



Cabinet
17 April 2023

**Report from the Corporate Director,
Governance**

Policy, Procedures and Use of Regulation of Investigatory Powers Act (RIPA) 2000

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:	One 1) Appendix A –Extract of proposed changes to RIPA Policy
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	<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: 020 8937 1544 Biancia.Robinson@brent.gov.uk</p> <p>Tola Robson Principal Lawyer Criminal Lit and Licensing Tel: 020 8937 1455 Tola.robson@brent.gov.uk</p>

1. Purpose

1.1. This report informs Cabinet of the Council's use and conduct of surveillance techniques in accordance with the Regulation of Investigatory Powers Act (RIPA) 2000; and requests Cabinet approve the changes to the attached RIPA policy.

2. Recommendations

That Cabinet:

- 2.1. approves the proposed changes to the RIPA policy attached at Appendix A.
- 2.2. notes the oversight role of Audit & Standards Advisory Committee (ASAC), and that this matter was considered by the committee at its meeting on the 21.03.2023.
- 2.3. notes the oversight role of the Monitoring Officer and that regular reviews are undertaken by her and senior management.

3. Detail

Background

- 3.1. The Regulation of Investigatory Powers Act 2000 (RIPA) regulates the use of Directed Surveillance and Covert Human Intelligence Sources; it gave the Council significant powers in order to investigate serious matters and offences. It enables the Council to use covert surveillance and covert human intelligence sources (CHIS). The Investigatory Powers Act 2016 regulates the acquisition and disclosure of communications data from communication service providers regarding service use or subscriber information. Compliance with this legislation ensures that the council's surveillance actions are 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).
- 3.2. Before the Council may undertake covert surveillance under RIPA, there are various criteria which must be met including the internal authorisation by a senior officer and the external approval of the application by a Magistrate. For surveillance required under the Investigatory Powers Act, authorisations are granted by a national body who act on behalf of the local authority.
- 3.3. 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).
- 3.4. Given the increasing use of social media, the guidance is that authorities should have a policy on the use of social media in investigations. The council's current policy addresses this.
- 3.5. In addition to the legislative framework, the Council's policies and procedures are informed by statutory codes of practice issued by the Home Office.

Inspection

- 3.6 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 and Brent will be due for a further review on or around 2023/24.

Key changes to RIPA policy

3.7. 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.

3.8. 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.

3.9. In addition, changes to titles have also been made to reflect the organisational restructure that took place in September 2022. Extracts of the PCSA changes to the RIPA Policy are produced as **Appendix A** for Cabinet's consideration.

Oversight

3.10. 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.

3.11. 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).

3.12. In accordance with paragraph 4.47 of the Covert Surveillance and Property Interference Revised Code of Practice, Councillors have a formal scrutiny role in relation to RIPA and should regularly review the authority's use of RIPA. Accordingly, it was previously agreed by Cabinet that the ASAC should conduct a high-level annual review and any significant policy changes recommended by the Committee arising from its review will be reported to Cabinet for decision.

Use of RIPA

3.13. 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.

3.14. 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

Year	Number of Authorisations
2022/2023	0
2021/2022	0
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
2021/22	0	
2022/23	2	Fraudulent subletting a council property Fraudulent use of blue badge concession.

3.15. 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. 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. The legal considerations relating to RIPA 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 Governance