

**Report of: Executive Member for Finance, Performance and Community Safety**

<b>Meeting of:</b>	<b>Date</b>	<b>Ward(s)</b>
<b>Executive</b>	<b>6 February 2020</b>	All
<b>Delete as appropriate</b>		Non-exempt

  
**SUBJECT: THE COUNCIL'S USE OF INVESTIGATORY POWERS****1. Synopsis**

- 1.1 The report updates the Committee on the council's use of investigatory powers under the Regulation of Investigatory Powers Act 2000 ("RIPA") and recent legal developments.
- 1.2 The report summarises amendments to the council's RIPA policy and covert surveillance procedural notes.

**2. Recommendations**

- 2.1 To note the level of directed surveillance undertaken by the council and the recent legal developments.
- 2.2 To agree the updated RIPA policy and covert surveillance procedural notes.

**3. Background**

- 3.1 RIPA provides a statutory framework regulating the use of directed surveillance and the conduct of covert human intelligence sources (informants or undercover officers) by public authorities. RIPA requires public authorities, including local authorities, to use covert investigation techniques in a way that is necessary, proportionate and compatible with human rights.
- 3.2 Directed surveillance is covert surveillance conducted for the purposes of a specific

investigation or operation that is likely to result in the obtaining of private information about a person. Private information includes any aspect of a person's private or personal relationship with others, including family and professional or business relationships. Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information.

- 3.3 Communications data is generated in the provision, delivery and maintenance of postal or telecommunications services but does not include the content of the communication. Communications data falls into two categories of entity data and events data.
- 3.4 The use of covert surveillance techniques by local authorities was previously the subject of some controversy. The Government introduced significant changes under the Protection of Freedoms Act 2012, which came into effect on 1 November 2012. The changes mean that a magistrate's approval is required before a local authority's RIPA authorisation can take effect.
- 3.5 The Investigatory Powers Commissioner ("the IPC") has responsibility for oversight of investigatory powers used under RIPA. The council was last inspected on 1 December 2016 and we have received notification that the next inspection will be on 9 March 2020.

## **4. Obtaining communications data**

- 4.1 The Investigatory Powers Act 2016 ("IPA") governs the lawful obtaining of communications data by public authorities. The term communications data includes the 'who', 'when', 'where', and 'how' of a communication but not the content i.e. what was said or written. A local authority cannot make an application that requires the processing or disclosure of internet connection records for any purpose.
- 4.2 Communications data is generated, held or obtained in the provision, delivery and maintenance of communications services i.e. postal services or telecommunications services. All communications data held by a telecommunications operator or obtainable from a telecommunication system falls into two categories of entity data and events data.

Examples of entity data include:

- 'subscriber checks' such as "who is the subscriber of phone number 01234 567 890?", "who is the account holder of e-mail account example@example.co.uk?" or "who is entitled to post to web space www.example.co.uk?";
- subscribers' or account holders' account information, including names and addresses for installation, and billing including payment method(s), details of payments;
- information about apparatus or devices used by, or made available to, the subscriber or account holder, including the manufacturer, model, serial numbers and apparatus codes.

Examples of events data include, but are not limited to:

- information tracing the origin or destination of a communication that is, or has been, in transmission (including incoming call records);
- information identifying the sender or recipient of a communication from data comprised in or attached to the communication;
- itemised timing and duration of calls;

- 4.3 Part 3 of IPA contains provisions relating to authorisations for obtaining communications data. This part of IPA is now in force but the acquisition of communications data was previously

covered by RIPA. Under RIPA, local authorities were required to obtain judicial approval in order to acquire communications data. However, the position has now changed and from June 2019, all communications data applications must instead be authorised by the Office for Communications Data Authorisations ("the OCDA").

- 4.4 The Home Office issued 'Communications Data' Code of Practice in November 2018 and chapter 8 covers local authority procedures. A local authority must make a request to obtain communications data via a single point of contact ("SPoC") at the National Anti-Fraud Network ("NAFN"). In addition to being considered by a NAFN SPoC, an officer within the local authority of the rank of service manager or above should be aware the application is being made before it is submitted to an authorising officer in the OCDA.
- 4.5 A serious crime threshold applies to the obtaining of some communications data. The council can only submit an application to obtain events data for the investigation of a criminal offence capable of attracting a sentence of 12 months or more. However, where the council is looking to obtain entity data this can be done for any criminal investigation where it is necessary and proportionate to do so.

