



Haringey Council

Agenda item:

[No.]

Audit Committee

On 14 September 2010

Report Title: Regulation of Investigatory Powers Act (RIPA) 2000 – operation and use within the Council

Report authorised by: Director of Corporate Resources

J. Power 6/9/10

Report of and Contact Officer: Anne Woods, Head of Audit and Risk Management

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Wards(s) affected: All

Report for: Information

1. Purpose of the report

1.1 To advise the Audit Committee of the operation and use of RIPA by the Council during 2009/10.

2. State link(s) with Council Plan Priorities and actions and/or other Strategies:

2.1 Audit and Risk Management contribute to the Council priority to deliver excellent, customer focused, cost effective services by reviewing the implementation and use of the RIPA legislation and undertaking investigations, where appropriate, to reduce risks and improve controls.

3. Recommendations

3.1 That the Audit Committee notes the requirements of RIPA legislation and the operational processes in place to ensure that the Council complies with these requirements.

4. Reason for recommendation(s)

4.1 It is a requirement for Members to have involvement in the overall approach to RIPA and monitor the Authority's surveillance processes, culture and controls.

4.2 This report provides information on the implementation and usage of RIPA within the Council.

5. Other options considered

5.1 Not applicable

6. Summary

6.1 To provide assurance that the Council is complying with the requirements of RIPA 2000, and to inform the Committee of work being undertaken in this area.

6.2 Key to the use of RIPA is that it has to be for the purpose of preventing or detecting crime or preventing disorder. Examples of its use in Haringey have been tackling serious crimes such as drug-related crime, serious anti-social behaviour and persistent fly tippers.

7. Head of Legal Services Comments

7.1 The Head of Legal Services has been consulted in the preparation of this report, and in noting that the contents are informative, advises that there are no direct legal implications arising from the report.

8. Chief Financial Officer Comments

8.1 The Chief Financial Officer notes that the RIPA legislation requires that Members should review the authority's use of RIPA at least once a year and this report enables this requirement to be met.

8.2 There are no financial implications associated with the contents of this report that need to be highlighted as any costs associated with this activity are met from within existing budgets.

8.3 Members should note paragraph 16.4 which sets out the expectation that the new Coalition Government will be undertaking a further review of RIPA. Clearly the financial or other impacts of any proposed changes to the current regulations will need to be assessed at that time.

9. Head of Procurement Comments

9.1 Not applicable

10. Equalities and Community Cohesion Comments

10.1 This report deals with how the RIPA legislation is used within the Council. It is best practice for local authorities to monitor the use and implementation of legislation to ensure that this is done in accordance with required regulations which can enable the Council to improve conditions for those who live and work in the borough.

11. Consultation

11.1 No external consultation was required or undertaken in the production of this report. Consultation has been undertaken with relevant authorised officers in the development of the Council's guidance and to ensure that all applications made under RIPA legislation are appropriately authorised and recorded.

12. Service Financial Comments

12.1 There are no direct financial implications arising from this report. The costs of ensuring the Council complies with the RIPA legislation are contained and managed within the Audit and Risk Management and relevant service departments' revenue budgets.

13. Use of appendices

13.1 N/A

14. Local Government (Access to Information) Act 1985

14.1 For access to the background papers or any further information please contact Anne Woods on 0208 489 5973.

15. Background

- 15.1 On the 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.
- 15.2 The powers to access communications data are set out in section 21-25 of RIPA 2000. The Regulation of Investigatory Powers (Communications Data) Order 2003 (S.I. 2003/3172) also applies. These powers apply to local authorities.
- 15.3 RIPA specifies how different public sector bodies, including the police, can use the Act to assist in performing their duties. RIPA allows surveillance to be undertaken and communications data (including telephone records) to be obtained for a variety of reasons, including issues relating to national security. However, under RIPA local authorities are restricted to using the legislation only in relation to the prevention and detection of crime.
- 15.4 Some areas where a crime is suspected are the responsibility of the local authority to take the lead in the first instance e.g. investigations into Housing Benefit fraud, breaches of environmental health and trading standards legislation. It is for this reason that the legislation allows local authorities to use the 'prevention and detection of crime' reason when applying the RIPA legislation.
- 15.5 The use and operation of RIPA is detailed in Home Office guidelines. Home Office Guidelines also contain the forms which must be used by local authorities when using

RIPA. All applications to undertake surveillance and obtain communications data must be submitted using the appropriate forms.

- 15.6 All applications must be authorised by a nominated officer who has been provided with appropriate training in the use and application of RIPA. In addition, RIPA legislation requires that all applications are reviewed at regular intervals and either renewed or cancelled depending on the current status of the investigation. All reviews, renewals and cancellations also have to be completed using the relevant Home Office forms and approved by the officer authorising the original application.
- 15.7 Copies of all applications, reviews, renewals and cancellations must be maintained by the originating officer, but RIPA also requires a separate central record to be maintained within the local authority and a nominated contact officer who is responsible for the oversight of the use of RIPA across the organisation.
- 15.8 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 (ICCO) 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 ICCO. Both organisations require annual returns and performance information to be made by the Council.

