



**Audit and Standards Advisory  
Committee**  
21 March 2023

**Report from the Corporate Director  
Governance**

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

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Not applicable
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	One Appendix A - Extracts of the PCSA changes to the RIPA Policy
<b>Background Papers:</b>	None
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**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**

That the Committee notes:

- 2.1. the contents of this report.
- 2.2. the changes to the RIPA policies in relation to further powers to extract data from a mobile device, pursuant to Police Crime Sentencing and Courts Act 2022.
- 2.3. that the updated policies and procedures on RIPA are to be approved by Cabinet on 17 April 2023.

## **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 to acquire 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 Investigatory Powers Commissioner's Office (IPCO). Inspections focus on RIPA policies, procedures and practice. The last inspection was undertaken on 9 March 2020; when the Inspector was happy with his findings. There were no recommendations arising out of 2020 inspection. Brent will be due for a further review on or around 2023/24, and officers will keep this Committee informed once such a notification is received.

### Changes to RIPA policy

- 3.4. The RIPA Policy and procedures were last revised 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.
- 3.5. Sections 37 to 44 of the Police, Crime, Sentencing and Courts Act 2022 (PCSCA) came into force on 8 November 2022. This provided public authorities with a further power to extract (Communications) Data held on electronic devices. Any extraction that fails to comply with the requirements must be reported to the IPC's office as a relevant error. Consequently, Section 7 of the RIPA Policy and Procedures has been amended to reflect the PCSA changes.
- 3.6. In addition, changes to titles have been made to reflect the organisational restructure that took place in September 2022. As this Committee will know, the present Chief Executive retires at the end of this financial year. Consequently, at the beginning of April and in preparation for consideration by Cabinet the new Chief Executive's name, Kim Wright, will be reflected in the RIPA Policy.

Extracts of the PCSA changes to the RIPA Policy are produced as **Appendix A** for Members consideration.

#### Oversight

- 3.7. 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.
- 3.8. The Monitoring Officer reviews RIPA related topics such as internal training, social media, applications/authorisations and changes in addition to keeping 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).
- 3.9. 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

- 3.10. Following the introduction of legislative changes in the RIPA regime, the number of RIPA authorisations declined within local authorities and this position has not changed. 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 and their purpose.

Table 1

<b>Year</b>	<b>Number of Authorisations</b>
<b>2022/2023</b>	<b>0</b>
2021/2022	0
2020/2021	0
2019/2020	0
2018/2019	0
2017/2018	0
2016/2017	1
2015/2016	0

Table 2

<b>Year</b>	<b>Number of Requests</b>	<b>Purpose</b>
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
2021/22	0	
<b>2022/23</b>	<b>2</b>	<b>Fraudulent subletting a council property</b> <b>Fraudulent use of blue badge concession.</b>

- 3.11. 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 and tobacco. These operations continue to take place, but using procedures not requiring the use of a RIPA authorisation.

#### **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**

Corporate Director of Governance