

Report to: **Audit Panel**

Date: Tuesday, 25 June 2024

Reporting Officer: Aileen Johnson - Borough Solicitor

Subject: **UPDATE ON THE REGULATION OF INVESTIGATORY POWERS ACT (RIPA) POLICY AND ANNUAL REPORT OF RIPA AUTHORISATIONS**

Report Summary: This report is brought to Members for a formal review of the Council's Policy use of authorisations to utilise its powers by virtue of the Regulation of Investigatory Powers legislation and guidance.

Recommendations: That Members of the Audit Panel note that


- (i) the report;
- (ii) Officers across the Council will continue to engage in refresher training led by the Borough Solicitor in relation to the Regulation of Investigatory Powers legislation and guidance.
- (iii) officers are reviewing the current RIPA report and bring forward any amended policy document for approval by 10 December 2024.

Financial Implications: There are no direct financial implications arising from the report.
(Authorised by the statutory Section 151 Officer & Chief Finance Officer)

Legal Implications: Non-compliance with the RIPA legislation could cause court proceedings to be compromised, human rights to be breached and reputational damage to the Council, with criminal sanctions and cost implications. Members should note this legislation applies to all types of surveillance and investigations carried out on behalf of the Council.
(Authorised by the Borough Solicitor)

Risk Management: Risks of non-compliance will be mitigated by ensuring officers receive training, refresher training and updated, and have a good working knowledge of how the legislation and policies apply to their work.

Background Information: The background papers relating to this report can be inspected by contacting Colin Brittain, Head of General Law, Legal Services.

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1 INTRODUCTION

- 1.1 The Council is required to produce an annual report in relation to the use of the Council's surveillance powers and ensure that all officers engaged in investigatory work understand the requirements of the Regulation of Investigatory Powers Acts 2000 and 2016 (RIPA).
- 1.2 Much of a further piece of legislation, the Investigatory Powers (Amendment) Act 2024 (the 2024 Act) received Royal Assent on 25 April 2024. It builds on RIPA, specifically amending the 2016 Act, also amending various other relevant pieces of legislation, and aiming to ensure the law keeps pace with expanding technology and modern threats to security such as terrorism, criminal gangs and child abusers. It is particularly relevant to the intelligence agencies operating in this landscape of accelerating technological change.
- 1.3 The reforms the 2024 Act brings are designed to ensure the surveillance powers continue to be subject to robust independent oversight by the Investigatory Powers Commissioners Office (IPCO), expanding their role. The intention remains that access to individuals' data will happen only where it is proportionate and necessary to prevent the most serious forms of crime and with robust precautions in place.
- 1.4 Members will recall that the IPCO is a non-departmental public body (NDPB) which was established to oversee the authorisation and use of covert tactics by statutorily empowered public authorities of which the Council is one. The IPCO team supports the Investigatory Powers Commissioner and Judicial Commissioners in fulfilling their duties under the Investigatory Powers Act 2016. Funding for the IPCO is provided by the Home Secretary. However, the IPCO carries out its functions independently of the Government and is not part of the Home Office.
- 1.5 RIPA regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement agencies have the powers they need to conduct investigations effectively. The Council must have in place a system of authorising, recording, and reviewing any surveillance that it carries out that is covered by the Act. All directed surveillance or use of covert human intelligence sources carried out by officers of the Council, or by those acting on the Council's behalf, must be authorised in the first instance by an Authorising Officer. However, any authorisation granted will not take effect until a judicial approval has been granted.
- 1.6 The Council is included within the RIPA framework with regard to the authorisation of both directed surveillance and of the use of covert human intelligence sources (CHIS). Since the introduction of the Protection of Freedoms Act in November 2012, the Council is now only able to authorise surveillance under RIPA if it is for the purpose of preventing or detecting crime or preventing disorder subject to the "serious offence test". These are criminal offences that attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.
- 1.7 Directed surveillance includes the covert surveillance of an individual in circumstances where private information about that individual may be obtained. A CHIS is a person who builds up a relationship of trust with another person for the purpose of obtaining information as part of an investigation.
- 1.8 The latest Home Office Code of Practice on Covert Surveillance and Property Interference recommends that elected members should consider internal reports on the Council's use of RIPA powers on a "regular basis" to ensure that the Act is being used consistently with the Council's Policy Guidelines and that they should review their RIPA policies at least once per year. The Code reiterates that members should not be involved in making decisions on specific RIPA authorisations.

- 1.9 The last report to the Committee, in November 2022 was a “nil return” as there had been no directed surveillance or CHIS authorisations for the relevant reporting since 2013. The current reporting period is from that date to June 2024 and there have again been no authorisations over this period.

2. IPCO DESKTOP INSPECTION – 28 MARCH 2022 AND RIPA POLICY REVISION

- 2.1 On 4 February 2022 the Monitoring Officer received notification from the IPCO that the Council was due for its next programmed inspection of the use of covert surveillance in accordance with the provisions of the Regulation of Investigatory Powers Act 2000. The following information and documentation was required to be sent in advance to the Inspector:

- If any use of RIPA has been made since the last inspection (CHIS/DSA) the exact numbers and if possible (redacted names/premises are fine) a small selection of the RIPA applications/authorisations/cancellations.
- Details of any training undertaken since the last inspection.
- A copy of your RIPA policy
- Details of any data assurance measures/training in place to comply with the safeguarding chapters of the codes of practice

- 2.2 On 28 March 2022, a video and desktop based inspection took place following the Inspector’s examination of the relevant documentation, thereby obviating the need for a visit by a Surveillance Inspector.

- 2.3 On 29 March 2022, the IPCO wrote to the Chief Executive with details of the Inspector’s findings. The Inspector had identified that *‘whilst our RIPA policy contained references to the keeping and management of records (Section D), the policy should also carry details regarding the data safeguards contained within each Code of Practice and to advise the reader as to the minimum standards required; who will undertake the required review of covertly obtained material; and the time period within which this review will take place to determine if the material gathered will be retained or destroyed’*.

- 2.4 Having regard to the findings of IPCO a revised RIPA policy was prepared and approved on 22 November 2022. That policy is appended to this report and remains fit for purpose. However, it is envisaged that there will be a triannual inspection by IPCO in 2025 and it would be prudent for officers to review the current policy to ensure that it remains to be fit for purpose and to bring forward any revised policy for approval by Members of the Audit Panel by the end of the current year in anticipation of the inspection.

3. RECOMMENDATIONS

- 3.1 As set out on the front of the report.