


<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">CABINET</p> <p style="text-align: center;">1 JULY 2019</p>	
<p>REGULATION OF INVESTIGATORY POWERS (RIPA)</p>	
<p>Report of the Deputy Leader – Councillor Sue Fennimore</p>	
<p>Open Report</p>	
<p>Classification - For Decision</p> <p>Key Decision: Yes</p>	
<p>Consultation Legal, Fraud, Community Safety, Equalities, Risk Management, Information Management, Financial, Business, IT, Procurement</p>	
<p>Wards Affected: All</p>	
<p>Accountable Director: Sharon Lea, Strategic Director of Environment</p>	
<p>Report Author: Beth Morgan, Policy and Service Development Officer Community Safety Unit</p>	<p>Contact Details: Tel: 020 8753 3102 E-mail: Beth.Morgan@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1. This report concerns the working arrangements of Hammersmith & Fulham Council for the exercise of functions under the Regulation of Investigatory Powers Act 2000 (RIPA). It proposes a new sovereign arrangement for Hammersmith & Fulham Council for the exercise of functions under RIPA which will involve the termination of the existing Section 113 arrangement with the Royal Borough of Kensington and Chelsea (RBKC), the adoption of a new Hammersmith & Fulham RIPA Policy and the appointment of a Senior Responsible Officer (SRO).

2. RECOMMENDATIONS

- 2.1. That Cabinet approve the termination of the existing agreement between Hammersmith & Fulham Council and RBKC pursuant to Section 113 of the Local Government Act 1972.
- 2.2. That authority be delegated to the Strategic Director of the Environment in consultation with the Assistant Director of Legal and Democratic Services to finalise and approve the proposed sovereign borough Hammersmith & Fulham

RIPA Policy for the exercise of RIPA powers in Hammersmith & Fulham (attached as Appendix 1).

- 2.3. That Cabinet approve the appointment of the Chief Officer, Safer Neighbourhoods & Regulatory Services, Environment Department, as the Senior Responsible Officer for Hammersmith & Fulham Council.

3. REASONS FOR DECISION

- 3.1. Implementing a sovereign Hammersmith & Fulham RIPA Policy will support the continued disaggregation of shared services between Hammersmith & Fulham Council and RBKC and will enable future policy development to be tailored to the needs of local residents, make the process more agile and enable the Council to act faster in relation to directed surveillance.

4. BACKGROUND

- 4.1. 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. RIPA regulates the use of these powers in a manner that is compatible with the Human Rights Act.
- 4.2. Hammersmith & Fulham Council occasionally use RIPA to undertake directed surveillance and access communication data in order to detect and prevent crimes such as fraud, rogue trading, drug dealing and anti-social behaviour. Surveillance usually takes the form of officers in plain clothes observing activity, often filming it or taking photographs. The product of such surveillance can be very effective evidence in the prosecution of offenders and can lead to early admissions of guilt saving prosecution costs and court time. These powers have been used to detect various forms of low-level crime and anti-social behaviour (more details can be found in Appendix 2).
- 4.3. Part 1 of RIPA allowed Hammersmith & Fulham Council to access communication data from Communication Service Providers (CSP's), e.g. Royal Mail, BT and the mobile phone companies. The Council is able to seek information about whom someone has phoned not what they say. This includes information, itemised phone bills, periods of subscription and billing addresses.
- 4.4. These provisions have recently been replaced by Part 3 of the Investigatory Powers Act 2016 and it will be necessary to update the policy to deal with this change. In brief, the Council can access "Entity Data" e.g. who pays a phone bill and "Event Data" e.g. access to an itemised phone bill. To access event data the Council must be investigating a serious crime capable of attracting a prison sentence of 12 months or more. It will no longer be necessary to apply to the Magistrates court for approval for applications to access communication data. Instead the applications will be assessed by the Office for Communications Data Authorisations (OCDA).

