


<p><b>London Borough of Hammersmith &amp; Fulham</b></p> <p><b>COMMUNITY SAFETY AND ENVIRONMENT POLICY AND ACCOUNTIBILITY COMMITTEE</b></p> <p><b>05 December 2018</b></p>	
<p><b>REVIEW OF USE OF REGULATION OF INVESTIGATORY POWERS ACT (RIPA)</b></p>	
<p><b>Report of the: Director for Residents' Services</b></p>	
<p><b>Open Report</b></p>	
<p><b>Classification - For Policy &amp; Advisory Review &amp; Comment</b></p>	
<p><b>Key Decision: No</b></p>	
<p><b>Consultation None</b></p>	
<p><b>Wards Affected: All</b></p>	
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**1. EXECUTIVE SUMMARY**

- 1.1. This report is to give Members the opportunity to scrutinise the Council's use of covert surveillance and CCTV.
- 1.2. The Regulation of Investigatory Powers Act 2000 (RIPA) provides a statutory framework for police and public authorities to use surveillance and communications data, where necessary and proportionate, for the purpose of preventing or detecting crime or preventing disorder. RIPA regulates the use of these powers in a manner that is compatible with the Human Rights Act.

**2. RECOMMENDATIONS**

- 2.1. That Members review the use of surveillance by the Council.

**3. REASONS FOR DECISION**

- 3.1. The code of guidance published by the Secretary of State under section 91 of RIPA advises that local authority Members should review the use of the Act and set the policy.

#### **4. THE REGULATION OF INVESTIGATORY POWERS ACT 2000**

- 4.1. The Regulation of Investigatory Powers Act 2000 (RIPA) introduced a process for balancing an individual's rights with the authority's obligations to enforce laws on behalf of the wider community. The Act makes all conduct carried out in accordance with an authorisation granted under the terms of the Act lawful "for all purposes". Surveillance must be "necessary" and "proportionate" and be approved by both a council authorising officer and a magistrate.
- 4.2. Councils use RIPA to undertake directed surveillance and access communication data to detect and prevent crimes such as fraud, rogue traders, and anti-social behaviour. Since November 2012 Councils must obtain an order from a JP (District Judge or lay magistrate) approving an authorisation to use directed surveillance, acquire communication data or use a CHIS.

RIPA is separated into 2 parts:

##### **Part I Communications Data Access**

- 4.3. This allows Councils to access communications data from Communications Service Providers. It does NOT allow for the interception of communications (i.e. it enables the Council to seek information as to who someone is phoning, not what they say).
- 4.4. Communications Service Providers (CSP's) are anyone who provides a postal or telecommunications service e.g. Royal Mail, British Telecom, Vodafone, etc.
- 4.5. Councils' only have the power to acquire the following data from CSP's
- Billing, delivery, and installation address
  - Contact telephone numbers
  - Periods of subscription use
  - Itemised telephone call records
  - Itemised records of connections to internet services
  - Provision, and use of forwarding/redirection services
  - Records of postal items, e.g. registered, recorded, or special delivery postal items
  - Top up details for mobile phones, credit/debit card details and voucher top up details
- 4.6. CSP's will only respond to requests from Council's via designated contacts who must have undertaken and passed a Home Office approved course. The Council uses NAFN (National anti-fraud network) as the designated contact.

**Part II – Directed Surveillance & Covert Human Intelligence Sources**  
**Directed Surveillance**

- 4.7. This refers to covert but, not intrusive, surveillance which is not an immediate response to events. It is undertaken for a specific investigation or operation in a way likely to obtain private information about a person (any information relating to private or family life, interpreted broadly to include relationships with others). It must be necessary for the purpose of preventing or detecting crime or disorder and proportionate to what it seeks to achieve.
- 4.8. Since November 2012 a Council can only authorise directed surveillance to prevent or detect criminal offences that are either punishable by at least 6 months’ imprisonment or are related to the underage sale of various prohibited items. This is known as the “crime threshold”.

**Covert Human Intelligence Sources (CHIS)**

- 4.9. The practice of using an officer to establish or maintain a personal or other relationship with a person for the covert purpose of obtaining information, e.g. an officer who poses as a tenant to obtain information and evidence against a nuisance tenant. LBHF has never authorised the use of a CHIS.
- 4.10. The Office of Surveillance Commissioners (**OSC**) regulates Part II of RIPA. There was an inspection on 10 January 2017.
- 4.11. **Frequency of use of these powers:**

**Directed Surveillance:**

<b>September 2017 – October 2018</b>			
<b>Department:</b>	<b>Authorising Officer</b>	<b>Number of Authorisations</b>	<b>Reason for use of RIPA</b>
Environment, Leisure, and Residents Services: Safer Neighbourhoods Division	Head of Community Safety	2	Covert CCTV cameras and Visual Surveillance to identify perpetrators of ASB, and drug dealing

**Communication Data:**

<b>Department</b>	<b>Authorising Officer</b>	<b>Number of authorisations</b>	<b>Reason for use of RIPA</b>
		None	

