

ANNUAL REPORT ON RIPA USAGE & POLICY

Head of Service/Contact: Amardip Healy, Chief Legal Officer
Annexes/Appendices (attached): **Annex 1** – Policy & Guidance on Lawful Surveillance, Regulation of Investigatory Powers Act 2000

Other available papers (not attached):

Report summary

To give an annual report to members on activities relating to surveillance by the Council and policies under the Regulation of Investigatory Powers Act 2000.

Recommendation (s)

That the Committee:

- (1) notes the annual report of the Council's use of its RIPA powers;**
- (2) approves the Council's 'Policy & Guidance on Lawful Surveillance' for the forthcoming year attached at Annex 1.**

1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 To ensure that any covert surveillance activity carried out by the Council remains proportionate and in line with current legislation and good practice. Compliance with this legislation will contribute to keeping the Borough clean and green, safe and vibrant, and supporting our community and businesses.

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2 Background

- 2.1 The Council has a number of functions to undertake which involve the enforcement of laws and regulation. On occasion, officers may need to conduct investigations and, in exceptional circumstances, the Council has the power to make use of covert surveillance and similar activities.
- 2.2 The Regulation of Investigatory Powers Act 2000 (RIPA) and the Codes of Practice issued under section 71 of that Act regulates the way in which the Council conducts surveillance for the purposes of law enforcement. The fundamental requirement of RIPA is that when the Council considers undertaking directed surveillance or using a covert human intelligence source it must only do so if:
 - a) the activity has been authorised by an officer with appropriate powers, and
 - b) the relevant criteria are satisfied, including authorisation by the Magistrates Court.
- 2.3 All directed surveillances (covert, but not intrusive) and use of covert human intelligence sources (CHIS) require authorisation by a senior Council officer and the exercise of the powers is subject to review. The controls are in place in accordance with the Human Rights Act, particularly the right to respect for family and private life.
- 2.4 Substantial changes were made to the powers of Local Authorities to conduct directed surveillance and the use of human intelligence sources under the Protection of Freedoms. As of 1 November 2012 any RIPA surveillance which the Council wishes to authorise must be approved by an authorising officer at the council and also be approved by a Magistrate; where a Local Authority wishes to seek to carry out a directed surveillance or make use of a human intelligence source the Council must apply to a single Justice of the Peace. The Home Office issued guidance to Local Authorities and to Magistrates on the approval process for RIPA authorisations.
- 2.5 The Office of the Surveillance Commissioner (OSC) oversees the exercise by Councils of their surveillance powers. As a consequence of the Investigatory Powers Act 2016, the Office of the Surveillance Commissioner was subsumed (with the Interception of Communications Commissioner's Office and the Intelligence Services Commissioner) into the Investigatory Powers Commissioner's Office which took effect from the 1st September 2017.

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- 2.6 Following a desktop review by the Surveillance Commissioner in 2017, a number of recommendations were made. They included updates to the Council's RIPA Policy. The recommendations were incorporated into an amended policy and reported to the Strategy & Resources Committee for approval. The amended policy was approved on the 17th April 2018. Following a review of the law and good practice, no changes were felt necessary to the Policy this year.
- 2.7 As a part of the 2017 recommendations, there was also a requirement to ensure officers were trained in the use of powers. Specialist training was arranged by the Council which included a number of other Surrey Councils. Not only did this keep the cost to the Council of such training to a minimum, it also enable a wider sharing and knowledge of good practice. This format for training will be repeated as part of a rolling programme.
- 2.8 The Council's policy requires a regular update of RIPA activity to be reported to the Audit, Crime & Disorder Committee. The Council did not undertake any directed surveillance or use a covert human intelligence source in 2016/2017. In 2017/18, one application was approved for directed surveillance which lead to the conviction of a defendant in a fly tipping case. There have been no applications for the period 2018/19.

3 Proposals

- 3.1 This report seeks to inform on the last year's activities and seeks approval of 'Policy & Guidance on Lawful Surveillance' for the forthcoming year attached at Annex 1.
- 3.2

4 Financial and Manpower Implications

- 4.1 There are no financial implications to this report.
- 4.2 **Chief Finance Officer's comments:** None for the purposes of this report.

5 Legal Implications (including implications for matters relating to equality)

- 5.1 The Policy & Guidance document sets out the means of compliance with and use of the RIPA legislation by the Council. It is based on the requirements of the Act and the relevant Codes of Practice.

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5.2 Use of investigatory powers potentially engages the Human Rights Act 1998 and in particular the qualified right to private and family life under article 8 of the European Convention. This right may only be interfered with in circumstances where it is necessary and proportionate to do so in pursuit of the public interest. The Council's RIPA Policy & Guidance document is designed to facilitate compliance with the Human Rights Act.

5.3 **Monitoring Officer's comments:** none arising from the contents of this report

6 Sustainability Policy and Community Safety Implications

6.1 The RIPA Policy is part of the Council's regulatory toolkit. An annual review of the Policy helps to maintain public confidence in the Council's position on community safety.

7 Partnerships

7.1 Not applicable for the purposes of this report

8 Risk Assessment

8.1 It is important to ensure regulatory investigative procedures are kept up to date in line with current good practice.

9 Conclusion and Recommendations

9.1 An annual review and updating of the RIPA policy ensures the Council is both up to date with current thinking and practice and allows all regulatory tools to remain available if needed.

Ward(s) Affected: (All Wards);