

Resources

222 Upper Street

London N1 1XR

Report of: Corporate Director of Resources

Meeting of: Audit and Risk Committee

Date: 21 May 2024

Ward(s): None

Subject: The council's use of covert investigatory powers – RIPA Annual Report

1. Synopsis

- 1.1. The report updates the Committee on the council's use of covert investigatory powers. The report also provides an update on the outcome of the Investigatory Powers Commissioner's Office ("IPCO") inspection and recent developments in the council's arrangements to ensure compliance with the provisions of the Regulation of Investigatory Powers Act 2000 ("RIPA").

2. Recommendations

- 2.1. To note the level of directed surveillance undertaken by the council.
- 2.2. To note the outcome of the IPCO inspection and 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. The IPC is supported by the IPCO.

4. Recent developments

- 4.1 A desk-top inspection was conducted during September and October 2023 by IPCO inspector, Nick Fletcher. Following completion of the inspection, the IPC wrote to the council on 19 October 2023. The IPC was satisfied that the council provided assurance of its ongoing compliance with RIPA and IPA and advised that the council would not require further inspection at the current time. The next inspection will be due in 2026.
- 4.2 The inspector raised an issue of best practice regarding the use of social media to conduct covert activity. The inspector advised that for some covert investigations, the council's investigating officers should use pseudonyms to gather information from social media sites. This should be based on an assessment of risk to the investigating officer and the circumstances of the case.
- 4.3 The use of social media is currently covered in the council's RIPA policy and procedures. However, it is proposed that the council should have a stand-alone social media policy for investigations which will capture the Home Office guidance, best practice as highlighted by the Inspector and the procedure for investigating officers across the council.
- 4.3 Following the introduction of the social media policy for investigations the RIPA Co-ordinating Officer will arrange training for key officers across the council.

5. Authorisation of covert surveillance

- 5.1 During the financial year 1 April 2023 to 31 March 2024, the council has not authorised any directed surveillance.
- 5.2 For the previous financial year (1 April 2022 to 31 March 2023) 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'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:
- 2018/19 – 6
 - 2019/20 – 4
 - 2020/21 – 0
 - 2021/22 – 0
 - 2022/23 – 0
- 5.5 The council has not authorised any non-RIPA covert surveillance.

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.

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

There are no known environmental implications.

6.4 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.

7. Conclusion and reasons for recommendations

The council is managing its covert activities in accordance with RIPA and Home Office codes of practice. The recent IPCO inspection found that the council continues to provide assurance of ongoing compliance with RIPA and IPA.

Final report clearance:

Authorised by:

Corporate Director of Resources

Date: 13 May 2024

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