- 4.5. The Council will continue to use the National Anti-Fraud Network (“NAFN”) to act as the Single Point of Contact (SPoC) and deal with all applications for the acquisition of communications data. Applications are submitted to NAFN electronically, they check that the application is compliant with the legislation, that the acquisition intended is practical and lawful, and that the tests of proportionality and necessity have been adequately considered and detailed.
- 4.6. Once the SPoC is satisfied with the application, they will complete the relevant sections, identifying the data to be acquired, and how it may be acquired. The SPoC will then notify the Designated Persons at the Council by email that there is an application pending which requires final approval.
- 4.7. Covert surveillance and access to communication data inevitably runs the risk that the privacy of persons under investigation as well as other people they associate with may be compromised. The Human Rights Act 1998 requires a public body to have respect for an individual’s private and family life in accordance with Article 8 of the European Convention on Human Rights. This is a qualified human right and Article 8(2) provides that the right may be interfered with so long as it is done in accordance with the law and “is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
- 4.8. The Regulation of Investigatory Powers Act 2000 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”. This is in effect a statutory defence to any claim by a resident that their rights, including human rights such as those under Article 8, have been breached by the authority’s surveillance activity. The defence is only available if the surveillance is “necessary” and “proportionate” and has been approved by both a council authorising officer and a magistrate.
- 4.9. The number of authorisations approved by Hammersmith & Fulham Council since 2015 is set out in Appendix 2. The main use of directed surveillance in the London Borough of Hammersmith & Fulham has been directed at drug dealing/supply and preventing anti-social behaviour.
- 4.10. The Head of Community Safety reports annually to the Community Safety & Environment Policy & Accountability Committee on the use of RIPA. The last report was in December 2018.

Current Arrangement

- 4.11. On 1st October 2015 Hammersmith & Fulham Council and RBKC entered into an agreement pursuant to Section 113 of the Local Government Act 1972. Under the terms of this agreement Officers employed by one borough working in a shared service are made available to the non-employing borough for the

purpose of authorising conduct under RIPA and conduct of a similar nature which is not regulated by the Act and any function incidental to the same.

- 4.12. In the current arrangement both Hammersmith & Fulham Council and RBKC adhere to the same policy and procedures for the use RIPA and non-RIPA surveillance. This Joint Working Arrangement specified a single SRO across both boroughs and five Authorising Officers (three from LBHF and two from RBKC) capable of granting authorisation to officers of either Council.

5. PROPOSAL AND ISSUES

- 5.1. This report proposes a new sovereign arrangement for Hammersmith & Fulham Council for the exercise of functions under the RIPA.
- 5.2. This requires the termination of the existing agreement between Hammersmith & Fulham Council and RBKC pursuant to Section 113 of the Local Government Act 1972 and the adoption of a new Hammersmith & Fulham RIPA Policy (attached as Appendix 1).
- 5.3. RIPA sets out the process of authorising and monitoring surveillance activity. The Home Office has prescribed forms for the granting, review, renewal and cancellation of authorisations. The proposed Hammersmith & Fulham RIPA Policy puts these into effect.
- 5.4. Officers of Hammersmith & Fulham Council who want to undertake directed surveillance and/or access communications data will be required to do so in accordance with this policy.
- 5.5. RIPA also requires the Council to have a Senior Responsible Officer (SRO) who is responsible for ensuring compliance with the Act and Code of Guidance and the integrity of the process in place within the authority to acquire communications data. It is proposed that Matthew Hooper, Chief Officer, Safer Neighbourhoods & Regulatory Services, Environment Department, acts as the SRO for Hammersmith & Fulham Council.
- 5.6. Within the proposed Hammersmith & Fulham RIPA Policy the following Officers are empowered to act as Authorised persons for applications for surveillance and Covert Human Intelligence Sources (CHIS), and as Designated Persons for applications for Communication data.
- Tri Borough Head of Fraud
 - Bi Borough Head of Environmental Health (Licensing and Trading Standards)
 - Head of Community Safety
- 5.7. The Policy specifies that Authorising Officers should not be responsible for authorising investigations in which they are directly involved.

- 5.8. All Authorising Officers/Designated Persons must also have current working knowledge of human rights principles, specifically those of necessity and proportionality. We can confirm that this is the case for the Authorising Officers/Designated Persons referred to in section 5.6.
- 5.9. The Council must hold a centrally retrievable record of all applications that must be retained for a period of at least 3 years from the ending of an authorisation. This should include the unique reference number ('URN') of the investigation and details of the authorisation, review, cancellation and any renewal. The date of the court order approving the application will also be recorded in the central register. The Policy specifies that the central record will be maintained by the Community Safety Manager.
- 5.10. The proposed policy will continue to allow directed surveillance techniques in investigations which do not meet the "crime threshold" set out in RIPA. However, all such "Non RIPA" surveillance must be approved by a RIPA Authorising Officer and Investigating Officers are required to demonstrate that their proposed surveillance is necessary and proportionate in the same way that they would for a RIPA authorisation. A central record of all non RIPA surveillance is maintained by the Community Safety Manager.
- 5.11. The proposed Hammersmith & Fulham RIPA Policy is attached to this report as Appendix 1.

