



Cabinet
9th March 2020

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

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 Appendix A: RIPA policy (with proposed changes)
Background Papers:	None
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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; it notifies Cabinet of the pending Investigatory Powers Commissioner's Inspection and requests Cabinet approve the changes to the attached RIPA policy.

2. Recommendations

That the 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 20.01.2020.
- 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.

- 3.6. Attached to this report, as appendix A, is the Council's policy and procedures on RIPA (excluding the separate appendices referred to in that document). The policy explains the Council's use and conduct of covert surveillance techniques.

Inspection

- 3.7. 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 in November 2016; and the report following the Inspection was very positive with only two recommended suggestions. The ASAC 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.
- 3.8. The Investigatory Powers Commissioner's next routine inspection is due in March 2020.
- 3.9. The ASAC will receive a report updating it on the outcome of the RIPA inspection as part of its high-level review role.

Legal development - Communications Data

- 3.10. Previously the acquisition of communications data was covered by RIPA and there was a requirement to obtain Judicial Approval in order to acquire it. Communications data is now addressed by Part 3 of the Investigatory Powers Act (IPA) 2016 and consequently from June 2019 all communications data applications must be authorised by the Office for Communications Data Authorisations (OCDA).
- 3.11. The Home Office Communications Data Code of Practice, chapter 8 sets out the procedures to be complied with by a local authority. Now, all applications to obtain communications data have to be made via a Single Point of Contact (SPOC) at the National Anti-Fraud Network (NAFN). In addition to being considered by a NAFN SPoC, the authority making the application must ensure someone of at least the rank of the Senior Responsible Officer (SRO), is aware that the application is being made before it is submitted to an Authorising Officer in the (OCDA). In Brent, this role is undertaken by the Head of Regulatory Services.
- 3.12. Communications data has been re-categorised as Entity and Events data:
- *Entity data* is information about the subscriber account such as name, address, payment method.
 - *Event data* is anything else such as call data, internet usage.
- 3.13. In relation to Events data there is now a serious crime threshold and the council can only submit an application for an investigation of a criminal offence capable of attracting a sentence of 12 months or more.

- 3.14. In relation to Entity data, this can be done for any criminal investigation where it is considered necessary and proportionate to do so.
- 3.15. The Communications Data Code of Practice states a local authority may not make an application that requires the processing or disclosure of Internet Connection Records for any purpose. An Internet Connection Record (ICR) is data which may be used to identify, or assist in identifying, a telecommunications service to which the data is being transmitted and will generally identify a service that customer had been using. The Code makes clear that there is no single set of data that constitutes ICR as it will depend on the service provider concerned.

Key changes to RIPA policy

- 3.16. The RIPA Policy and procedures were revised in 2016 where it was commented by the Commissioner to be “excellent”. A number of changes have now been made to ensure that it remains up to date and compliant with the Home Office’s revised Codes of Practice.
- 3.17. The key amendments to the Policy relate to:
 - a) the change from the Office Surveillance Commissioner (OSC) to the Investigatory Powers Commissioner Officers (IPCO);
 - b) the changes put into place by the IPA 2016 in relation to the acquisition of Communications data;
 - c) the consequences of non-compliance with the RIPA framework;
 - d) changes to Data Protection legislation.

A copy of the RIPA policy is attached at **Appendix A** for member’s consideration. The proposed changes are highlighted in red for ease of reference.

Oversight

- 3.18. 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.
- 3.19. 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. 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).

3.20. In addition, the Monitoring Officer meets regularly with senior managers across the Council who may utilise RIPA as part of their work remit to review practice and processes.

3.21. 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 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

3.22. Following the changes in the RIPA regime, the number of RIPA authorisations have seen a continuous decline with all local authorities. 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 1

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

3.23. 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, although they have not been used this way by Brent for some time. They are occasionally used in the context of serious fraud investigations.

3.24. The most recent Communications Data request via NAFN was made in 2018/19. None have been sought for 2019/20.

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

Director of Legal, HR, Audit and Investigations