

11th July 2018

Regulatory and Governance Committee

Regulation of Investigatory Powers Act 2000

Report of: Daniel Toohey, Monitoring Officer and Head of Legal Services

Wards Affected: All

This report is: Public

1. Executive Summary

- 1.1 The Investigatory Powers Commissioner's Office (IPCO) conducts periodic inspections of local authorities' use of their powers under the Regulation of Investigatory Powers Act 2000 (**RIPA**). The purpose of these inspections is to examine the Council's policies, procedures, operations and administration in relation to directed surveillance and covert human intelligence sources (**CHIS**) under RIPA.
- 1.2 The last inspection took place on 16th August 2017 and although it was noted that there has been no directed surveillance or CHIS been requested since 21st July 2014 the inspector made one recommendation requiring a number of parts of Corporate RIPA policy to be updated and amended. In addition, the Inspector, while not a subject of a Recommendation, pointed out that the issue of the dual role of Senior Responsible Officer (SRO)/ Authorising Officer (AO) being exercised by one officer should be avoided. The roles should be separated. The purpose of the SRO is to maintain general oversight of RIPA compliance, including the integrity of the authorisation process, while the AO's role is solely to authorise requested activity. There are some minor changes as set out in 4.2 iii & iv . This report will enable members to generally review the RIPA activity since the last report and implement the recommendation as contained in attached Corporate RIPA policy document.

2. Recommendation(s)

- 2.1 **That the Committee approves the amendments to the Corporate RIPA policy set out in Appendix A in accordance with the recommendation of the Surveillance Inspector.**
- 2.2 **That the Committee note the statistical information relating to the use of RIPA since September 2017.**

3. Introduction and Background

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) legislates for the use by local authorities of covert methods of surveillance and information gathering to assist in the detection and prevention of crime in relation to an authorities core functions.
- 3.2 The Council's use of these powers is subject to regular inspection and audit by the Investigatory Powers Commissioners Office (**IPCO**) in respect of covert surveillance authorisations under RIPA, and the Interception of Communications Commissioner (**IOCCO**) in respect of communications data. During these inspections, authorisations and procedures are closely examined and Authorising Officers are interviewed by the inspectors.

4. Issue, Options and Analysis of Options

Training

- 4.1 Training of relevant personnel shall be taking place during Summer 2018. This shall be a refresher training which shall include the changes in the RIPA policy to ensure the Council's preparedness should the need arise to undertake surveillance or CHIS activity in the future.

Amended RIPA Policy

- 4.2 The draft RIPA Policy has been amended to reflect the recommendation issued by the IPCO in their Inspection Report of the 16th August 2017 in which it was recommended that the following areas be updated:-
- i. Updating the policy arising from the changes in the Data Protection Act 2018 ;
 - ii. At present the dual role of Senior Responsible Officer (SRO)/ Authorising Officer (AO) is exercised by one officer .The role of the AO is singular , in that they are solely responsible for the decision to grant authorisation for Surveillance or CHIS whereas the SRO has the final say on the decision. This role of the SRO and AO should be separated. ;
 - iii. Under section 8 of the policy the reference to urgent oral authorisation and their duration needs to be removed following the legislative changes of 2012.
 - iv. The term Managing Director needs to change to Chief Executive

A copy of the amended draft RIPA Policy is attached at Appendix A.

Statistical Information

- 4.3 The Committee is asked to note the following statistical information relating to the use of RIPA over the period between September 2017 and 30th May 2018 .
- 4.4 September 2017 and 30th May 2018 Total No. Of RIPA authorisations 0

- 4.5 September 2017 and 30th May 2018 Total No. Of CHIS authorisations 0
- 4.6 Officers are encouraged to use overt surveillance wherever possible, and use RIPA as a last resort. Often necessary evidence can be obtained overtly, and if an officer makes his or her investigation visible, this alone can have the desired effect of compliance.

National Anti-Fraud Network (NAFN)

- 4.7 Occasionally 'data matching' (for example, matching a telephone number to a specific individual) is necessary to identify those engaging in criminal activity. The Council is a member of NAFN through whom requests for such data are regulated and, where legitimately applied for, processed. Members should note that there has been no such data matching exercise conducted during the last year.

5. Reasons for Recommendation

- 5.1 To implement the recommendation made by the Surveillance Inspector and changes in law and to assist with Members' oversight and decision making in relation to the attached RIPA Policy.

6. Consultation

- 6.1 None

7. References to Corporate Plan

- 7.1 These actions assist with the work towards a safer borough.

8. Implications

Financial Implications

Name & Title: Jacqueline Van Mellaerts, Interim Chief Finance Officer/S.151 Officer

Tel & Email: 01277 312542/jacqueline.vanmellaerts@brentwood.gov.uk

- 8.1 There are no financial implications directly related to this report.

Legal Implications

Name & Title: Daniel Toohey, Head of Legal Services and Monitoring Officer

Tel & Email: 01277 312860/daniel.toohey@brentwood.gov.uk

- 8.2 Legal implication comments are contained within this report above.

9. Appendices to this report

Appendix A – Draft RIPA Policy

Report Author Contact Details:

Name: Daniel Toohey, Head of Legal Services/Monitoring Officer
Telephone: 01277 312860
E-mail: Daniel.Toohey@brentwood.gov.uk