

Contains Confidential or Exempt Information	YES/NO NO
Title	Regulation of Investigatory Powers Act 2000 (RIPA) Update
Responsible Officer(s)	Helen Harris, Director of Legal and Democratic Services
Author(s)	Hatoon Zeb
Portfolio(s)	Cllr Steve Donnelly, Inclusive Economy
For Consideration By	Cabinet
Date to be Considered	17 January 2024
Implementation Date if Not Called In	29 January 2024
Affected Wards	ALL
Keywords/Index	

Purpose of Report:

To update Cabinet on the use of the Council's powers under RIPA and to update the Council's 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 RIPA policy at Appendix 1.

c) Approves the continuing appointment of:

- i) Helen Harris (Director of Legal and Democratic Services) as senior responsible officer (SRO) 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):
 - Mike Pinder (Assistant Director, Audit and Investigations)
 - Justin Morley (Head of Legal Services - Litigation)
 - Jess Murray (Assistant Director, Safer Communities and Resident Services)

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

- i) make any further amendments to the RIPA Policy which are necessary to maintain consistency with legislation, Codes of Practice, good practice
- 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

There is a requirement in the 2018 Code of Practice for Covert Surveillance and Property Interference, that elected members are to be kept informed about the Council's use of powers under RIPA and that Cabinet approves a policy annually to ensure the policy remains fit for purpose.

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 court 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 annually as required having regard to the Home Office Codes of Practice and any changes in the law.

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 Investigatory Powers Commissioners Office (IPCO).

4. Investigatory Powers Commissioners Office

4.1 The IPCO 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 4th August 2023.

4.2 The only recommendation from the 2023 inspection was to continue to ensure the key compliance issues receive the necessary internal governance and oversight which include:

- a) policy updates
- b) annual updates as required by this report to elected members
- c) ongoing training and awareness raising
- d) internal compliance monitoring by lead managers within their business areas
- e) the retention, review and destruction (RRD) of any product obtained through the use of covert powers (Records and Product Management in accordance with the Safeguards Chapters of the relevant Codes of Practice)

The policy will be uploaded onto Onespace (the Council's intranet) so it is accessible to all council officers.

5. Officer Training

5.1 The last training session on RIPA for the Council's officer team was held on 30 June 2023. The training was attended by officers from various departments of the Council including the Senior Responsible Officer, Authorising Officers and investigating officers. The training was comprehensive in providing a refresher on the law, process and procedure around RIPA 2000. Although the Council has not carried out RIPA investigations in recent years, it is essential that officers understand the constraints and opportunities afforded by RIPA, including best practice examples from experts in the field. Further training is anticipated in early 2026 to ensure officers remain updated in this area. IPCO requires the Council to arrange for training to be carried out once in every three year period.

6. Use of RIPA powers

6.1 There were no RIPA applications for covert surveillance made in period 1 April 2022 - 31 March 2023. This reflects the fact that nearly all enforcement activity by Council officers continues to be overt and does not therefore require RIPA. There have been no inquiries regarding Non-RIPA requests.

6.2 The Council has a RIPA Officer Group who schedule to meet at least twice annually to oversee the Council's obligations under RIPA are adequately met. The SRO chairs the meeting and attendees include the Council's authorising officers and the RIPA legal adviser. Regular agenda items include training, IPCO Inspection, RIPA Applications update and any live issues following IPCO guidance.

7. Financial

Any financial implications arising from RIPA will continue to be managed within the respective existing budgets. Ensuring adequate arrangements and procedures are in place safeguards against the risks of the Council needing to pay compensation.

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. These 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 and correctly could result in reputational damage for the Council and claims for compensation.

12. Community Safety

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

13. Links to the 3 Key Priorities for the Borough

The Council's three key priorities are:

- Creating good jobs
- Tackling the climate crisis
- Fighting inequality

The recommendations in this report support those priorities.

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 Policy.

15. Staffing/Workforce and Accommodation implications:

None

16. Property and Assets

None

17. Any other implications

None

18. Consultation

None

19. Timetable for Implementation

None

20. Appendices

Policy attached

21. Background Information

- (i) Regulation of Investigatory Powers Act 2000
<http://www.legislation.gov.uk/ukpga/2000/23/contents>
- (ii) Covert Surveillance and Property Interference Code of Practice – August 2018
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733218/201800802_CSPI_code_reformatted_for_publication_003_.pdf
- (iii) Home Office Covert Human Intelligence Sources – August 2018
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742042/20180802_CHIS_code_.pdf
- (iv) IPCO Guidance – July 2016
<https://www.ipco.org.uk/docs/OSC%20PROCEDURES%20AND%20GUIDANCE.pdf>
- (v) Article 8 Human Rights Act 1988
<https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/7>

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Helen Harris	Director of Legal & Democratic Services			
Emily Hill	Strategic Director, Resources	07/12/2023	07/12/2023	Throughout
Cllr Steve Donnelly	Portfolio Holder	07/12/2023	08/12/2023	Para 5.1 only

Report History

Decision type:	Urgency item?
Non-key decision	No
Report no.:	Report author and contact for queries:
	Hatoon Zeb Senior Lawyer (Litigation & Prosecution)