

## **ANNUAL REPORT ON RIPA USAGE & APPROVAL OF POLICY & GUIDANCE ON LAWFULL SURVEILLANCE**

<b>Head of Service/Contact:</b>	Amardip Healy, Chief Legal Officer
<b>Urgent Decision?(yes/no)</b>	No
<b>If yes, reason urgent decision required:</b>	
<b>Annexes/Appendices (attached):</b>	<b>Annex 1</b> – Policy & Guidance on Lawful Surveillance, Regulation of Investigatory Powers Act 2000 <b>Annex 2</b> – Annual Report of the Chief Surveillance Commissioner, 2016-17
<b>Other available papers (not attached):</b>	Regulation of Investigatory Powers Act 2000

### **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.
- 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 from 1<sup>st</sup> September 2017, headed by Lord Justice Adrian Fulford (the Investigatory Powers Commissioner).

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- 2.6 For the inspection year 2016-2017, the Chief Surveillance Commissioner, Lord Judge, in his Annual Report decided that for non-unitary councils, where statutory powers have not been used at all, or very rarely during the previous 3 years, any inspection process should begin with a “desktop” examination of papers following a request by an Inspector or Assistant Surveillance Commissioner for material.
- 2.7 The Council’s RIPA procedures and activity were inspected by the Office of the Surveillance Commissioner through a desktop review in 2017. A set of recommendations were put to the Council in order to ‘improve upon what is already sound guidance’.
- 2.8 The recommendations were incorporated into an amended policy and reported to the Strategy & Resources Committee for approval. The amended policy was approved on the 17<sup>th</sup> April 2018.
- 2.9 Training to support legal compliance when planning, authorising and/or conducting investigative practices regulated by RIPA will be refreshed, and will be mandatory for those involved in any part of the process.
- 2.10 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 led to the conviction of a defendant in a fly tipping case.
- 2.11 The question of why RIPA may be used so infrequently, was addressed by the Annual Report of the Chief Surveillance Commissioner, 2016-17, published in December 2017 (**Annex 2**) says:

“The Inspectorate has explored the reasons for the reduced use by local authorities of the statutory powers. Generally speaking the same explanations are given throughout the United Kingdom. Resources are reduced, and trained individuals, time, and money, are not available to carry out what can sometimes become protracted investigations. Moreover the Protection of Freedoms Act 2012 imposed additional burdens on authorities, with new statutory requirements for approval of planned activity by magistrates. We are often told that where an investigation appears to be necessary, local authorities now prefer to handle the investigation process overtly and covert investigations are usually treated as a last resort. Where there are grounds for concern that serious criminality may be involved the facts are reported to the police.”

<https://www.ipco.org.uk/docs/OSC%20Annual%20Report%202016%20-%202017%20with%20new%20page%20furniture.pdf>

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**3 Proposals**

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

**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 new 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.
- 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.

**6 Sustainability Policy and Community Safety Implications**

- 6.1 The RIPA Policy is part of the Council's regulatory toolkit. Updating 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. The desktop review by the Office of Surveillance Commissioners is a part of this process.

**9 Conclusion and Recommendations**

- 9.1 The 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);