



CABINET REPORT

Report Title	Regulation of Investigatory Powers Act 2000 – Policy Update
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AGENDA STATUS: PUBLIC

Cabinet Meeting Date:	16 October 2019
Key Decision:	No
Within Policy:	N/A
Policy Document:	Yes
Service Area:	Borough Secretary
Accountable Cabinet Member:	Councillor Jonathan Nunn
Ward(s)	All

1. Purpose

- 1.1 To seek Cabinet approval of a revised Regulation of Investigatory Powers Act Policy (as amended)(RIPA Policy)

2. Recommendations

- 2.1 Cabinet note the update on the outcome of the desktop Inspection carried out by the Investigatory Powers Commissioner's Office (IPCO) dated 16th August 2019.
- 2.2 Approve the updated RIPA Policy attached as Appendix 1; and
- 2.3 delegate authority to the Borough Secretary and Monitoring Officer to
- a) Update the RIPA policy to include the name and contact details of new Authorising Officers after they have been appointed, and
 - b) Make such future amendments to the Policy which are in the opinion of the Borough Secretary and Monitoring Officer minor and are necessary to reflect either legislative requirements, relevant guidance or current good practice.

3. Issues and Choices

3.1 Report Background

- 3.1.1 Local authorities are required to respect various rights of its citizens including their rights to private and family life, their homes and correspondence, their possessions and their right to a fair trial in accordance with the Human Rights Act 1998. These rights are qualified and interference is allowed when it is necessary and proportionate and carried out in accordance with the law.
- 3.1.2 The Regulation of Investigatory Powers Act 2000 (RIPA) contains powers for various bodies to carry out covert surveillance and engage covert human intelligence sources. Certain covert surveillance powers under RIPA are available to local authorities and can be used in appropriate circumstances in accordance with the requirements of the Act to support the delivery of their functions.
- 3.1.3 The Investigatory Powers Commissioner's Office (IPCO) oversees the use of covert surveillance powers under RIPA by local authorities. This role was previously performed by the Office of Surveillance Commissioners (OSC) however, the OSC and other similar bodies have now been replaced by the IPCO.
- 3.1.4 The Council has a RIPA Policy in place that covers the use of directed surveillance and covert human intelligence sources by the Council.
- 3.1.5 Directed surveillance is surveillance that is covert, is conducted for the purposes of a specific investigation or operation, is likely to result in the obtaining of private information about a person and is conducted otherwise than by way of an immediate response to events. In summary a person is a covert human intelligence source if they establish or maintain a personal or other relationship with a person and they covertly use the relationship to obtain information or provide access to any information to another person, or they covertly disclose information obtained through such a relationship or as a consequence of the existence of such a relationship. While the Council's RIPA Policy clearly states that the use of covert human intelligence sources has not been identified as an investigative technique applied by the Council, the Policy still covers the processes that would need to be applied if a situation ever arose in the future where the Council did use a covert human intelligence source.
- 3.1.6 Only specific officers within the Council are able to authorise the use of RIPA powers. (The use of RIPA powers must also be judicially approved following approval by an Authorising Officer). Such officers have to be of a sufficient level of seniority, as defined by statute and must also be appointed internally as Authorising Officers.
- 3.1.7 The Council's use of RIPA powers is minimal. Since the Office of Surveillance Commissioners last inspection on the 1st December 2015 the Council has not authorised the use of RIPA powers.

