



Audit and Standards Advisory Committee

26 May 2020

Report from the Director of Legal, HR, Audit and Investigations

Review of the Use of Regulation of Investigatory Powers Act 2000 – Inspection Update 2020

Wards Affected:	All
Key or Non-Key Decision:	Not applicable
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	One Appendix A Investigatory Powers Commissioner's Inspection letter 2020
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	<p>Debra Norman, Director of Legal, HR, Audit & Investigations Email: debra.norman@brent.gov.uk Tel: 020 8937 1578</p> <p>Biancia Robinson, Senior Constitutional & Governance Lawyer Email: biancia.robinson@brent.gov.uk Tel: 020 8937 1544</p> <p>Tola Robson, Principal Lawyer Criminal Lit and Licensing Email: Omotolani.Robson@brent.gov.uk Tel: 020 8937 1455</p>

1. Purpose

- 1.1. On the 20.01.2020, this Committee received an annual report addressing the Council's use and conduct of surveillance techniques in accordance with the Regulation of Investigatory Powers Act (RIPA) 2000. It noted the proposed changes to the RIPA policies and procedures and the pending Investigatory Powers Commissioner's Inspection. The Committee will be aware that changes to the RIPA policy were approved at the Cabinet meeting on the 9.3.2020. This report provides

details on the outcome of the inspection undertaken by the Investigatory Powers Commissioner's Office (IPCO) on the 9.03.2020.

2. Recommendation

- 2.1. That the Committee notes the positive outcome of the 2020 IPCO inspection into the council's use of RIPA as set out in the Inspector's letter. The Inspector's letter is attached as Appendix A.

3. Detail

Background

- 3.1. The Regulation of Investigatory Powers Act 2000 (RIPA) gave the Council significant powers in order to investigate serious matters and offences. It enables the Council to use covert surveillance, covert human intelligence sources (CHIS) and the acquisition of service use or subscriber information in relation to communications data in a manner which is compatible with Article 8 of the European Convention on Human Rights (which governs an individual's right to respect for their private and family life). Before the Council may undertake covert surveillance, there are various criteria which must be met including approval of the application by a Magistrate.
- 3.2. Covert surveillance techniques include static surveillance (e.g. taking up an observer post to monitor the activities and movements of those suspected of having committed criminal offences); mobile surveillance (e.g. following someone to see where they are going without their knowledge) and using hidden CCTV at a crime hotspot. RIPA refers to these techniques as 'directed surveillance'. It 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).

Inspection

- 3.3. The Council is periodically inspected (approximately every 2-3 years) by the Investigatory Powers Commissioner's Office (IPCO, formally referred Office of Surveillance Commissioners).
- 3.4. The IPCO has responsibility for reviewing the use of investigatory powers by public authorities and other intelligence and law enforcement agencies. They oversee how these powers are used, and ensure that investigations are conducted in accordance with the law.
- 3.5. The inspections focus on RIPA policies, procedures and practice; including, for example, the training undertaken by the Council, the use of open source data in particular via social media, data protection compliance and the processes in place for investigations that do not meet the RIPA thresholds (Non-RIPA process).
- 3.6. The council's last inspection was undertaken in November 2016; and the report following the Inspection was very positive with only two recommended suggestions. This Committee considered a report in March 2018 which set out the compliance with the two suggestions made by the Commissioner arising out of the 2016 inspection as part of its higher-level review.
- 3.7. The Committee will recall that for the inspection that took place on the 8.11.16, 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'".

- 3.8. It is against this backdrop of good compliance that on the 9.03.2020 the Inspector undertook his telephone and desk-top inspection; concluding "your Council was last inspected in November 2016 by Mr McCrory who found, then, a good compliance regime with no recommendations for improvement required. I am pleased to note that this inspection has found similarly good levels of compliance. My Inspector noted the regular updating of the Council's RIPA policy document; a robust application process for the use of social media investigations; and clear processes to comply with R v Sutherland conditions when the use of CCTV equipment is required by external agencies".
- 3.9. Following the inspection no recommendations have been made. In accordance with the assurances affirmed by The Investigatory Powers Commissioner, officers will ensure "that the integrity of [the] Council's processes and governance procedures will be maintained to ensure that the noted high standards of compliance with the Act and relevant codes of practice continue".

4. Financial Implications

- 4.1. There are no financial implications arising out of this report.

5. Legal Implications

- 5.1. RIPA was introduced to ensure that covert surveillance undertaken by public authorities was done in accordance with the European Convention on Human Rights and the Human Rights Act 1998. The RIPA framework establishes a lawful process to use covert surveillance and thereby protects the Council from legal claims, providing it have been complied with.
- 5.2. The use of RIPA was modified by the Protection of Freedoms Act 2012. These changes mean that a local authority can 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. Equality Implications

- 6.1. Under section 149 of the Equality Act 2010, the council has a duty when exercising its functions to have 'due regard' to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty.
- 6.2. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 6.3. Due regard is the regard that is appropriate in all the circumstances.
- 6.4. There are no equalities implications arising from this report.

7. Consultation with Ward Members and Stakeholders

7.1. None

Report sign off:

DEBRA NORMAN

Director of Legal, HR, Audit and Investigations