



## London Borough of Enfield

<b>Title</b>	<b>Regulation of Investigatory Powers Act 2000 (RIPA) Update</b>
<b>Report to:</b>	<b>General Purposes Committee</b>
<b>Date of Meeting:</b>	<b>20<sup>th</sup> October 2022</b>
<b>Cabinet Member:</b>	<b>Councillor Ergin Erbil, Deputy Leader</b>
<b>Director:</b>	<b>Terry Osborne, Interim Director of Law &amp; Governance</b>
<b>Report Author:</b>	<b>Catriona McFarlane, Senior Lawyer</b> <a href="mailto:Catriona.mcfarlane@enfield.gov.uk">Catriona.mcfarlane@enfield.gov.uk</a>
<b>Ward(s) affected:</b>	<b>N/A</b>
<b>Key Decision Number:</b>	<b>N/A</b>
<b>Implementation date, if not called in:</b>	<b>N/A</b>
<b>Classification:</b>	<b>Part I Public</b>
<b>Reason for exemption</b>	<b>N/A</b>

### **Purpose of Report**

To update Members on the Council's use of powers under the RIPA between 10 March 2021 and 9 September 2022.

### **Recommendations**

1. To note the report and to recommend to Council that a review of the Council's use of RIPA powers be reported every 3 years.

### **Background and Discussion**

2. Members are required, on an annual basis, to consider the Council's use of its powers under the Regulation of Investigatory Powers Act 2000 ("RIPA") and to review the Council's RIPA policy and procedure.
3. 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.

4. Directed surveillance and Covert Human Intelligence Sources [CHIS] (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. Directed surveillance means, essentially, covert, but not intrusive and it is carried out for the purposes of a specific investigation or operation related to the preventing or detecting of crime; whilst surveillance is covert if, and only if, it is carried out in a manner calculated to ensure that any persons who are subject to the surveillance are unaware that it is or may be taking place (section 26(9)(a)RIPA).
5. 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.
6. 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 was available on the Council's intranet.
7. 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).
8. 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 was undertaken by relevant officers who may have either required a RIPA authorisation in connection with the carrying out of their roles or who had been designated as authorising officers.
9. 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, i.e. 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.
10. 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.
11. The Council has not used RIPA powers during the monitoring period covered by this report i.e. from 10 March 2021 to 9 September 2022. The reason for this is at present there is no need for us to use any RIPA powers because we have other ways or organisations we can contact to find out the information we need and because of the wide availability of open-source material and intelligence.

12. Officers have reviewed the policy and no revisions are required, other than to correct the reference to the Audit Committee which should now refer to the General Purposes Committee instead.
13. On 3rd February 2021, the Council was subject to a periodic inspection by Investigatory Powers Commissioner's Office (IPCO). The main findings of, and recommendations arising from, the inspection were reported to General Purposes Committee on 4th March 2021. These will be acted upon if and when the Council resumes use of its RIPA powers, namely:
  - a. RIPA refresher training to be 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.
  - b. The 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.
  - c. 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.

#### **Relevance to Council Plans and Strategies**

14. The use of RIPA powers is relevant to the delivery of the priorities of the 2020-2022 Corporate Plan, "A lifetime of opportunities for Everyone", particularly that of safe, healthy and confident communities: keeping communities free of crime.

#### **Financial Implications**

15. 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**

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

#### **Equalities Implications**

17. There are no particular equalities considerations arising from this report.

#### **Safeguarding Implications (if any)**

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

#### **Crime and Disorder Implications (if any)**

19. The use of RIPA powers by the Council, as and when necessary, will enable the Council to better investigate crime and disorder in the borough. By taking the steps

recommended the Council is protecting itself from challenges to its enforcement work because its required policies are compliant and up to date.

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**Appendices**

None

**Background Papers**

None