to promote transparency in decision-making. The Council's internal process ensures that requests for authorisation to use RIPA or IPA consider any potential impact on individuals and groups who share protected characteristics.

10. Use of Appendices

Appendix 1 – RIPA Policy October 2019.

Appendix 2 – IPA Policy October 2019.

11. Local Government (Access to Information) Act 1985

RIPA codes of practice, which can be found here:

<https://www.gov.uk/government/collections/ripa-codes>

IPA Communications data code of practice, which can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757850/Communications_Data_Code_of_Practice.pdf