

Report for: Cabinet – 18 04 23

Title: The Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016: Use of powers by the Council in 2021 and 2022

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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 investigatory powers under the Regulation of Investigatory Powers Act (RIPA) 2000.

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.

3. Recommendations

That Cabinet:

- 3.1 Notes the use of RIPA by the Council;
- 3.2 Delegates authority for the Senior Responsible Officer (SRO) to make inconsequential updates to the policies. This is for amendments which will not affect the Council's principals and approach to surveillance. Should anything in relation to overall process and policy change, it should still go to Cabinet for approval.

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 Currently, any change to the policies would have to go before Cabinet for approval. This proposal will provide flexibility and enable trivial and minor changes to the policies quickly and easily to ensure that the policies are up to date and accurately reflect the Council structure and job titles.

5. Alternative options considered

- 5.1 In relation to bringing information on usage of the powers, 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.
- 5.2 Continue to take policies to Cabinet for approval, but it is not the preferred option as policies are then not always update in a timely manner and they need to be slotted in to the hard-pressed Cabinet schedule.

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.

IPA

- 6.7 The Investigatory Powers Act (IPA) 2016 provides the legal framework for the acquisition of communication data.
- 6.8 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.
- 6.9 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.
- 6.10 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.
- 6.11 The Council has never used its powers under IPA 2016.

Operational procedures in Haringey

- 6.11 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 Head of Legal and Governance, who has been provided with guidance on the SRO role and its responsibilities.
- 6.12 The Chief Executive, Director of Finance, Director of Environment and Neighbourhoods and the Head of Community Safety and Regulatory Services may provide internal approval of RIPA forms prior to seeking judicial approval; and the same officers may provide internal approval of IPA forms prior to seeking independent authorisation. These officers have been trained in the use and application of RIPA and IPA.
- 6.13 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.
- 6.14 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 from 2019 to 2022 is given in Table 1 below (no requests have been made under IPA 2016).

Table 1

Year	2019 applications	2020 applications	2021 applications	2022 applications
Service area				
Audit and Risk Management	1	0	0	0
Total	1	0	0	0

6.15 Table 2 below provides details of the use made of RIPA during 2018 to 2021.

Table 2

Service area	Use applied for	Application authorised
Audit and Risk Management	Covert surveillance to capture evidence of an offence under the Prevention of Social Housing Fraud Act 2013	Yes

6.17 The Council reported nil usage of its powers during 2021 and 2022 to the Investigatory Powers Commissioner's Office.

6.18 The Council was last subject to an inspection visit from the Office of the Surveillance Commissioner during March 2020.

7. Contribution to strategic outcomes

7.1 The Council needs to comply with relevant legislation to ensure that directed surveillance is undertaken lawfully.

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

8.1 Finance

8.1.1 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.

8.2 Strategic Procurement

8.2.1 Strategic Procurement note the subject and recommendations of the report and that there are not procurement implications in this report.

8.3 Legal

8.3.1 The Head of Legal and 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.

8.4 Equality

8.4.1 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. Although it is not treated as a legally protected characteristic, Haringey Council treats socioeconomic status as a locally protected characteristic.

- 8.4.2 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.

9. Use of Appendices

Not applicable.

10. 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