16. Background

- 16.1 As a result of concerns which had been expressed over the way in which RIPA had been used by a number of authorities, in 2009 the Local Government Association asked Councils to review their use of the powers to respond to residents' complaints about serious crime such as fly tipping, rogue traders and benefit fraud rather than less serious matters. The previous Government also launched a review into the working of RIPA.
- 16.2 The outcome of this review is that a new Order (The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (the Order) and revised Codes of Practice have been issued, containing the following main changes:
- The Order
- maintains the grounds for which an authorisation can be given i.e. for the purpose of preventing or detecting crime or of preventing disorder; and
 - revises the prescribed officers who can sign authorisations to be Director, Head of Service, Service Manager or equivalent.
- The Codes of Practice
- Within every public authority it is considered good practice for a senior responsible officer to be made accountable for:
- the integrity of the process in place within the authority for the management of CHIS;

- compliance with RIPA and with the Codes;
- oversight of the reporting of errors to the relevant Commissioner and the identification of both the cause of errors and the implementation of processes to minimise the repetition of errors;
- engagement with the Office of Surveillance Commissioners Inspectors when they conduct their inspections;
- where necessary oversight of the implementation of post inspection plans approved by the relevant Commissioner;
- within local authorities, the senior responsible officer should be a member of the corporate leadership team and should be responsible for ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the Office of the Surveillance Commissioner. Where an inspection report highlights concerns about the standards of authorising officers this individual will be responsible for ensuring the concerns are addressed.

16.3 Under the 2010 Order, Members should review the authority's use of RIPA at least once a year and be advised of its use on a quarterly basis. Members should also consider the use of RIPA to ensure that it is being used consistently with the requirements of the legislation. Members should not however be involved in making decisions on specific authorisations. The 2010 order does not prescribe how the Member oversight role is operated in practice. Legal Services advice is that this role is an Executive function for the Cabinet, rather than a full Council side function, and that reports should be provided to Cabinet in order to comply with the 2010 Order.

16.4 It is understood that the new Coalition Government will be including a further review of RIPA and the Audit Committee will be kept advised of any changes in the regulations and their impact on local authorities.

17. Operational Procedures in Haringey

17.1 Haringey Council is committed to complying with RIPA to ensure both that an investigation is carried out properly and that the investigation is necessary and proportionate to the alleged offence.

17.2 Within Haringey, the Senior Responsible Officer (introduced as a result of the 2010 Order) with responsibility for oversight of RIPA is the Director of Corporate Resources, who has been provided with guidance on the role and responsibilities, in addition to their role as an authorising officer. From 2010/11, the Director of Corporate Resources provides a summary of any RIPA applications made on a quarterly basis to the Cabinet Member for Resources in order to comply with the 2010 Order and fulfil the Member oversight role. An annual report will be made to the Cabinet.

17.3 A central record of all RIPA applications, reviews, cancellations and renewals is maintained securely, both electronically and in hard copy (as required by the OSC and ICCO) within the Audit and Risk Management business unit. Reminders are sent to all

officers on a quarterly basis to ensure that the central record is complete and up to date. Records are held in accordance with Audit and Risk Management’s records management policy, which complies fully with Data Protection Act requirements.

- 17.4 Haringey maintains a list of officers who are able to approve RIPA forms and 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. To support them further, Haringey has produced its own local guidance notes, which are based on the Home Office guidance, and these are circulated to all officers involved in RIPA when updates to the legislation or standard forms are issued. These guidance notes are also held on the Council’s intranet site. The Head of Audit and Risk Management maintains an oversight and review role for all RIPA applications to ensure they comply with current RIPA regulations and provides feedback to officers if any issues of non-compliance with the legislation were to be found.
- 17.5 The OSC and ICCO undertake regular inspections of all councils to ensure that their systems and procedures are compliant with RIPA legislation. Haringey Council has been inspected by both the OSC and ICCO. All results of inspection visits by the OSC and ICCO are reported to the council’s Audit Committee, together with any action plans to address any identified gaps in performance. No recommendations are outstanding from any previous inspections.
- 17.6 Haringey makes limited use of RIPA legislation and the Council has always complied fully with the legislative requirements and has never used the legislation for trivial matters, for example investigations into school applications, dog fouling and littering.
- 17.7 A summary of the total number of applications to use RIPA from 2007/08 to 2009/10 is detailed in Table 1 below. The information in Table 1 has been taken from the central electronic record of all RIPA applications maintained by Audit and Risk Management. The record holds high level details of the application only (reference number, applicant’s name and department, authorising officer, renewal and cancellation dates), in order to comply with the Data Protection Act.

Table 1

Year	2007/08	2008/09	2009/10
Department			
Urban Environment	2	4	1
Chief Executive – PPP&C	9	13	1
Children & Young People’s Service	0	0	1
Total	11	17	3

- 17.8 In order to maintain an oversight of RIPA use and provide the required data and statistical returns to the OSC and ICCO, Audit and Risk Management hold hard copies

of all application, renewal and cancellation forms. These are retained within Audit and Risk Management for a period of three years and then disposed of using secure confidential waste procedures. Individual departments may hold the records for longer periods if the operations result in court action or police investigation.

17.9 Table 2 below provides details of the use made of RIPA during 2009/10. All requirements of RIPA have been fulfilled and relevant returns to the OSC and ICCO have been completed for 2009/10.

Table 2

Department	Use applied for	Application authorised	Application refused
Urban Environment	To identify persons fly tipping commercial waste	1	
Chief Executive – PPP&C	To establish whether a location was being used for dealing drugs	1	
Children & Young People’s Service	Establish whether two individuals were maintaining contact/ a relationship		1
Total		2	1