

ANNUAL REPORT ON THE USE OF RIPA POWERS

Head of Service: Amardip Healy, Chief Legal Officer
Wards affected: (All Wards);
Urgent Decision?(yes/no)
If yes, reason urgent decision required:
Appendices (attached): 1: Policy & Guidance on Lawful Surveillance, Regulation of Investigatory Powers Act 2000
2: IPCO Inspection Letter dated 19.1.2021

Summary

To report on the Council's activities relating to surveillance under the Regulation of Investigatory Powers Act 2000 for 2020.

Recommendation (s)

The Committee is asked to:

- (1) note the annual report of the Council's use of its RIPA powers for 2020;**
- (2) note the findings of the inspection by the Investigatory Powers Commissioner's Office.**

1 Reason for Recommendation

- 1.1 This report seeks to inform on the last year's activities and update the Committee following the Inspection by the Investigatory Powers Commissioner's Office.

2 Background

- 2.1 The Council undertakes a number of functions 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.

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- 2.3 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.
- 2.4 All RIPA surveillance which the Council wishes to authorise must be approved by an Authorising Officer 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.

Inspections

- 2.5 The Investigatory Powers Commissioner's Office has responsibility to oversee the exercise of the use by Councils of their surveillance powers.
- 2.6 Following a desktop review by the Surveillance Commissioner in 2017 (as it was known then), a number of recommendations were made. They included updates to the Council's RIPA Policy. The recommendations were incorporated into an amended policy and approved by Strategy & Resources Committee on the 17th April 2018. Following a review of the law and good practice, no changes were felt necessary to the Policy in 2019.
- 2.7 A further inspection was carried out in 2020, by the Investigatory Powers Commissioner's Office. As a result, a review of the Surveillance policy was delayed until the outcome of the inspection was known.
- 2.8 As a result of compliance following a desktop survey, the Investigatory Powers Commissioner's Office, did not need to undertake a physical inspection. The Council received the Inspection report in January 2021, a copy of which is attached at Appendix 2. There were no recommendations which the Council was asked to implement. The Policy has been updated to reflect changes to personnel only.
- 2.9 Even though the Council does not often use its powers under the Regulatory Investigatory Powers Act, it remains critical for Officers to understand how to operate the Council's Surveillance Policy. The last training exercise was delivered in late 2018 and was offered to all Surrey Councils to develop better joint learning. It is proposed to provide refresher training later this year on the same basis.

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Use of Powers 2020

2.10 There were no applications for directed surveillance authorisations in 2020.

3 Risk Assessment

Legal or other duties

3.1 Impact Assessment

3.1.1 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.

3.2 Crime & Disorder

3.2.1 It is important to ensure regulatory investigative procedures are kept up to date and once the current Inspection is completed any recommendations will be included as part of the review.

3.3 Safeguarding

3.3.1 None arising from the contents of this report.

3.4 Dependencies

3.4.1 None

3.5 Other

3.5.1 None

4 Financial Implications

4.1 None arising from the contents of this report.

4.2 **Section 151 Officer's comments:** None for the purposes of this report.

5 Legal Implications

5.1 None arising from the contents of this report.

5.2 **Monitoring Officer's comments:** None arising from the contents of this report.

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6 Policies, Plans & Partnerships

- 6.1 **Council's Key Priorities:** The following Key Priorities are engaged: not applicable for the purposes of this report.
- 6.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.
- 6.3 **Climate & Environmental Impact of recommendations:** not applicable for the purposes of this report.
- 6.4 **Sustainability Policy & Community Safety Implications:** not applicable for the purposes of this report.
- 6.5 **Partnerships:** Not applicable for the purposes of this report.

7 Background papers

- 7.1 The documents referred to in compiling this report are as follows:

Previous reports:

- Annual report Audit, Crime & Disorder and Scrutiny Committee, 19 November 2020. <https://democracy.epsom-ewell.gov.uk/documents/s17973/Annual%20Report%20on%20the%20use%20of%20RIPA%20powers.pdf>

Other papers:

- Policy & Guidance on Lawful Surveillance, 2018.