



Report for: ACTION/INFORMATION
Item Number: 18

Contains Confidential or Exempt Information	NO
Title	Regulation of Investigatory Powers Act 2000 (RIPA) Update
Responsible Officer	Helen Harris, Director of Legal and Democratic Services
Author	Hatoon Zeb
Portfolio(s)	Cllr Mahfouz
For Consideration By	Cabinet
Date to be Considered	16 October 2018
Implementation Date if Not Called In	29 October 2018
Affected Wards	All
Keywords/Index	RIPA, Regulation of Investigatory Powers Act 2000

Purpose of Report:
To update Cabinet on the use of the Council’s powers under RIPA and to update the Councils RIPA policy.

1. Recommendations

It is recommended that Cabinet:-

- a) Notes the current use of RIPA in relation to surveillance and acquisition and disclosure of communications data as set out in this report.
- b) Approves the updated RIPA policy at Appendix 1.
- c) Approves the continuing appointment of the following:
 - i) Helen Harris (Director of Legal and Democratic Services) as senior responsible officer for directed surveillance, use of covert human intelligence sources, and obtaining communications data.
 - ii) the following as authorising officers for directed surveillance and the use of covert intelligence under s.28 and S.29 of RIPA 2000 (prior to judicial approval):
 - Mark Wiltshire, (Director of Safer Communities & Housing)
 - Mike Pinder (Head of Audit and Investigations)
 - Jackie Adams (Head of Legal (Property and Regulatory))

d) Authorises the Director of Legal and Democratic Services to:-

- i) make any further necessary amendments to the RIPA Policies which are necessary to maintain consistency with legislation, Codes of Practice, good practice and
- ii) make any necessary changes in authorising officers, and
- iii) review the authority's procedures, policies and training on a quarterly basis.

2. Reason for Decision and Options Considered

The Protection of Freedoms Act 2012 requires that councillors be kept informed about the Council's use of powers under RIPA and that Cabinet approves a policy for the use of directed surveillance.

3. Key Implications

3.1 Human Rights legislation requires the Council to respect the private and family life of citizens and their homes and correspondence. This is not an absolute right but a qualified right which the Council may interfere with provided such interference is in accordance with the law, necessary and proportionate.

3.2 RIPA regulates the circumstances and methods by which public bodies may carry out covert surveillance and in certain circumstances compel telecommunications and postal companies including internet service providers to obtain and release to the Council communications data in their possession or control.

3.3 RIPA is used by public authorities to ensure that surveillance activities are lawful. It provides for the authorisation of covert surveillance by the Council where that surveillance is likely to result in the obtaining of private information about a person.

3.4 The Council has its own RIPA Policy, which is updated having regard to the Home Office Codes of Practice.

3.5 RIPA seeks to ensure that any interference with an individual's right to privacy under Article 8 of the [European Convention on Human Rights](#) is both necessary and proportionate.

3.6 There is a risk that if the correct procedures are not followed, evidence may be disallowed by the courts or a complaint of maladministration could be made to the Ombudsman, and/or the Council could be ordered to pay compensation. Furthermore any failure to comply would expose the Council to unnecessary legal risks and criticism from the Office of Surveillance Commissioners.

3.7 RIPA Policy Update – The Council has two RIPA policies which have now been combined and updated into a single RIPA policy. The policy has been updated to include the Revised Home Office guidance issued in August 2018 on Covert Surveillance and Property Interference. This guidance at paragraph 3.10 refers to Online Covert Activity which was raised during the Council's last inspection by the Inspector. The updated policy has at page 28 a section on Internet investigations.

Investigating officers and authorising officers will be receiving training scheduled for Summer 2019 to accord with the revised guidance.

4. Office of Surveillance Commissioners

4.1 The Office of Surveillance Commissioners ('OSC') is tasked with carrying out regular inspections of law enforcement agencies such as the Council to ensure compliance with RIPA insofar as directed surveillance and the use or conduct of a covert human intelligence source ('CHIS') is concerned. The Council was last inspected on the 22 November 2016. The inspection was a positive one and the inspector made recommendations which have been implemented.

5. Officer Training

The last RIPA training session was on the 26th July 2017. Officers involved in carrying out directed Surveillance or the RIPA process either as Senior Responsible Officer, Authorising Officer or Applicant attended the training. The training was comprehensive in explaining the law, process and procedure around RIPA 2000. Further work will be carried out to identify knowledge gaps where further training will be provided.

6. Use of RIPA powers

6.1 There were no RIPA applications for covert surveillance made in period 1st April 2017 - 31st March 2018. This reflects the fact that nearly all enforcement activity by Council officers is overt and does not therefore require RIPA authorisation.

6.2 In April 2018 an officer decision was taken for a test purchase to be made at a premises in High Street Ealing called LA Confidential. The details of the test purchase provided were considered not to meet the criteria requiring an application for a RIPA approval.

6.2 In 2017/18 Trading Standards, in partnership with the Metropolitan Police and their cadets, undertook three operations to see if knives, alcohol, tobacco and fireworks were being sold to children within the borough. An underage cadet undertook test purchasing. No surveillance equipment was used

7. Financial

Any financial implications arising from RIPA will be managed within the respective existing budgets.

8. Legal

8.1 Since 1 November 2012 the Council's ability to exercise their powers under RIPA have been restricted to offences which may be punishable by a custodial sentence of 6 months or related to the underage sale of alcohol and tobacco. Furthermore, since that date, such applications, including renewals, have required judicial approval (namely approval by a Magistrate).

8.2 The role of the Magistrate is to ensure that the correct procedures have been followed and the relevant factors have been taken into account. The new provisions allow a Magistrate, on refusing an approval of an authorisation, to quash that authorisation.

8.3 The Home Office issues Codes of Practice which give guidance on Covert Surveillance and the use or conduct of Covert Human Intelligence Sources. Revised Codes of Practice have been incorporated in the Council's Policy.

9. Value For Money

Proper compliance with RIPA ensures that enforcement action and prosecutions are robust

10. Sustainability Impact Appraisal

No sustainability Impact appraisal is required.

11. Risk Management

Failure to use RIPA appropriately could result in reputational damage for the Council.

12. Community Safety

Appropriate and proportionate use of RIPA powers will improve community safety in some enforcement and prosecution matters.

13. Links to the 6 Priorities for the Borough

Appropriate and proportionate use of RIPA powers in certain circumstances will assist in making Ealing safer and cleaner

14. Equalities, Human Rights and Community Cohesion

An initial assessment indicates that there are no specific equalities issues arising from this report. Human Rights issues are addressed in the Policies

15. Staffing/Workforce and Accommodation implications:

None

16. Property and Assets

None

17. Any other implications:

None

18. Appendices

Appendix 1 Updated Corporate Policy and Procedures on the Regulation of Investigatory Powers Act (RIPA) 2000

19. Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Mark Wiltshire	Director of safer communities & Housing Regeneration	10.09.18	12.9.18	
Mike Pinder	Head of Audit and Investigation	10.09.18	13.9.18	
Jackie Adams	Head of Property & Regulatory	10.09.18	14.9.18	
Helen Harris	Head of Legal & Democratic services	10.09.18	13.9.18	
Christopher Neale	Head of Accountancy	10.10.18	20.09.18	Throughout
Brian Khumalo	Senior Finance Business Advisor	10.09.18	20.09.18	Throughout
Cllr Mahfouz		10.09.18		

Report History

Decision type:	Urgency item?
Non-key decision	No
Report author and contact for queries: Hatoon Zeb - Solicitor (Property & Regulatory) (ext:8461)	