## **5. Updated RIPA policy and covert surveillance procedural notes**

- 5.1 The council's RIPA policy and covert surveillance procedural notes have been updated to reflect recent changes regarding obtaining communications data and revised codes of practice published by the Home Office.
- 5.2 The policy and procedural notes include new sections regarding online investigations. Where online monitoring or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, the policy and procedural notes set out when a RIPA authorisation should be considered.
- 5.3 There are new sections in the directed surveillance procedural notes on 'general observation activities' and surveillance not relating to 'core functions'. The general observation duties of council officers do not require authorisation under RIPA, whether covert or overt. Core functions are the specific public functions undertaken by the council, in contrast to the ordinary functions which are undertaken by all public authorities e.g. employment issues and contractual arrangements. The council can only seek a RIPA authorisation in performance of its core functions.

## **6. Authorisation of covert surveillance**

- 6.1 During this financial year since 1 April 2019, the council has authorised directed surveillance on 4 occasions for cases investigated by Housing Investigations:
- 2 cases of unlawful subletting of council tenancies
  - 1 case of unlawful subletting of a council tenancy and benefit fraud
  - 1 case of fraudulent RTB and benefit fraud
- These authorisations were all given judicial approval by a magistrate.
- 6.2 For the previous financial year (1 April 2018 to 31 March 2019) the council authorised directed surveillance on 6 occasions for cases investigated by Housing Investigations:
- 4 cases of unlawful subletting of council tenancies

- 1 case of unlawful subletting of a council tenancy, fraudulent RTB application and benefit fraud
- 1 case of unlawful subletting of a council tenancy and benefit fraud

These authorisations were all given judicial approval by a magistrate.

- 6.3 The council has not authorised the use of a covert human intelligence source since October 2010.
- 6.4 The trend in the number of RIPA authorisations has generally been downwards, although there was a slight increase in the last financial year. By comparison the council has granted the following number of directed surveillance authorisations in previous years:
- 2010/11 – 23
  - 2011/12 – 15
  - 2012/13 – 17
  - 2013/14 - 6
  - 2014/15 – 4
  - 2015/16 – 1
  - 2016/17 – 2
  - 2017/18 - 1

## **7. Implications**

### **7.1 Financial implications:**

There are no financial implications arising directly from this report. Robust anti-fraud activity is an integral part of the council's strategy for safeguarding its assets and maximising its use of resources. The use of investigatory surveillance is one of the tools the council uses to achieve these aims.

### **7.2 Legal Implications:**

RIPA was introduced to ensure that covert surveillance undertaken by public authorities is undertaken in accordance with the European Convention on Human Rights and the Human Rights Act 1998.

The council can only undertake covert surveillance under RIPA if the proposed operation is authorised by one of the council's authorising officers and subsequently approved by a magistrate. The council can only use directed surveillance if it is necessary to prevent or detect criminal offences, which attract a custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. The authorising officer must also be satisfied that the proposed directed surveillance is proportionate to what is sought to be achieved.

There has been a reduction in the number of directed surveillance authorisations granted by the council since 1 November 2012, when the Protection of Freedoms Act 2012 introduced significant changes to local authorities' use of RIPA. However, the council could still face a legal challenge to the way in which covert surveillance is conducted; this could lead to the evidence obtained being ruled as inadmissible and/or a complaint to the Investigatory Powers Tribunal.

Part 3 of IPA is now in force and this sets out the provisions for the obtaining of communications data by public authorities.

**7.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:**

Not applicable

**7.4 Resident Impact Assessment:**

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A resident impact assessment has not been conducted, as this report only provides monitoring information and a legal update for the Committee.

**8. Reason for recommendations**

- 8.1 The Protection of Freedoms Act 2012 introduced additional safeguards to the use of RIPA and the impact of covert surveillance on the privacy of those under investigation. This has seen a reduction in the use of directed surveillance by the council.
- 8.2 The council is managing its covert activities in accordance with RIPA, IPA and Home Office codes of practice. The Council's covert surveillance policy and procedural notes have been updated to reflect recent changes.

**Appendices:** The council's RIPA policy and covert surveillance procedural notes  
Summary of key changes to the council's RIPA policy and covert surveillance procedural notes

**Background papers:** None

Final report clearance:

**Signed by:**



29 January 2020

Councillor Andy Hull, Executive Member for Finance, Performance and Community Safety      Date

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