## **The Policy**

- 4.12. On 3 November 2014 the Cabinet gave approval to a Joint Working Agreement for the exercise of RIPA powers with the Royal Borough of Kensington & Chelsea including sharing officers. Officers are currently working on a sovereign policy for LBHF and will be seeking cabinet approval to end the agreement with RBKC.
- 4.13. The current policy sets out how an investigating officer must apply for RIPA authorisation to one of five Authorising Officers. The officer must set out the purpose of the investigation, the details of the operation (duration, methods, equipment and so on to be employed), the identities where known of the subject of the application, the information it is desired to obtain, the offence to be prevented or detected, an explanation of why it is necessary, details of potential collateral intrusion (infringement of the privacy of people other than the intended subject) including precautions taken to avoid collateral intrusion and an explanation of why the application is proportionate to the aims of the operation.
- 4.14. The Authorising Officer is a senior person of at least Head of Service level, who is not connected with the operation. He or she will consider the application and if satisfied that the requirements of the Act and the Council's policy are met will authorise the application. In doing so the Authorising Officer will record the who, where, what, when and how of the activity, set a date to review the operation. The investigating officer will then apply to the Magistrates' court for approval.
- 4.15. In April 2018 training on RIPA was provided to officers of LBHF by ACTNOW, a leading provider of training in this subject. In addition informal training also takes place with the professional witnesses from the Anti-Social Behaviour Unit, with common mistakes and best practice being discussed.
- 4.16. The Act requires the Council to have a SRO who is responsible for ensuring compliance with the Act and Code of Guidance and the integrity of the in place within the authority to acquire communications data. The Director of Legal Services Acts as the SRO.
- 4.17. The Authorising Officers meet at least 3 times a year with the SRO and review the policy and procedure.
- 4.18. **Non RIPA Surveillance**
- 4.19. The policy sets out the circumstances when officers may use surveillance techniques where the crime threshold is not met. In such circumstances, by carefully considering exactly the same factors of necessity and proportionality which would be considered before granting authorisation under RIPA, the officers can show that their activity is lawful and necessary in terms of the qualification in Article 8(2) of European Convention of Human Rights

4.20. Non-RIPA surveillance has been used by officers investigating anti-social behaviour, which can involve day to-to-day incidents such as vandalism, and noisy or abusive behaviour by neighbours. Even what is perceived as ‘low level’ anti-social behaviour, when targeted and persistent, can have a devastating effect on a victim. In order to support victims, it has been necessary to conduct surveillance that does not satisfy the serious crime threshold requirement of RIPA. Evidence gathered can then be used to support enforcement action against the perpetrators of the ASB, including those that reside in RSL properties.

4.21. **Frequency of use:**

<b>September 2017 – October 2018</b>			
<b>Department</b>	<b>Authorising Officer</b>	<b>Number of applications</b>	<b>Reason</b>
Environment, Leisure, and Residents Services: Safer Neighbourhoods Division	Head of Community Safety	11	Covert CCTV cameras and Visual Surveillance to identify perpetrators of ASB, criminal damage, harassment, intimidation, and drug dealing

**5. OSC Inspection**

5.1 On 10 January 2017 an Inspector of the Office of Surveillance examined the arrangements of LBHF and RBKC to ensure compliance with the statutory provisions which govern the use of covert surveillance. His report was sent to the Chief Executive on 14 February 2017.

5.2 The report was broadly positive and found that both Councils continue to make sufficient provision to ensure compliance. The Inspector found that the Authorising Officers had all received RIPA training and were clearly knowledgeable about their responsibilities. He made 6 recommendations.

5.3 Two of the recommendations related to inconsistent practices across the two councils for documenting authorisations and the conduct of reviews. RBKC have adopted LBHF procedures.

5.4 To deal with these inconsistencies the inspector recommended that a RIPA “gatekeeper” should provide a more “intrusive role” and review authorisations before and after they are granted to ensure quality assurance. At present authorisations are reviewed by a Senior Solicitor in Legal services after they have been approved by a magistrate. They are also reviewed at the quarterly meetings of the Authorising Officers.

Officers are exploring the use of Office 365 functions so that authorisations can be reviewed by Legal Services prior to them being taken to court without delaying the process.

- 5.5 As set out above LBHF has never used the CHIS powers and has no officers trained to undertake this role. The Inspector was concerned that officers would recognise a CHIS issue if they come across one and whether this may lead to a breach of the legislation. He recommended that the SRO review current provision for CHIS and implement measures if considered necessary.
- 5.6 The Inspector recommended that the RIPA policy should be reviewed and kept up to date as a constant reminder of the care with which social media sites should be used by Council officers. This in case some officers, acting in good faith, use their personal profiles on social media in connection with Council business. This may, lead to officers, inadvertently, falling within the ambit of RIPA. It is intended to review and publicise the policy and highlight the risks of using social media. Training covering this issue will also be provided.
- 5.7 The last recommendation was that the Councils should ensure that when the Police use LBHF CCTV for targeted surveillance they should comply with the OSC Procedures and Guidance.

**6. EQUALITY IMPLICATIONS**

- 6.1. The recommendations do not affect the Council’s equality duties.

**7. LEGAL IMPLICATIONS**

- 7.1. The legal implications are contained in the body of the report.

**8. FINANCIAL AND RESOURCES IMPLICATIONS**

- 8.1. There are no financial implications for this report.

**9 IMPLICATIONS FOR BUSINESS**

- 9.1 There are no business implications for the purpose of this report.

**LOCAL GOVERNMENT ACT 2000**  
**LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.			