



**Audit and Standards Advisory
Committee**
11 May 2021

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

**Review of the Use of Regulation of Investigatory Powers
Act 2000**

Wards Affected:	All
Key or Non-Key Decision:	N/A
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:	None
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	<p>Debra Norman Director of Legal, HR, Audit & Investigations Tel: 020 8937 1578 Debra.Norman@brent.gov.uk</p> <p>Biancia Robinson Senior Constitutional & Governance Lawyer Tel: 0208 937 1544 Biancia.Robinson@brent.gov.uk</p> <p>Tola Robson Principal Lawyer Criminal Litigation and Licensing Tel: 020 8937 1455 Omotolani.Robson@brent.gov.uk</p>

1. Purpose

1.1. This report explains the Council's use and conduct of surveillance techniques in accordance with the Regulation of Investigatory Powers Act (RIPA) 2000; and complies with its annual reviewing obligations as set out in Brent Council's RIPA policy and procedures.

2. Recommendations

2.1. That the Committee notes the contents of this report.

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 user 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 by the Office of Surveillance Commissioners (now superseded by the Investigatory Powers Commissioner's Office). Inspections focus on RIPA policies, procedures and practice. The last inspection was undertaken on the 9 March 2020; and this Committee will recall it considered a report in May 2020 which noted that the Inspector was very impressed with Brent at his last inspection, he was happy with his 2020 inspection findings and there were no recommendations arising out of his inspection.

Changes to RIPA policy

- 3.4. The RIPA Policy and procedures were revised in 2016 where it was commented by the Commissioner to be “excellent”. Further changes were made in 2020 in relation to the acquisition of Communications Data to ensure that it remains up to date and compliant with the Home Office’s revised Codes of Practice; the consequences of non-compliance with the RIPA framework and changes to Data Protection legislation. All of which were considered by this Committee and approved by the Inspector.
- 3.5. No changes to the policy are currently proposed.

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.
- 3.7. The Monitoring Officer also 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. In addition, the SRO is responsible for:
- a) the integrity of the process in place for the management of CHIS and directed surveillance;
 - b) compliance with the codes of practice;
 - c) engagement with the IPCO inspectors when they conduct their inspections;
 - d) oversight of the implementation of post-inspection action plans;
 - e) ensuring authorisation officers are of an appropriate standard (where a IPCO report highlights concerns about the standard of authorising officers, the SRO will be responsible for ensuring the concerns are addressed).
- 3.8. In accordance with paragraph 4.47 of the Covert Surveillance and Property Interference Code, Councillors have a formal scrutiny role in relation to RIPA and should regularly review the authority’s use of RIPA. Accordingly, it was decided that this Committee should conduct a high-level annual review. Any significant policy changes recommended by the Committee arising from its review will be reported to Cabinet for decision.

Use of RIPA

- 3.9. Following the introduction of legislative changes in the RIPA regime, the number of RIPA authorisations declined within local authorities. In more recent years, this combined with the shrinking size of the council investigative teams, and in part the improvements with investigative methods has meant there is

less reliance on directed surveillance. In Brent, for the current financial year, there has been zero RIPA Directed Surveillance or CHIS authorisations. Table 1 below sets out the directed surveillance authorisations in previous years. Table 2 shows the number of requests for communications Data pursuant to the Investigative Powers Act 2016

Table 1

Year	Number of Authorisations
2020/2021	0
2019/2020	0
2018/2019	0
2017/2018	0
2016/2017	1
2015/2016	0

Table 2

Year	Number of Requests	Purpose
2017/18	6	Freedom pass fraud
2018/19	39	Doorstep crime and rogue trading investigation.
2019/20	0	
2020/21	18.	Subletting of council housing

3.10. 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 occasionally used in the context of serious fraud investigations.

4. Financial Implications

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

5. Legal Implications

5.1. The legal considerations are contained within the body of the report.

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