

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

22nd July 2020

REGULATION OF INVESTIGATORY POWERS ACT 2000

Relevant Portfolio Holder	Councillor Geoff Denaro
Portfolio Holder consulted	Yes
Relevant Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services and Monitoring Officer
Wards affected	All Wards
Ward Councillor consulted	N/A
Non-Key Decision	

1. SUMMARY

- 1.1 The Council, along with other public bodies, has powers under the Regulation of Investigatory Powers Act 2000 [“RIPA”] to carry out covert surveillance in certain circumstances.
- 1.2 This report is the annual update to members on RIPA matters and any update to the Policy that has been made since the last report, to comply with the requirement set out at 3.3.

2. RECOMMENDATIONS

The Committee is asked to RESOLVE that

2.1 the Council’s RIPA Policy as reviewed, be endorsed; and

2.2 the update on RIPA activity be noted, described in this report.

NOTE Members are requested to read and review the Council’s policy electronically. There will be a hard copy available on the evening of the committee meeting and beforehand in the Members’ room.

3. KEY ISSUES

Financial Implications

- 3.1 The Policy is lengthy and costly to print, so a small number of printed copies will be made available in the Members’ Room.

Legal Implications

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- 3.2 The Regulation of Investigatory Powers Act 2000 [“RIPA”] gave local authorities powers to conduct covert surveillance under certain circumstances. The Act also regulates the use ‘Covert Human Intelligence Sources’ [“CHIS”] and obtaining certain Communications Data.
- 3.3 The revised Code of Practice for Covert Surveillance and Property Interference 2018 (paragraph 4.47) advised that elected members should at least on an annual basis review the RIPA policy and the authority’s use of the Act. This report is published in compliance with that requirement and also to draw attention to the updating of the Policy.
- 3.4 Local Authority powers are at the lower end of the scale and changes in legislation since the Act was originally introduced, have resulted in further restrictions on their use:
- the use of surveillance was restricted to criminal investigations and in 2012;
 - the Protection of Freedoms Act 2012 introduced a requirement for local authorities to obtain approval from the Magistrates Court for any proposed surveillance activity;
 - A threshold for the level of crime being investigated was raised to include only ‘serious crime’ (as defined).
- 3.5 The regime is overseen by the Investigatory Powers Commissioner’s Office, and includes inspections of organisations by an Inspector appointed by the Commissioner, usually about every three years.
- 3.6 Any organisation which had investigatory powers under RIPA is required to have in place a Policy governing all aspects of the regime, including the need for updating and officer training, regardless of whether the powers are exercised. The Council’s Policy is regularly updated to comply with any changes in the legislation, guidance and codes of practice which apply to the regime. Changes are notified to the Council by an external trainer and RIPA expert, who also provides training and advice on RIPA issues.

Service / Operational Implications

- 3.7 From the outset, the Council’s use of RIPA powers was always low. There are a number of reasons for this: A rigid process has to be followed to establish that a proposed surveillance activity is both “necessary” and “proportionate”; a senior officer has to evaluate the proposal against a number of criteria and would now have to be referred to the Magistrates Court to be confirmed. Then there would have been major resource implications for any authorised surveillance to have been undertaken.

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- 3.8 Since the changes introduced in 2012 as described in 3.3 above, the Council has not exercised its powers under RIPA at all. The Surveillance Commissioner has noted that in recent years authorities like ours have granted far fewer RIPA authorisations and some have granted none at all in the last three years. The reasons include the legislative changes and also reduced resources, greater access to data-matching and overt, rather than covert law enforcement.
- 3.9 At the time of the Council's last physical inspection, in 2015, RIPA powers had not been exercised by the Council since 2012. In 2018, a further three years on, during which no RIPA activity had been undertaken, the Surveillance Commissioner conducted a remote, light-touch review.
- 3.10 One of the points of feedback provided by the Commissioner in 2018 was a reminder of the importance of regular, ongoing internal oversight of the actual or potential use of these powers, which should be managed through your Senior Responsible Officer. The Inspector advised that officers need to maintain their levels of training lest, however remote a possibility it may appear, the powers need to be used. The Senior Responsible Officer [SRO] is Jayne Pickering, Director of Finance and Resources, who holds a meeting every six months to review any RIPA issues, consider any training or other issues relating to RIPA. These meetings used to take place quarterly, but due to the lack of RIPA activity, the SRO decided that twice a year would be sufficient. The Inspector has been advised of this and has not raised a concern.
- 3.11 It is not possible for the Council to 'opt out' of the RIPA regime, which means that although we have not used these powers for years, we are still required by the Commissioner to keep our officers briefed on it, aware of its potential use and crucially, trained in the completion of applications and their approval.
- 3.12 The Council is a member of the National Anti-Fraud Network [NAFN], which is hosted by Thameside MBC and which provides data and intelligence services under the RIPA regime to public sector organisations in relation to fraud investigations. Over 90% of local authorities are members of NAFN. Membership enables the Council to avail of its expertise, without having to have our own staff for the purpose.
- 3.13 Members' attention is drawn to the recent amendment to the Policy since last year's report, the inclusion of a section on 'Obtaining Communications Data'.

Customer / Equalities and Diversity Implications

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3.14 There are no direct implications arising out of this report, providing information to elected members and seeking their approval of the Council's RIPA policies and procedures.

4. RISK MANAGEMENT

The Council is required to comply with the statutory provisions and guidance governing the RIPA regime and any recommendation made by the Inspector on behalf of the Commissioner.

Officers need to be aware of the RIPA powers so that there is no risk of surveillance or CHIS activity being undertaken without the correct approvals being in place.

5. APPENDICES

The Council's RIPA Policy

6. BACKGROUND PAPERS

None

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