

Report for: ACTION/INFORMATION
Item Number: 17

Contains Confidential or Exempt Information	NO
Title	Regulation of Investigatory Powers Act 2000 (RIPA) Update
Responsible Officer	Helen Harris
Author	Jackie Adams
Portfolio(s)	Cllr Yvonne Johnson
For Consideration By	Cabinet
Date to be Considered	15 th September 2015
Implementation Date if Not Called In	28 September 2015
Affected Wards	All
Keywords/Index	RIPA, Regulation of Investigatory Powers Act 2000

Purpose of Report:

To update Cabinet on matters relating to the use of the Council's powers under the Regulation of Investigatory Powers Act 2000 (RIPA) for the period 2013/14

1. Recommendations

It is recommended that Cabinet:-

- a) Note the current use of RIPA in relation to surveillance and acquisition and disclosure of communications data as set out in this report.
- b) Approve revised Corporate Policies and Procedures on the Regulation of Investigatory Powers Act (RIPA) 2000 (Directed Surveillance and Covert Human Intelligence Sources (CHIS)) attached as Appendix 1.
- c) Approve:
 - i) the continued appointment of the post of 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 continued appointments of the posts of Head of Regulatory Services, Head of Audit and Investigations and Head of Legal Property and Regulatory as Authorising Officers for Directed Surveillance and Use of Covert Human Intelligence Sources
 - iii) the continued appointment of the post of Head of Audit and Investigations as a Designated Person for Obtaining Communications Data and the additional appointment of .the Head of Regulatory Services and Head of Legal Property and Regulatory as Designated Persons

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

i) make any further necessary amendments to the two 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

This report is intended to update members on the Council's use of RIPA powers to enable members to review those powers in accordance with the recommendations in the RIPA Codes of Practice published in April 2010 (as amended).

3. Key Implications

3.1 The Human Rights Act 1998 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 The Regulation of Investigatory Powers Act 2000 (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 covered by the Act 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 drafted and adopted having regard to the Home Office Codes of Practice. Revised Codes were issued in December 2014 and it is therefore it is proposed that the Council's Policy be amended to reflect the changes to the Codes. (see paragraphs xxx below)

3.6 The current RIPA policy for Directed Surveillance and Use of Covert Human Intelligence Sources was approved by Cabinet on 17 September 2013. The Policy states;

“Quarterly returns of all surveillance activity undertaken by Council staff including joint surveillance and Directed Surveillance using the CCTV system will be compiled by the RIPA Legal Advisor and reported to the Portfolio Holder for Finance and Performance in line with the current advice in the Codes of Practice. Members will review on a yearly basis the policy to assess whether the activity undertaken is in line with this policy”.

In accordance with the Policy and Codes of Practice annual reports on RIPA are produced to Cabinet and quarterly reports are made to the Portfolio Holder for Finance, Performance and Welfare.

3.5 RIPA seeks to ensure that any interference with an individual's right to privacy under Article 8 of the convention on Human Rights and Fundamental Freedoms 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 exposes the Council to unnecessary legal risks and criticism from the Office of Surveillance Commissioners.

4. Covert Surveillance

4.1 The powers of RIPA contain important restrictions on the Council with regard to covert surveillance. In particular, the Council cannot engage in the most intrusive form of covert surveillance operations (called "intrusive surveillance") which involve presence of a person or a listening device in residential premises or a private vehicle. The Council can only carry out covert, non-intrusive surveillance (called "directed surveillance"). The only lawful basis on which the Council can conduct a surveillance operation under RIPA is for the prevention or detection of crime.

4.2 The Council is committed to implementing the provisions of RIPA to ensure that any covert surveillance carried out during the course of investigations is undertaken properly and that the surveillance is necessary and proportionate to the alleged offence/s.

