

**Audit, Standards and
Governance Committee
2022**

21 July

Report title: Annual Update Report on RIPA

Relevant Portfolio Holder	Councillor G. Denaro
Portfolio Holder Consulted	Yes
Relevant Head of Service	Claire Felton
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Wards Affected	All
Ward Councillor(s) consulted	n/a
Relevant Strategic Purpose(s)	n/a
If you have any questions about this report, please contact the report author in advance of the meeting.	

1. RECOMMENDATIONS

The Committee is asked to RESOLVE that:-

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

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

NOTE Members are requested to read and review the Council's policy electronically. It has been emailed to members of the Committee.

2. BACKGROUND

2.1 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.

2.2 The revised Code of Practice for Covert Surveillance and Property Interference, 2018, at 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.

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- 2.3 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 restricted to criminal investigations;
 - the Protection of Freedoms Act 2012 required local authorities to get approval from the Magistrates Court for any proposed surveillance; and
 - the threshold for the level of crime being investigated was raised to include only 'serious crime' (as defined).
- 2.4 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.
- 2.5 Any organisation which has 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 RIPA expert, who also provides training and advice on RIPA issues.
- 2.6 From the outset, the Council's use of RIPA powers was always low. There were 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 then have to be referred to the Magistrates Court to be confirmed. If approved, there would have been major resource implications for any authorised surveillance to have been undertaken.
- 2.7 Since the changes introduced in 2012 as described in 2.3 above, the Council has not exercised its powers under RIPA. 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.
- 2.8 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, an Inspector on behalf of the Surveillance Commissioner conducted a remote, light-touch review.

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Update: Inspection in January 2022

2.9 A further Inspection was undertaken in January 2022. This was a video and desk-top based inspection. The Commissioner's Report is attached at **Appendix 1**

2.10 The Commissioner's Report stated that :

- the information provided demonstrated a level of compliance which removed for the present the requirement for a physical inspection”;
- The oversight provided by your SRO is of a high standard and is undertaken through bi-annual meetings with representatives from Legal, Enforcement, and Information Management Services; and
- that the Council was “in a good place” with the SRO fully aware of his responsibilities.

- **Recommendations** in the Commissioner's report:

1. The Council's RIPA Policy was described by the Inspector as “already well-formed”, but he recommended a couple of additions to the policy to assist readers' understanding of two issues, one relating to the use of social media in covert investigations and the second relating to how volunteers could become a Covert Human Intelligence Source (CHIS).

The recommendation was for the inclusion of extracts from the Home Office Codes of Practice on these matters, and these have now been added to the Policy.

2. Since the report to members in July 2021, the most substantial amendment to the policy has been the addition of a new section specifically dedicated to Data Safeguards. This was done in November 2021 and was introduced to comply with requirements of the Surveillance Commissioner set out in a letter sent to all Local Authorities in April 2020.

This section was reviewed as part of the inspection in January 2022

The Inspector advised that to address fully the minimum standards expected, the policy should identify the timeframes within which covert material gathered should be subject to review and then, if no

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longer required to be retained, destroyed.

This has been added to the Policy.

Other Changes to the Policy since report to members in 2021

- The SRO at the time of the inspection has now left the Council and this role has now been assigned to the Head of Legal, Democratic & Property Services, who has fulfilled this role previously and is also fully aware of the oversight responsibilities of the role.
- The policy and codes of practice refer to quarterly monitoring of RIPA activity. However, as noted in the Inspector's report, these occur twice a year, rather than quarterly, and the Inspector was satisfied with this.

Training

Relevant officers had a day's refresher training on these aspects of RIPA, in January 2022. This took place just prior to the inspection but had been commissioned months earlier and before the notification of the inspection had been sent to the Council.

- 2.9 It is not possible for the Council to 'opt out' of the RIPA regime, and we are required by the Commissioner to keep our officers briefed on it, aware of its potential use and in the completion of applications and their approval.
- 2.10 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. FINANCIAL IMPLICATIONS

- 3.1 None as a direct result of this report.

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4. LEGAL IMPLICATIONS

- 4.1 The Council has demonstrated compliance with its statutory obligations under RIPA to the satisfaction of the Surveillance Commissioner following inspection in January 2022 and continues to update its policy and provide training for officers.
- 4.2 This report to members complies with the Code of Practice requirement that members should be updated annually on RIPA activity and endorse the Policy, including any changes to it, for the coming year.

5. STRATEGIC PURPOSES - IMPLICATIONS

Relevant Strategic Purpose

- 5.1 'An Effective and Sustainable Council'

Climate Change Implications

- 5.2 None

6. OTHER IMPLICATIONS

Equalities and Diversity Implications

- 6.1 There are no direct implications arising out of this report.

Operational Implications

- 6.2 Only as outlined in the report

7. RISK MANAGEMENT

- 7.1 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.

8. APPENDICES

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Appendix 1 – Report of the Investigatory Powers Commissioner dated
12 January 2022

BACKGROUND PAPERS

The Council's RIPA Policy

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9. REPORT SIGN OFF

Department	Name and Job Title	Date
Portfolio Holder	Cllr G. Denaro	7 July 2022
Lead Director / Head of Service	Claire Felton	7 July 2022
Financial Services	Peter Carpenter	7 July 2022
Legal Services	Clare Flanagan	author
Policy Team (if equalities implications apply)	n/a	
Climate Change Officer (if climate change implications apply)	n/a	