

MUNICIPAL YEAR 2017/2018 REPORT NO. 37A

MEETING TITLE AND DATE:

Council
19 September 2017

REPORT OF:

Monitoring Officer

Agenda – Part: 1**Item: 9****Subject:**

**Annual Approval of Regulation of
Investigatory Powers Act (RIPA) Policy
and Procedure Document**

**Cabinet Member consulted: Councillor
Dino Lemonides**

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1. EXECUTIVE SUMMARY

- 1.1 This report reminds Members of the requirement to monitor the use by the Council of Covert Surveillance to ensure compliance with the law.
- 1.2 Members to note that since the last report there have been no applications for Directed Surveillance or Covert Human Intelligence Sources.
- 1.3 The Inspection by the Office of Surveillance Commissioners planned for the 27th of March 2017 was postponed and will take place at a later date (TBC).
- 1.4 Members to review and vote on the new version of the Council's RIPA Policy and Procedure Document. The most significant amendment is that the requirement to produce a quarterly report to the Audit Committee is removed if RIPA powers have not been used in the preceding quarter (at 3.24).

2. RECOMMENDATIONS

- 2.1 That Council approves the new version of the Council's RIPA (Regulation of Investigatory Powers Act) Policy and Procedure document and notes the requirement for the Audit Committee to receive quarterly reports if RIPA powers are not used within the preceding quarter.

3. BACKGROUND**RIPA 2000**

- 3.1 The Regulation of Investigatory Powers Act 2000 (“RIPA”) and its amending legislation regulate the way investigations are carried out for the prevention and detection of crime.
- 3.2 Controls on covert surveillance were introduced as a consequence of the Human Rights Act 1998. RIPA aims to ensure that public bodies respect the privacy of members of the public when carrying out their investigations and that there is an interference with privacy only where the law permits it and there is a clear public interest justification.
- 3.3 Directed surveillance and Covert Human Intelligence Sources (the meaning of both of which are set out in RIPA and explained in the Council’s Policy and Procedure document) shall only be carried out where necessary for the prevention of crime.
- 3.4 Further, the powers must be used in accordance with the Human Rights Act 1998 and, in particular Article 8 - (the right to respect for private and family life). Authorisation under RIPA will only ensure that there is a justifiable interference with an individual’s Article 8 right if it is necessary and proportionate for these activities to take place.
- 3.5 In complying with RIPA, officers must have full regard to the Code of Practice on the use of covert surveillance issued by the Home Office. Although the Codes of practice do not extend the council’s legal obligations under RIPA 2000 the codes are nevertheless admissible as evidence in both criminal and civil proceedings. The Council’s own policy and procedure is available on the Council’s intranet.
- 3.6 RIPA and the Code of Practice also set out the requirements for using covert surveillance in relation to confidential information, juvenile sources, vulnerable individuals, home surveillance and collateral intrusion (interference with the privacy of persons other than the subject(s) of surveillance).
- 3.7 All applications for RIPA authorisations have to be considered and approved by specified trained authorising officers within the Council. Applications for directed surveillance will be authorised for the Council at Head of Service level or above. The Council has adopted a RIPA Policy and Procedure and produced a range of forms which are available to all officers on the intranet. Training has been undertaken by relevant officers who may either require a RIPA authorisation in connection with the carrying out of their roles or who have been designated as authorising officers.
- 3.8 In investigating criminal offences, the Council also has powers (by virtue of the RIPA (Communications Data) Order 2004 (“the Communications Order”) to gain access to communications data – that is information held by telecommunication or postal service providers about the use of their

services by persons who are the subject of criminal investigations. The Council is now using the National Anti Fraud Network (NAFN) to make all its applications for access to communications data; this was one of the recommendations made by the IOCCO inspector following his visit in September 2010.

- 3.9 The Council's use of its powers under RIPA and the Communications Order are subject to external scrutiny in the form of inspections by the Office of Surveillance Commissioner's Office (OSC) and the Interception of Communications Commissioner's Office (IOCCO) respectively.
- 3.10 The Council's Monitoring Officer and the Head of Legal Services meet on a quarterly basis if the Council's has used its RIPA powers.
- 3.11 The Council has not used its RIPA powers for over a year and a new version of the Policy and Procedure Document has been prepared to reduce the requirement for the Audit Committee to review the use of RIPA powers quarterly unless they have been used in the previous quarter. The Audit Committee will still be required to review the RIPA policy once a year.
- 3.12 The Council was preparing for an inspection by the Office of Surveillance Commissioners on the 27th March 2017 however this has been postponed until a later date which is yet to be confirmed.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The requirement for the Audit Committee to review the use of RIPA powers contained in the previous version of the Policy and Procedure Document could be maintained.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The current reporting procedure has been judged to be unnecessary as RIPA powers are now very rarely used and in the event that they are used again reports will still be produced to the Audit Committee.

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS

6.1 Financial Implications

There are no specific financial implications relating to this report. However, a failure by the Council to exercise its powers appropriately and in accordance with the law could result in legal challenge and possibly in a claim for damages.

6.2 Legal Implications

The legal implications are set out within the body of this report.

6.3 Property Implications

There are no specific property implications arising from this report.

7. KEY RISKS

- 7.1 The key risks to the Council are that without clear and robust policies and procedures in place, there would be a risk that officers/members would fail to comply with the relevant legislation and associated codes of practice. Consequently, complaints may be made against the Council by aggrieved persons, which may proceed to investigation by the independent tribunals set up by the Office of the Surveillance Commissioner. The Tribunals have the power to cancel authorisations, order the destruction of any records obtained in exercise of the powers conferred by RIPA and award compensation as they see fit.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

Scrutiny by Members of the Council's use of its powers under RIPA assists in ensuring that the Council does not misuse its powers resulting in injustice to any individual.

8.2 Growth and Sustainability

No direct relevance

8.3 Strong Communities

Scrutiny by Members of the Council's use of its powers under RIPA helps to generally promote the local population's confidence in the Council.

9. PERFORMANCE MANAGEMENT IMPLICATIONS

There are no specific performance management implications arising from this report.

10. HEALTH AND SAFETY IMPLICATIONS

There are no specific health and safety implications arising from this report.

Background Papers

Enfield RIPA Policy and Procedure Document (version 7)