5. Office of Surveillance Commissioners

5.1 The Office of Surveillance Commissioners ('OSC') are tasked with carrying out regular inspections of law enforcement agencies such as the Council to ensure compliance with RIPA' in so far as directed surveillance and the use or conduct of a covert human intelligence source ('CHIS') is concerned.

5.2 The Council was last inspected on the 4 October 2012 and the recommendations made by the Inspector were subsequently implemented.

6. Legislation

6.1 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).

6.2 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.

6.3 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 were approved by Parliament in 2014 and the revised Codes were issued in December 2014. Amendments reflect the changes to local authority authorisation arrangements arising from the Protection of Freedoms Act 2012 (referred to in paragraph 6.1 above) and additional scrutiny applied to the authorisation of undercover law enforcement officers.

6.4 The Council's Policy has therefore been reviewed having regard to the new Codes of Practice and the revised Policy is attached in Appendix 1 for approval.

7. Officer Training

7.1 The last RIPA training was on the 23 April 2014, for a number of key Council officers was provided by an external trainer. The officers who attended include those involved in carrying out Directed Surveillance or the RIPA process either as Senior Responsible Officer, Authorising Officer or Applicant. The aim of the course was to provide them with the knowledge to be able to recognise and comply with the requirements of the RIPA process. Further refresher training (as necessary) will be organised in the coming year.

8. Use of RIPA powers

8.1 There has been only one RIPA application for covert surveillance made in period 1st April 2014 - 31st March 2015 which was rejected in July 2015 (see table below). In that case the Magistrate was of the view that the Council had sufficient evidence to warrant a prosecution without need for an authorisation.

The low level of applications reflects the fact that nearly all enforcement activity by Council officers is overt and does not require prior authorisation. The Council obtains evidence for prosecutions currently undertaken by other methods. These include direct observations, use of open mobile CCTV cameras with warning signage, intelligence from other sources such as Experian checks, data matching with other agencies and data acquired from the National Anti-Fraud Network.

8.2 Additionally, given that the use of RIPA is now limited to serious crimes (those punishable by a maximum custodial sentence of 6 months or more (except underage sales of alcohol and tobacco) and RIPA applications can no longer be used for preventing disorder. Prior to the changes in legislation the majority of previous RIPA applications related to incidents of disorder in Council housing blocks.

8.3 Trading Standards are not currently using underage children to make test purchases of alcohol and tobacco. Current intelligence continues to suggest there has been a reduction in underage sales to children.

In 2014/15 Trading Standards, in partnership with the Metropolitan Police and their cadets, undertook an operation to see if knives were being sold to children within the borough. An underage cadet undertook test purchasing. No surveillance equipment was used. No relationship was established with the vendor. It was considered that the possibility of obtaining of private information was minimal. In these circumstances both the Police and Trading Standards believed the obtaining of a RIPA authorisation was not considered necessary.

In phase one of the operation in May 2014, a total of 13 shops were visited. Six supplied knives or a pack of knives, with no questions asked to a person under the age of 18. They were all subsequently given advice as part of our stepped enforcement approach. During phase two of the operation in August of last year, a total of six local shops in the Southall area were visited by Trading Standards, Volunteer Police Cadets and Police Officers. One store ignored a previous warning and again supplied a knife to a minor and was prosecuted. This retailer also failed to attend court and was fined in his absence £2,000, ordered to pay a victim surcharge of £120 and costs of £834.

Number of RIPA authorisations	0
Purposes	N/A
Reviews/renewals/cancellations	0
Number Applications Rejected	1
Number of CHIS authorised	0

9. Acquisition of Communications Data

9.1 RIPA also regulates the Council's acquisition of communications data. The Council has powers to acquire communications data under RIPA as opposed to powers to intercept the content of that data. The Act specifies the purposes for which communications data may be acquired including preventing or detecting crime and the protection of public health.