3.2 Issues

- 3.2.1 Inspections are carried out by the Investigatory Powers Commissioner's Office approximately once every three years. In August 2019, the Investigatory Powers Commissioner's Office carried out its most recent desktop RIPA inspection. This inspection was carried out by Mr Paul Gration and the findings have been formally reported by The Investigatory Powers Commissioner The Rt. Hon. Lord Justice Fulford.
- 3.2.2 The Inspection correspondence was very positive and the training regime undertaken by the Council has been recognised as relevant and consistent. Francis Fernandes, the Council's Senior Responsible Officer under the Codes of Practice issued under RIPA, was both active in the inspection and informed in the outcome. In summary there are only 2 observations from the inspection which are as follows:
- a) **Your RIPA Policy has recently been reviewed and is an extremely comprehensive document. It does however include some matters that are not relevant to your organisation such as the paragraph which relates to 'Relevant Sources'.**
This has been removed in the attached tracked change document.
 - b) **Relevant guidance relating to the investigative use of the Internet. This is also a well written document and should be made available to all staff at the earliest opportunity to ensure full compliance.**
This document will be shared with Authorising Officers and will be placed on the intranet. Also all staff will receive a copy of the guidance electronically.
- 3.2.3 Cabinet is asked to approve adoption of the amended RIPA Policy at Appendix 1. The amendments are shown as tracked changed. The main proposed amendments are:
- c) **Para 2.5.4 (page 8)** updating of wording in relation to covert recording of noise. This has been removed in the 2018 code
 - d) **Para 3.8 (page 17)** new section relating to reviews of authorisations.
 - e) **Para 3.9 (page 18)** new section relating to renewals of authorisations
 - f) **Para 3.10 (page 19)** new section regarding cancellation of authorisations
 - g) **Section 4 (pages 30,31)** new section regarding error and serious errors
 - h) **Section 6 (pages 33-38)** new section regarding safeguards
- 3.2.4 Cabinet is asked to delegate authority to the Borough Secretary and Monitoring Officer to make such future amendments to the Policy which are in the opinion of the Borough Secretary and Monitoring Officer minor and are required only to reflect legislative requirements, relevant guidance or current good practice. It is important that Councillors are satisfied that the RIPA Policy is fit for purpose and are regularly involved in setting the Policy. Therefore any significant amendments to the Policy or changes in policy

direction would only be made with Members' approval and not pursuant to powers delegated to an officer.

3.3 Choices (Options)

3.3.1 Members are recommended to adopt the amended RIPA Policy attached at Appendix 1. Alternatively, Members may choose not to accept the amended RIPA Policy, but this course of action is not recommended because the amendments have been recommended by the Investigatory Powers Commissioner and, under the Codes of Practice issued under the Act, the Council should implement such recommendations.

3.3.2 Members are recommended to delegate authority to the Borough Secretary and Monitoring Officer as set out in paragraph 2.3 b) to make minor changes to the RIPA Policy in the future. The alternative is not delegating this authority, which could lead to the impractical situation of all minor changes being brought before Cabinet for consideration.

4. Implications (including financial implications)

4.1 Policy

4.1.1 This report has implications for the Council's RIPA Policy 2000 as it recommends amendments to this Policy.

4.2 Resources and Risk

4.2.1 There are no financial implications arising directly from this Report.

4.3 Legal

4.3.1 If the Council needs to undertake any surveillance covered by the Regulation of Investigatory Powers Act 2000 (RIPA) for any purpose it must do so in accordance with both the provisions of that Act and of any Codes of Practice issued under it.

4.3.2 The Council's RIPA policy is central to ensuring that the Council's authorisation and record keeping procedures comply with the Act. The Council is required to co-operate with the Investigatory Powers Commissioner in relation to any inspection and to implement any recommendations made following such an inspection. The recommendations set out in the body of the Report will ensure that the Council complies with its duties and, should a need to undertake surveillance arise, ensure that appropriate safeguards are in place to protect the rights of its citizens.

4.4 Equality and Health

- 4.4.1 This is a policy update rather than a whole new policy. Having considered the equality impacts in relation to the policy changes the view is that there are no equality and health implications arising directly from this report.

4.5 Consultees (Internal and External)

- 4.5.1 Given that changes to the report arose from a RIPA Inspection no internal consultations have taken place although Departments will be consulted and engaged with following Cabinet's consideration of the report.

4.6 How the Proposals deliver Priority Outcomes

- 4.6.1 The RIPA Policy links indirectly to the priority in the Corporate Plan to invest in safe, cleaner neighbourhoods because having a fit for purpose RIPA Policy provides the Council's officers with an additional tool that can be used in appropriate circumstances to support investigations carried out in relation to some of the Council's enforcement activities.

4.7 Other Implications

- 4.7.1 No other implications.

5. Background Papers

- 5.1. Post inspection letter dated 16th August 2019.

6. Next Steps

- 6.1 If Cabinet agree the amended report then the Senior Responsible Officer will present a yearly report to the Standards Committee on the number of RIPA applications submitted and approved by the Magistrate's Court.

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