

Resources

7 Newington Barrow Way

London N7 7EP

Report of: Corporate Director of Resources

Meeting of: Audit Committee

Date: 15 November 2022

Ward(s): None

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 recent developments in the council's arrangements to ensure compliance with the provisions of RIPA.

2. Recommendations

- 2.1. To note the level of directed surveillance undertaken by the council.
- 2.2. To note the recent developments in the council's arrangements to ensure compliance with the provisions of RIPA.

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 in 2020 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.
- 3.6 An action plan was drawn up which was brought to Audit Committee on 28 July 2020. An update on the action plan was brought to Audit Committee on 27 July 2021.

4. The action plan

- 4.1 The actions 1a – 7 set out in the action plan have been completed. Actions 2 and 4c are ongoing and these actions will be kept under review.

Number	Action
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.
Action 1b	When the ‘non-RIPA’ policy is signed off the RIPA Co-ordinating Officer to provide a 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.

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.
Action 3b	The retention schedule is updated so that RIPA and IPA is included and clearly defined.
Action 4a	Data mapping to be completed for the flow of data resulting from a RIPA or IPA authorisation, identifying where it is stored.
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 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.
Action 5	When the data mapping exercise is completed, authorising officers to be provided with briefing.
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.
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.

5. Recent developments

- 5.1 The council has appointed a new Senior Responsible Officer for RIPA and new authorising officers.
- 5.2 Training has been provided for officers across the council on the non-RIPA policy and the new authorising officers have been provided with relevant RIPA training.

6. Authorisation of covert surveillance

- 6.1 During this financial year since 1 April 2022, the council has not authorised any directed surveillance.
- 6.2 For the previous financial year (1 April 2021 to 31 March 2022) the council authorised one application for directed surveillance. However, the investigating officer decided not to seek judicial approval and other less intrusive lines of enquiry were implemented.
- 6.3 The council has not authorised the use of a covert human intelligence source since October 2010.
- 6.4 The council's use of RIPA to carry out directed surveillance has reduced in recent years. The number of times the council has obtained approval for directed surveillance is set out below:
- 2017/18 – 1
 - 2018/19 – 6
 - 2019/20 – 4
 - 2020/21 - 0

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.

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 has promoted the council's compliance.

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

There are no known environmental implications.

7.4 Equalities 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.

An Equalities Impact Assessment is not required because it is not relevant to this report.

8. Conclusion and reasons for recommendations

The council is managing its covert activities in accordance with RIPA and Home Office codes of practice.

Final report clearance:

Signed by:

Corporate Director of Resources

Date: 31 October 2022

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