

For General Release

REPORT TO:	ETHICS COMMITTEE 1 February 2017
AGENDA ITEM:	8
SUBJECT:	REGULATION OF INVESTIGATORY POWERS ACT 2000
LEAD OFFICER:	ACTING BOROUGH SOLICITOR AND ACTING MONITORING OFFICER
WARDS:	ALL
CABINET MEMBER:	Councillor Hamida Ali - Communities, Safety and Justice
CORPORATE PRIORITY/POLICY CONTEXT: Monitoring compliance with the Regulation of Investigatory Powers Act supports the Council's approach to corporate governance.	
FINANCIAL IMPACT The recommendation contained in this report has no financial implications	
KEY DECISION REFERENCE NO: This is not a key decision.	

1. RECOMMENDATION

The Committee is asked to:

- 1.1 Note the use of the Regulation of Investigatory Powers Act 2000 by the Council over the past calendar year.

2. EXECUTIVE SUMMARY

2.1 The purpose of this report is to inform the Committee how the powers available to the Council under Regulation of Investigatory Powers Act 2000 (RIPA) have been used over the last calendar year.

3. DETAIL

3.1 RIPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist the detection and prevention of crime in relation to an authorities core functions. Evidence obtained by any covert surveillance could be subject to challenges under Article 8 of the European Convention on Human Rights (ECHR) - the right to respect for private and family life. However, properly authorised covert surveillance under RIPA makes lawful what might otherwise be a breach of Article 8 of the ECHR and protects the Council from any civil liability. A public authorities "core functions" are the specific public functions

it undertakes when providing services, in contrast to the “ordinary functions” which are those undertaken by all authorities (e.g. employment issues, contractual arrangements etc). Therefore a public authority may only engage in the use of RIPA when in performance of its “core functions”.

3.2 Using RIPA, but only for the purpose of investigating crime and disorder, the Council is able to:

- Carry out covert directed surveillance;
- Use covert human intelligence sources;
- Acquire data relating to communications (e.g. telephone subscriber information).

3.3 ‘Covert’ in this context means carried out in a manner calculated to ensure that those subject to the surveillance are unaware that it is or may be taking place. It usually involves personal observation, the use of CCTV, or accessing communications data such as mobile phone number subscriber or website details (see paragraph 2.6 below). However, even using these powers, the Council cannot carry out intrusive surveillance, such as putting a hidden camera in a suspect’s home to observe them, or listening to or obtaining the contents of telephone call or emails; such intrusive surveillance can only be carried out by the Police and government security services.

3.4 Further, even where the covert investigations are for the purpose of preventing crime and disorder, the Council must also show that the surveillance is necessary and proportionate and can be balanced against an individual’s right to their private and family life.

3.5 Covert Human Intelligence Sources (CHIS) are individuals who by the nature of the situation they are in are able to provide information in a covert manner to aid an investigation. The use of CHIS is very tightly controlled under RIPA and historically the Council has not made use of this aspect of RIPA.

3.6 It should also be noted that in respect of communications data, no information regarding the actual content of the communication can be obtained by a local authority. The information obtained is information regarding who pays the bill for a phone, website or where an item of post originated etc. This type of information is most often obtained as part of a Trading Standards investigation where, for example, they are trying to identify and/or locate a trader in counterfeit goods operating from a website, or rogue trader who has billed (often a vulnerable) person for work and where the only point of contact is via a mobile phone number.

3.7 In respect of the use of the powers under RIPA the Council has had in place a Corporate Policy and Procedure to ensure their proper use. Local Authorities require judicial approval from a Court for the use of covert directed surveillance, covert human intelligence sources (CHIS) and access to communications data (i.e. billing and subscriber information), and the use of RIPA to authorising directed surveillance is now limited to cases where the offence under investigation carries the possibility of minimum custodial sentence of 6 months or more being passed on conviction. When

access to communications is sought or for test purchasing exercises (investigations into underage sales of alcohol and tobacco), this restriction does not apply.

3.8 Authorisation Arrangements

Overall supervision of the Council's use of RIPA lies with the Acting Borough Solicitor and Acting Monitoring Officer. Day to day monitoring of and advice on authorisations, to ensure that the issues of necessity and proportionality are fully considered and to ensure that all applications meet the necessarily high standard that is required. The application is then made to the Magistrates by an authorised officer in the Corporate Legal Team. In accordance with statutory requirements, this team also maintains the Council's Central Register of covert surveillance applications. Currently there are 5 Council officers nominated by their Executive Directors who are able to authorise an application for the use of the powers available under RIPA. These officers are those whose services undertake specific enforcement activities and/or investigations.

4.0 Occasions when RIPA has been used to Support Investigations

4.1 The occasions and outcomes where the use of the powers available under RIPA to aid investigations was authorised during 2016 are set out below:

- Directed Surveillance - 1 Investigation (Investigation ongoing - fraud/theft)
- Communications Data - 3 Investigations (Trading Standards (joint investigation - Trading Standards case closed) / Environmental: fly-tipping/illegal waste transfer (prosecuted, sentencing pending) / Environmental: street trading (Fixed Penalty Notice))

4.2 The Council's use of these powers, its policy and procedures are subject to inspection and audit by the Office of the Surveillance Commissioner and in respect of covert surveillance authorisations under RIPA and the Interception of Communications Commissioner Inspections in respect of communications data. During these inspections individual applications and authorisations are also closely examined and Authorising Officers are interviewed by the inspectors.

4.3 With the changes being brought about by the passing into law of the Investigatory Power Act 2016, these organisations will be brought together as the Investigatory Powers Commissioner, who will have oversight of the inspection regime. The Act, also for local authorities revises definitions of what is considered to be communications data and also the processes for obtaining it as well as placing additional responsibilities and sanctions upon those who process applications. These changes will be taken into account within a revised policy document, which the Committee will be asked to consider at a later date, once final guidance has been received.

4.4 Under the code of practice that govern the use of RIPA and the Council's own requirements, officers whose day to day work may require them to be aware to the issues surrounding the use of RIPA are required to be trained. In May 2016, 21 staff from across the Council attended a training event facilitated by Act Now Training.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 There are no direct financial implications arising from this report.

6. LEGAL IMPLICATIONS

6.1 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

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BACKGROUND PAPERS: None