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1. Option 1 – To not have a RIPA Policy. This is not the recommended option as a policy needs to be in place to enable the council to be compliant in the exercise of functions and powers under the Regulation of Investigatory Powers Act 2000.
- 6.2. Option 2 – To continue with the current section 113 arrangement with RBKC. This is not the recommended option as it would not support the council's disaggregation of shared services.
- 6.3. Option 3 – To adopt a sovereign RIPA Policy. In order to support the continued disaggregation of shared services between Hammersmith & Fulham Council and RBKC, the termination of the existing Section 113 arrangement with RBKC, the adoption of a new Hammersmith & Fulham RIPA Policy and the appointment of a Senior Responsible Officer (SRO) is the recommended option in order to ensure Hammersmith & Fulham remain fully compliant in the exercise of functions under the Regulation of Investigatory Powers Act 2000 (RIPA).

7. EQUALITY IMPLICATIONS

- 8.1. As required by Section 149 of the Equality Act 2010, the Council has considered its obligations regarding the Public Sector Equality Duty and it is not anticipated that there will be any direct negative impact on groups with protected characteristics, as defined by the Act, by implementing a sovereign Hammersmith & Fulham RIPA Policy.
- 8.2. *Implications completed by: Fawad Bhatti, Social Inclusion Policy Manager, tel. 07500 103617.*

8. LEGAL IMPLICATIONS

- 8.1. Legal implications are contained in the body of the report.
- 8.2. *Implications verified/completed by: Janette Mullins, Acting Chief Solicitor (Litigation and Social Care) x2744*

9. FINANCIAL IMPLICATIONS

- 9.1. There are no financial implications associated with the recommendations contained in this report.
- 9.2. *Implications verified/completed by: Lucy Varenne, Interim Head of Finance, tel;- 020 7341 5777.*
- 9.3. *Implications verified by Emily Hill, Head of Corporate Finance ext. 3145*

10. IMPLICATIONS FOR LOCAL BUSINESS

- 10.1. There are no direct business implications resulting from the proposal in this report.
- 10.2. *Implications verified by Alben Karameros, Programme Manager Earls Court, telephone 020 7938 8583*

11. COMMERCIAL IMPLICATIONS

- 11.1. There are no procurement implications associated with the recommendations contained in this report.
- 11.2. *Implications completed by: Joanna Angelides, Procurement Consultant, tel No. 0208 753 2586*

12. IT IMPLICATIONS

- 13.1. IT Implications: There are no IT implications resulting from the proposal in this report.

13.2. IM Implications: As the proposal in this report involves the processing of sensitive data, a Privacy Impact Assessment will need to be completed to ensure all potential data protection risks in relation to this proposal are properly assessed with mitigating actions agreed and implemented.

13.3. *Implications to be verified/completed by: Karen Barry, Strategic Relationship Manager, IT Services, tel 0208 753 3481*

13. RISK MANAGEMENT

14.1. Directed surveillance in the London Borough of Hammersmith & Fulham has been directed at drug dealing/supply and preventing anti-social behaviour. RIPA sets out the ways in which the Council can lawfully carry out investigations when we need to use surveillance techniques. A new sovereign RIPA policy contributes to the council priorities by preventing crime by standing by responsible residents and cracking down on anti-social behaviour so people feel safe.

14.3. Local authorities may only use covert surveillance for the prevention and detection of crime; and only in those cases where the offence under investigation is subject to a term of imprisonment of 6 months or more.

14.4. *Risk implications completed by Michael Sloniowski, Risk Manager, telephone 020 8753 2587*

14. BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None

LIST OF APPENDICES:

Appendix 1 - Hammersmith & Fulham RIPA Policy

Appendix 2 - Number of RIPA Authorisations Granted