



AGENDA ITEM: 8

CABINET:
16 September 2014

**AUDIT AND GOVERNANCE
COMMITTEE:**
23 September 2014

Report of: Borough Solicitor

Relevant Managing Director: Managing Director (People and Places)

Relevant Portfolio Holder: Councillor D Westley

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**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT – SETTING OF
POLICY AND REVIEW OF USE OF POWERS**

Borough Wide Interest

1.0 PURPOSE OF THE REPORT

1.1 To review and set the policy for the Regulation of Investigatory Powers Act (RIPA) and review the Council's use of covert surveillance and communications data over the last year.

2.0 RECOMMENDATIONS TO CABINET

2.1 That it be noted that for the period from the last annual report to date the Council has not authorised any relevant RIPA activity.

2.2 That the RIPA Guide at Appendix 1 to the report be approved.

3.0 RECOMMENDATIONS TO AUDIT AND GOVERNANCE

3.1 That the report be noted.

4.0 BACKGROUND

4.1 The Council employ a number of investigative techniques including surveillance, which assist its regulatory functions. Relevant areas of activity can include investigation by Internal Audit, Benefits Fraud Team, Environmental Health,

Housing, Licensing, CCTV Services and the MAPs Team. Some activities must be undertaken in accordance with the Regulation of Investigatory Powers Act 2000 ("RIPA"). RIPA, its subordinate legislation and Codes of Practice prescribe the type of activities permitted and the procedures required to monitor RIPA activity within the Council.

5.0 UPDATE ON COMPLIANCE AND ARRANGEMENTS FOR MONITORING

- 5.1 The Council has robust systems for internal control (as detailed in the Guidance for Compliance with RIPA (RIPA Guide) and the associated documents entitled 'Guidance on the Completion of the RIPA Authorisation Forms'. (Forms Guidance) which gives officers practical guidance. The Council is also subject to external inspections by the office of Surveillance Commissioners (which monitors the use of directed surveillance and covert human intelligence sources) and the Interception of Communications Commissioner's Office (which monitors the acquisition of communications data). The Council was last inspected by the OSC on 27 June 2013 and received a very favourable report as has previously been reported. The Council also supplies statistical information on the use of RIPA powers on an annual basis to the two offices to inform their annual reports to Parliament.
- 5.2 The Council's approved RIPA Guide is made available on the Council's Intranet at <http://wlintranet/intranet/docs/tpbripaguidlines24040> and is appended to this report at Appendix 1. It is a working document to assist investigating and co-ordinating officers within the Council. Paragraph 5 of the RIPA Guide stresses that grantors must believe the authorised activity is (1) necessary for preventing and detecting crime and (2) is proportionate to what is sought to be achieved in carrying out the surveillance activity (e.g. the 24/7 watching of premises where private individuals may go about their lawful business, for the possibility of gaining collateral evidence for a very minor technical infraction of a byelaw would not in all likelihood be proportionate). If it fails either test, authorisations should not be granted.
- 5.3 The Code requires that Councillors should consider internal reports on the use of RIPA on at least a quarterly basis to ensure that it is being used consistently with the Council's Policy and that the Policy remains fit for purpose. This is reported at each meeting of the Audit and Governance Committee. The Code advises that Councillors should not be involved in making decisions on specific authorisations. It is stressed that the involvement of elected members is not to extend to operational decision making or stipulate in detail how the Council discharges the procedure. The Government's position is that there should be no possibility of political interference in law enforcement operations.
- 5.4 Since the commencement of the Protection of Freedoms Act 2012 has further refined the requirements for granting authorisations. To entitle the grant of an RIPA authorisation the criminal offence which is sought to be prevented or detected must be punishable, whether on summary conviction or on indictment, by a maximum term of at least six months' imprisonment, or would constitute an offence involving the sale of tobacco and alcohol to underage children.
- 5.5 In addition the 2012 Act now requires local authorities to obtain the approval of a Magistrate for the use of any one of the three covert investigatory techniques available to them under RIPA, namely Directed Surveillance, deployment of a

Covert Human Intelligence Source (CHIS) and accessing communications data. This process follows on from the “internal authorisation” procedures.

- 5.6 The practical Forms Guidance available to officers sets out how the Magistrates’ approval process is to be followed. There are currently draft proposals before Parliament for approval which will likely result in further refinement of the Forms Guidance.

6.0 MONITORING OF RIPA ACTIVITY

- 6.1 Since the last annual report no covert surveillance has been authorised.
- 6.2 The Borough Solicitor, as Senior Responsible Officer, proactively seeks to ensure that the use of covert surveillance in this authority is well regulated. Applications for authorisation to use covert surveillance must be rejected when the Authorising Officer is not satisfied that the surveillance is necessary or proportionate and legal advice sought by Authorising Officers in appropriate cases.
- 6.3 A RIPA guidance note is circulated at regular intervals to ensure officers remain aware of requirements and is supplemented by a programme of training.

7.0 THE RIPA POLICY

- 7.1 As a requirement of the RIPA Code of Practice the Council considers its policy in this area on an annual basis, as well as reviewing its use of the powers through quarterly reports to Audit and Governance Committee. The Council’s RIPA Guide forms the Council policy in this area and has been commended in earlier inspections by the regulator. The current version includes minor amendments identified at the last inspection (June 2013). The RIPA Guide is found at Appendix 1.
- 7.2 The RIPA Guide includes provisions regulating the process for Management of CHIS (covert human intelligence sources) by the Borough Solicitor.
- 7.3 As noted, the Forms Guidance provides a step-by-step guide to officers in the use of the policy for relevant activity. These documents are monitored throughout the year to ensure they are up to date and ‘fit for purpose’ and may be amended in accordance with delegated arrangements.

8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 8.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

9.0 FINANCE AND RESOURCE IMPLICATIONS

- 9.1 There are no significant financial and resource implications arising from this report.

10.0 RISK ASSESSMENT

10.1 The Council could be in breach of the relevant legislation if it does not follow the procedures set out in the RIPA Orders and Codes. This could result in the inadmissibility of evidence and the possibility of breaches of the Human Rights Act 1990.

BACKGROUND DOCUMENTS

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this report.

Equality Impact Assessment

This will be considered in relation to any particular authorisation.

Appendices

Appendix 1 - RIPA Guide

Appendix 2 – Cabinet Minute (for Audit and Governance Committee only) TO FOLLOW