9.2 Acquisition of communications data under the Act involves four roles within the Council:

- a) the applicant service (eg Audit & Investigation)
- b) the designated person
- c) the single point of contact (SPoC) and
- d) the senior responsible officer

The 'designated person' is appointed to consider and authorise applications and the SPoC/s are responsible for providing a guardian and gatekeeper function to ensure that the Council's functions relating to this part of the Act are undertaken in an informed and lawful manner. The Senior Responsible Officer has overall responsibility for ensuring that the Council complies with the Act and associated Code of Practice.

9.2 The Home Office issued a revised Code of Practice in March 2015. The main changes concern the provision of additional safeguards. The Code enhances the operational independence of authorising officers in relevant public authorities. Further changes include reflecting the additional requirements on local authorities to request communications data through a magistrate and the National Anti-Fraud Network; new record keeping requirements for public authorities; and aligning the code with best practice regarding providing communications data to the emergency services following an emergency call.

9.3 The Designated person is currently the Head of Audit and Investigations. Paragraph 312 of the March 2015 Code of Practice confirms that designated persons must be independent from operations and investigations when granting authorisations or giving notices related to those operations. It is therefore proposed that the Head of Regulatory Services and Head of Legal (Property & Regulatory) also be appointed as Designated Person and to ensure that any authorisations under this legislation will be made in accordance with the Code of Practice

9.4 The exercise of these powers is kept under review by the Interception of Communications Commissioner and his commissioners who work from the Interception of Communications Commissioner's office (IOCCO).

9.5 The Council is a member of National Anti-Fraud Network (NAFN) and uses NAFN as its primary SPoC. Therefore the vast majority of applications to access Communications Data are made through NAFN via their online application service. The Council also retains an in-house SPoC for use in exceptional circumstances, for example where there maybe confidentiality issues involved.

9.6 There have been no applications in 2014/15 or so far this year.

10. Appointment of Officers

10.1 The Director of Legal and Democratic Services is the Senior Responsible Officer for all RIPA purposes and has delegated authority to appoint officers to implement and operate the provisions of the Act.

10.2 Persons appointed as Authorising Officers undertake a critical role in ensuring that authorisations are made in accordance with legislation and codes of practice. The Codes of Practice require that Authorising officers hold the rank of Director, Head of Service or Service Manager or equivalent.

10.3 It is recommended that Cabinet approve:

i) the continued appointments of the posts of Head of Regulatory Services, Head of Audit and Investigations and Head of Legal Property and Regulatory as Authorising Officers for Directed Surveillance and Use of Covert Human Intelligence Sources and

ii) the continued appointment of the post of Head of Audit and Investigations as Authorising Officer for Obtaining Communications Data

4. Financial

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

5. Legal

The legal implications are set out throughout this report

6. Value For Money

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

7. Sustainability Impact Appraisal

No sustainability Impact appraisal is required.

8. Risk Management

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

9. Community Safety

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

10. 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

11. 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

12. Staffing/Workforce and Accommodation implications:

None

13. Property and Assets

None

14. Any other implications:

None

15. Consultation

Regulatory Services and Audit and Investigation have been consulted with regard to the Policies

17. Appendices

Appendix 1 Revised Corporate Policies and Procedures on the Regulation of Investigatory Powers Act (RIPA) 2000 (Directed Surveillance and Covert Human Intelligence Sources (CHIS))

18. Background Information

Cabinet Report of 16th September 2014

Regulation of Investigatory Powers Act 2000

Covert Surveillance and Property Surveillance Revised Code of Practice December 2014

Covert Human Intelligence Sources Code of Practice December 2014

Acquisition and Disclosure of Communications Data Code of Practice March 2015

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012

Protection from Freedom Act 2012

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Mark Wiltshire	Head of Regulatory Services			
Steven Tinkler	Head of Audit and Investigation			
Maria Christofi	Director of Finance			

Report History

Decision type:	Urgency item?
Non-key decision	No
Report no.:	Report author and contact for queries:
	Jackie Adams Head of Legal (Property & Regulatory) (ext:8908)