



**Audit And Standards Advisory
Committee**
20 March 2018

**Report from the Director of Legal and
HR Services**

**Review of the Use of the Regulation of Investigatory Powers
Act (RIPA) Powers in 2018**

Wards Affected:	All
Key or Non-Key Decision:	Not applicable
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	Four: Appendix 1 Brent Council's RIPA policy and Procedures (December 2018) Appendix 2 Note to all staff on use of Social Media and Internet Appendix 3 Protocol for the use of Brent Council's Public CCTV Systems for Covert Surveillance Purposes (September 2018) Appendix 4 Office of Surveillance Commissioners Inspection Report dated (November 2016)
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Debra Norman Director of Legal and HR Services Email: debra.norman@brent.gov.uk Tel: 020 8937 1578 Tola Robson Principal Lawyer - Criminal Litigation and Licensing Email: omotolani.robson@brent.gov.uk Tel : 0208 937 1455

1.0 Purpose of the Report

- 1.1 This report explains the Council's use and conduct of covert surveillance techniques when investigating serious criminal offences relying on the powers made available to local authorities in Part II of the Regulation of Investigatory Powers Act 2000 (RIPA).

- 1.2 It was decided last year that the Council's oversight arrangements for the use of these statutory powers would be extended to cover a high level annual review by the Audit and Standards Advisory Committee. This report sets out the second of these reviews.

2.0 Recommendation

- 2.1 That the Committee note the contents of this report which sets out the arrangements to ensure compliance with RIPA and the statutory Codes of Practice.
- 2.2 That the Committee notes that there are no significant policy changes recommended out of this review.

3.0 Detail

Background

- 3.1 Appended to this report (Appendix 1) is the latest version of the Council's Policy and Procedures on RIPA (excluding the separate appendices referred to in that document). The document explains the Council's use and conduct of covert surveillance techniques when investigating serious criminal offences relying on the powers made available to local authorities in Part II of RIPA. RIPA authorises surveillance in accordance with the statutory framework. It establishes a lawful process and thereby protects the Council from legal claims and complaints and ensures that the evidence, relied upon, for example in prosecutions, is admissible.
- 3.2 Covert surveillance techniques are carried out in a manner calculated to ensure that any persons who are the subject of surveillance are unaware that it is or may be taking place; it includes
- a. static surveillance (e.g. taking up an observer post to monitor the activities and movements of those suspected of having committed criminal offences);
 - b. mobile surveillance (e.g. following someone to see where they are going without their knowledge);
 - c. using hidden CCTV at a crime hotspot.
- RIPA refers to these techniques as 'directed surveillance'.

Covert surveillance also extends to the use of undercover officers and informants. RIPA refers to these as 'covert human intelligence sources' (more commonly referred to as CHISs).

- 3.3 The Council's policy document also refers to accessing Communications Data. This includes for example, details of out-going phone calls and websites visited where the data is held by telephone and/or internet service providers. However, only limited information about who sent the communication, when, where and how can be accessed but not the content i.e. not what was said or written. Communications Data is regulated by a different part of RIPA and different procedures apply. For example, authorisations are granted by a national body which acts on behalf of local authorities.

- 3.4 As well as the current legislation, the Council's policies and procedures are informed by revised statutory codes of practice issued by the Home Office. The most recent codes being September 2018 regarding the Covert Surveillance and Covert Human Intelligence Sources Code of Practice.
- 3.5 The use of RIPA powers by local authorities is tightly controlled. Initially, directed surveillance or the use of a CHIS has to be assessed in detail and authorised in writing internally by a senior officer if assessed as necessary and proportionate. Subsequently, it has to be approved by a magistrate before the authorisation takes effect.

