



Report of: Corporate Director Resources

| Meeting of: | Date: | Ward(s): |
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| Audit Committee | 27 July 2021 | N/A |

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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"). The report also provides an update on actions taken following the Investigatory Powers Commissioners Office ("IPCO") inspection of the council's surveillance activities.

2. Recommendations

- 2.1 To note the actions undertaken to address the recommendations of the Investigatory Powers Commissioner ("IPC").
- 2.2 To note the outstanding actions to be taken to address the recommendations of the IPC.
- 2.3 To note the level of directed surveillance undertaken by the council.

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 The Investigatory Powers Act 2016 ("IPA") governs the lawful obtaining of communications data by public authorities. Communications data is generated in the provision, delivery and maintenance of postal or telecommunications services but does not include the content of the communication.
- 3.4 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's communications data requests must be authorised by the Office for Communications Data Authorisations.
- 3.5 The Investigatory Powers Commissioner ("the IPC") has responsibility for oversight of investigatory powers used under RIPA. A remote inspection was conducted last year by telephone interview & desktop evaluation. Following completion of the inspection, the IPC issued a report on 5 June 2020. The IPC also issued a data assurance letter regarding data handling and retention safeguards relating to data obtained under RIPA and IPA.
- 3.6 An action plan was drawn up which was brought to Audit Committee on 28 July 2020.

4. The action plan

- 4.1 There has been some slippage due to the pandemic; officers working on the Information Governance side have had to prioritise the development of working policies and practices for a radically different way of working. Officers have not practically been able to undertake covert surveillance during the pandemic, however, the action plan has been progressed and a number of actions have been completed. The action plan has been updated as set out in the table below.

| Number | Action | Owner | Original timescale | Update | Revised timescale | Date completed |
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| Action 1a | To draw up a 'non-RIPA' policy for sign off by the Senior Responsible Officer for inclusion in the council's RIPA policy & covert surveillance procedural notes. | RIPA Co-ordinating Officer | 31 August 2020 | Non-RIPA procedures drafted & signed off by the SRO | | 9 July 2021 |
| Action 1b | When the 'non-RIPA' policy is signed off the RIPA Co-ordinating Officer to provide a | RIPA Co-ordinating Officer | 30 September 2020 | Briefing note drafted & ready for circulation | | 9 July 2021 |

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| | briefing note for officers. | | | | | |
| Action 2 | Senior Responsible Officer and RIPA Co-ordinating Officer to keep training requirements across the council under 6 monthly review. | RIPA Co-ordinating Officer | Every 6 months | Review identified need for training of new Authorising Officers. Training delivered on 19.1.21 | | On going |
| Action 3a | The IG Team review the policy and guidance for staff regarding sharing of data obtained under a RIPA authorisation, with a specific focus on only providing the data that is necessary. | Head of Information Governance and Data Protection Officer | 31 July 2020 | Completed | | 27 May 2021 |
| Action 3b | The retention schedule is updated so that RIPA and IPA is included and clearly defined. | Information Management Lead | 31 August 2020 | Completed | | 11 September 2020 |
| Action 4a | Data mapping to be completed for the flow of data resulting from a RIPA or IPA authorisation, identifying where it is stored. | Head of Information Governance and Data Protection Officer | 30 September 2020 | Data mapping exercise has been completed for Trading Standards. Work on the data mapping exercise for Housing Investigations is underway | 31 August 2021 | |
| Action 4b | Following the data mapping exercise (i) Head of Information Governance and Data Protection Officer to provide guidance/recommendations where data should be stored (ii) Service Areas to apply storage | (i) Head of Information Governance and Data Protection Officer (ii) Investigation Managers | 30 October 2020 | (i) To be completed | (i) 16 July 2021 | |

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| | guidance/recommendations & agreed retention. | | | | | |
| Action 4c | Audits are periodically undertaken to ensure that staff are complying with the agreed processes for managing RIPA and IPA data. | Investigation Managers with SRO oversight | Annually | Audits to be scheduled for 2022 | | |
| Action 5 | When the data mapping exercise is completed, authorising officers to be provided with briefing. | RIPA Coordinating Officer | 30 October 2020 | Briefing to be provided when data mapping exercise (Actions 4a & 4b) is fully completed | 30 September 2021 | |
| Action 6 | Briefing to be prepared for investigating officers and authorising officers regarding information to be included in RIPA and IPA authorisation requests regarding retention and disposal of the data obtained. | RIPA Coordinating Officer | 30 October 2020 | To be completed | 30 September 2021 | |
| Action 7 | Commence a full review of previous authorisations. Identify all locations that data is stored and (where retention has been exceeded) securely destroy the data. Data that is still within retention should be stored in the agreed location and have the agreed retention period applied. | Investigation Managers with SRO oversight | 1 January 2021 | Reviews to be scheduled for 2022 | | |

5. Authorisation of covert surveillance

- 5.1 During this financial year since 1 April 2021, the council has not authorised any directed surveillance.
- 5.2 For the previous financial year (1 April 2020 to 31 March 2021) the council did not authorise any directed surveillance.
- 5.3 The council has not authorised the use of a covert human intelligence source since October 2010.
- 5.4 The council has not authorised any directed surveillance since the lockdown in March 2020. By comparison the council has granted the following number of directed surveillance authorisations in previous years:
- 2013/14 - 6
 - 2014/15 – 4
 - 2015/16 – 1
 - 2016/17 – 2
 - 2017/18 – 1
 - 2018/19 - 6
 - 2019/20 – 4

6. Implications

6.1 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.

6.2 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.

The council is complying with the legal requirements of RIPA and the Home Office codes of practice. The data obtained under RIPA and IPA is subject to obligations under the Data Protection Act 2018 and the action plan will ensure the council's compliance.

6.3 Environmental implications and contribution to achieving a net zero carbon Islington by 2030:

There are no known environmental implications.

6.4 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 completed because it is not relevant to this report.

7. Reason for recommendations

- 7.1 The council is managing its covert activities in accordance with RIPA, IPA and Home Office codes of practice.
- 7.2 The council has devised an action plan to address the recommendations flowing from the IPC inspection report and data assurance letter. The council is implementing the necessary actions as outlined in paragraph 4.1.

Final report clearance:

Signed by:

Corporate Director Resources

Date

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