



Haringey Council

Agenda item:

[No.]

Audit Committee

On 22 July 2008

Report Title: **Regulation of Investigatory Powers Act (RIPA) 2000**

Forward Plan reference number (if applicable): **N/A**

Report of: **Head of Audit and Risk Management**

Wards(s) affected: **All**

Report for: **Information**

1. Purpose

1.1 To advise the Audit Committee of RIPA and its operation in practice within Haringey.

2. Recommendations

2.1 That the Audit Committee notes the contents of the report.

Report Authorised by: **Chief Financial Officer**

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3. Local Government (Access to Information) Act 1985

3.1 List of background documents:

The following background documents were used in production of this report:

- RIPA 2000
- Reports of the OSC and ICCO

4. Introduction

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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 etc. 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.
- 4.5 The use and operation of RIPA is detailed in Home Office guidelines. These 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.
- 4.6 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.
- 4.7 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.
- 4.8 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 nominated contact officer.

5. Background

- 5.1 The issue of RIPA and its use within councils across England has been the subject of considerable media interest over recent weeks. The Local Government Association (LGA) Chairman, Sir Simon Milton, has also written to all councils in England requesting that leaders ensure that the powers are only used after careful consideration and that operations are 'necessary and proportionate to prevent or detect a criminal offence', as stipulated in the Act.
- 5.2 The LGA Chairman stated in his letter that 'Parliament clearly intended that councils should use the new powers, and generally they are being used to respond to residents' complaints about fly tippers, rogue traders and those defrauding the council tax or housing benefit system. Time and again, these are the just the type of crimes that residents tell us that they want to see tackled. Without these powers, councils would not be able to provide the level of reassurance and protection local people demand and deserve.' The LGA, in conjunction with Local Authorities Co-ordinators of Regulatory Services (LACORS), stated that RIPA should not be used for trivial matters and they specifically identify dog fouling and littering as two areas they consider to be trivial.
- 5.3 It was therefore considered appropriate, at this time, to provide the Audit Committee with details of the operation of RIPA at Haringey, and provide assurance that the Council's procedures and practices are compliant with the legislation and the LGA requirements.

6. Operational Procedures in Haringey

- 6.1 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.
- 6.2 Within Haringey, the nominated officer with responsibility for oversight of its application is the Head of Audit and Risk Management. 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.
- 6.3 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 role for all RIPA applications to ensure they comply with requirements.

6.4 The Head of Audit and Risk Management, as the nominated officer, provides the required annual returns and performance information to the OSC and ICCO and acts as the liaison officer to facilitate the inspection visits for both offices.

6.5 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. The results of the various inspection visits which have been completed to date are detailed in the sections below.

6.6 Haringey make limited use of RIPA legislation and has never used the legislation for trivial matters, and specifically not for dog fouling and littering. Since the legislation has been in place, the Council has applied to use RIPA a total of 85 times. Details of the numbers of applications are shown in Table 1 below.

6.7 The information in Table 1 has been taken from the central electronic record of all RIPA applications. The central record is maintained by Audit and Risk Management and 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	2001	2002	2003	2004	2005	2006	2007	2008
Department								
Urban Environment	1	0	3	16	6	18	15	4
Corporate Resources	3	7	6	4	2	0	0	0
Total	4	7	9	20	8	18	15	4

6.8 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.

6.9 Table 2 below provides details of the use made of RIPA over the previous three year period. All applications have been made in accordance with RIPA legislation and requirements and have been appropriately authorised. In addition, some of the individual applications have been subject to review by the OSC and ICCO as part of their inspection processes. Details of the outcome of these inspections is contained in the sections below.

6.10 Members will note that the Council primarily uses RIPA to deal with serious cases of anti-social behaviour including drug-dealing, gang-related violence and illegal brothels. They have also been used sparingly to tackle fly-tipping, unlicensed trading and trading counterfeit goods, and benefits fraudsters.

Table 2

Year	2006	2007	2008	Total
Action taken				
Urban Environment				
Identifying persons dumping refuse on estates	1	-	-	1
Identifying persons engaged in anti-social behaviour	13	12	4	29
Acquiring communications data	2	1	-	3
Identifying persons defacing buildings	1	-	-	1
Identifying unlicensed traders	1	-	-	1
Identifying counterfeit goods	-	1	-	1
Identifying persons working whilst claiming sickness benefit	-	1	-	1

7. Office of the Surveillance Commissioner (OSC)

- 7.1 The OSC has undertaken three inspection visits in total, in October 2002, August 2004 and May 2006. No major weaknesses in the council's application of RIPA have been identified by the OSC inspector during the three visits, although recommendations to improve some areas and implement best practice have been made.
- 7.2 At the last visit in May 2006, the inspector's report concluded that the Council had maintained its standards of compliance with RIPA since the last inspection (August 2004); and that the specific recommendations made in the previous report were all implemented in a timely manner.
- 7.3 The reports from the OSC, together with the Council's response and action plans to address the recommendations, have all been reported to the Audit Committee as follows: 1 May 2003; 14 October 2004; and 20 July 2006. All recommendations made have been addressed.

8. Interception of Communication Commissioner's Office (ICCO)

- 8.1 The ICCO has undertaken one inspection visit, in May 2007, to review compliance with RIPA legislation. The inspector concluded that the council was achieving a good level of compliance with the legislation and that the standard of applications for communications data made to date was of good quality.
- 8.2 No major weaknesses in compliance were identified, although a number of recommendations to improve some areas were made. The inspector also raised a number of best practice issues which were recommended for adoption by the council.
- 8.3 The final report was issued in September 2007 and was reported, together with the Council's response and action plan to address the recommendations, to the Audit Committee on 28 January 2008. All recommendations made have been addressed.