

London Borough of Enfield

General Purposes Committee

Meeting Date 4th March 2021

Subject: Council's Use of Regulation of Investigation Powers Act (2000) (RIPA)
Cabinet Member: Cllr George Savva
Director: Jeremy Chambers

Key Decision: No

Purpose of Report

1. To update Members on the Council's Use of RIPA in 2020, to report on the inspection of the Investigatory Powers Commissioner's Office (IPCO), and to note changes required to the RIPA Policy and Procedure document. The updated RIPA policy and Procedure will need to be taken to full Council for approval.

Proposals

2. Members are asked to note that the Investigatory Powers Commissioner's Office on 3rd February 2021 undertook a periodic inspection of the Council RIPA usage and its policy and procedures and has forwarded a written note of the findings of the inspection to the Council's Senior Responsible Officer who is the Council's Director of Law and Governance.
3. Members are asked to note the findings of the inspection and the minor changes required to the RIPA Policy and Procedure document to accommodate the inspector's findings.
4. Members are asked to note that there have not been any use of surveillance or CHIS powers nor any applications for RIPA authorisation in 2020.

Reason for Proposal(s)

5. Members are required, on an annual basis, to consider the Council's usage of RIPA as well as review the Council's RIPA policy and procedure. It is also good practice to report the Inspector's findings to Members.

Relevance to the Council Plan

CE 20/042

6. The proposals in this report supports the delivery of the priorities of the 2018-2022 Corporate Plan, "Creating a lifetime of opportunities in Enfield", particularly that of Safe, healthy and confident communities: keeping communities free of crime. Reporting to Members also assists in delivering the priorities of financial resilience and good governance.

Background

7. 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. Controls on covert surveillance were introduced because 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.

8. 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.

9. 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.

10. In complying with RIPA, officers must have full regard to the Codes 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.

11. 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).

12. 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.

13. 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.

14. 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 Investigatory Powers Commissioner's Office

15. 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. The Council has not used RIPA powers during the monitoring period covered by this report.

16. On 3rd February 2021, the Council was subject to a periodic inspection by Investigatory Powers Commissioner’s Office (IPCO). The inspection was light touch and the subsequent letter from the Commissioner was positive and made only few comments for improvement, and minor amendments of the policy and procedures, which are highlighted in track changes in the appended RIPA policy and procedures. All recommendation from IPCO’s last inspection in 2017 have been implemented.

Main Considerations for the Council

17. The main findings of, and recommendations arising from, the inspection were:

- RIPA refresher training to be key delivered to key personnel, either remotely or in person once COVID risks have abated. This should include all nominated Authorising Officers, SRO, RIPA co-ordinator, and any likely users of RIPA.
- Update the RIPA policy. An additional line is needed within paragraph 3.18 which refers to use of information from the internet and social media during investigations to clarify that *repeated or systematic viewing of social media profile or other personal information could amount to surveillance and require an authorisation.*
- Update the RIPA policy to state the duration of juvenile source authorisations (paragraph 7.10) is now three months having been extended in the revised CHIS Code of Practice (January 2021).
- The RIPA policy should be subject to an annual review and made available to members during this period. Members should also be advised annually whether surveillance or CHIS powers have been used or not.
- Council to clarify if records that relate to directed surveillance or CHIS deployments are routinely reviewed for deletion. IPCO’s expectation is

that every time an entry on the central record of surveillance authorisations is reviewed and deleted the accompanying case file should also be reviewed in accordance with the safeguards contained within the surveillance and CHIS Codes of Practice.

- The Council to confirm what surveillance equipment is retained for use by the Borough other than larger items such as mobile CCTV, primarily we are concerned with still and video cameras. IPCO ask that any equipment is centrally registered and controlled and its use subject to occasional audit.

Safeguarding Implications

18. Adhering to the safeguards set out in the policy, will protect any juvenile or vulnerable sources.

Public Health Implications

19. There are no particular public health considerations arising from this report.

Equalities Impact of the Proposal

20. There are no particular equalities considerations arising from this report. The changes in the policy are minor.

Environmental and Climate Change Considerations

21. There are no environmental and climate change considerations arising from this report.

Risks that may arise if the proposed decision and related work is not taken

22. The Council could be in breach of the law and its policies and procedures.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

23. none

Financial Implications

24. 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.

Legal Implications

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

Workforce Implications

26. There are no specific workforce implications arising from this report.

Property Implications

27. There are no specific equalities implications arising from this report.

Other Implications

28. None

Options Considered

29. It is a requirement of the law and policy and procedures to take the action set out in the report.

Conclusions

30. The report is to note as reporting usage of RIPA to Members on an annual basis is a requirement, and the changes or minor and will need to be sent to full Council for approval.

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Date of report 23rd February 2021

Appendices

Amended RIPA Policy and Procedure

Background Papers

The following documents have been relied on in the preparation of this report:
Letter from IPCO