Oversight

- 3.6 The Council's use and conduct of covert surveillance techniques is overseen internally by the Council's Monitoring Officer, who also acts as the Council's Senior Responsible Officer (SRO) for the purposes of the Home Office codes of practice. The Monitoring Officer keeps the Council's RIPA policy and procedures document under review and updates it as and when necessary. This ensures compliance with the most current legislation, statutory codes of practice, technical guidance and best practice. It is also necessary to keep the list of authorising officers up to date and for administrative, technical and presentational changes to be made from time to time to ensure the document acts as a helpful source of instruction and guidance to all officers of the Council.
- 3.7 The Council's use of its RIPA powers is also overseen externally by the Investigatory Powers Commissioner ((IPC) formerly the Office of Surveillance Commissioners (OSC)). The IPC took over from the OSC in September 2017 and has responsibility for reviewing the investigatory powers by public authorities and other intelligence and law enforcement agencies.
- 3.8 The office of the Investigatory Powers Commissioner has also taken over the inspection role of the OSC. Inspections are periodic and focus on RIPA policies, procedures and practices.
- 3.9 Inspections on the council's use of RIPA are undertaken every two to three years. The most recent Council inspection was on 8 November 2016, and the Chief Surveillance Commissioner wrote to the Council's Chief Executive acknowledging that the inspector considered the Council's policy and procedure document to be "excellent". Describing the Council's standards as "impressive" and noting that "the attitude of the Council to the need for training and awareness is sensible and far sighted". No formal recommendations were made but "some suggestions were offered for 'fine tuning'". A copy of the said report is appended (Appendix 4) to this report for ease of reference .
- 3.10 During the inspection two other main issues were raised.**First**, the need for the Council to review its CCTV protocol so that before the police and other law enforcement bodies are allowed to use its public CCTV systems for directed surveillance purposes, the Council is reassured that a RIPA authorisation has

been obtained. The Council's Protocol for the use of Brent Council's Public CCTV Systems for Covert Surveillance Purposes (September 2018 version) addressing this action is attached as Appendix 3.

Second, the Council was advised to raise Council-wide awareness about the use of social media and the internet to obtain information about others and the likely privacy and RIPA implications. Appended to this report (Appendix 2) is a copy of the guidance note prepared for all staff on the implications of the use of social media and internet to gather information. The Council's stance on online surveillance is supported by newly published revised codes on Covert Surveillance.

- 3.11 According to the Home Office codes of practice, Members should review the Council's use of its RIPA powers. Consequently, it was decided that this Committee would conduct high level reviews on an annual basis. Any significant policy changes recommended by the Committee, arising from its review, will be reported to Cabinet for decision. The Committee will note that there are no significant policy changes recommended out of this review for the Committee's consideration.

The Council's use of its RIPA powers

- 3.12 The Council's use of its directed surveillance and CHIS RIPA powers has significantly diminished in recent years. The table below illustrates this downward trend in further detail. To date no further authorisations have been applied for or granted since 2017/18.

Year	No of RIPA Authorisation Requests
2007/2008	54
2008/2009	56
2013/2014	4
2014/2015	9
2015/2016	0
2016/2017	1 (reviewed during the last inspection)
2017/2018	0

- 3.13 RIPA powers are now predominantly used to enforce trading standards controls and, in particular, to conduct test purchases of age restricted products such as alcohol. It is also occasionally used in the context of serious fraud investigations.

4.0 Financial Implications

- 4.1 None.

5.0 Legal Implications

- 5.1 Legal implications are contained within the body of this report. However, it should be noted that significant changes were introduced to the use of RIPA by the Protection of Freedoms Act 2012. These changes mean that a local authority can now only grant authorisations under RIPA for the use of directed

surveillance where it is for the purposes of investigating criminal offences that carry a custodial sentence of six months or more, or criminal offences relating to the underage sale of alcohol or tobacco. Further, a magistrates approval is required before the RIPA authorisation can take effect.

6.0 Equality Implications

6.1 The public sector equality duty requires public bodies to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

6.2 The Equality Act 2010 and the Public Sector Equality Duty (outlined above) cover the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.

6.3 There are no direct equalities implications arising from this report as it provides monitoring information and a legal update for the Committee.

7.0 Consultation with Ward Members and Stakeholders

7.1 None.

Report sign off:

DEBRA NORMAN

Director of Legal and HR Services