

London Borough of Hammersmith & Fulham

Report to: Community Safety & Environment Policy & Accountability Committee

Date: 11/11/2020

Subject: Update on Council's Use of Investigatory Powers (RIPA and IPA)

Report of: Beth Morgan, Community Safety Policy and Service Development Officer

Responsible Director: Sharon Lea, Director, Strategic Director of Environment

Summary

- This report is to give Members the opportunity to scrutinise the council's conduct in relation to directed surveillance, covert human intelligence sources (CHIS) and communications data.
- The council must conduct directed surveillance, and use covert human intelligence sources, in accordance with the Regulation of Investigatory Powers Act (RIPA) and council policy.
- RIPA provides a statutory framework for police and public authorities to use investigatory powers, 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.
- The Investigatory Powers Act (IPA) 2016 provides a new legal framework for the acquisition of communications data, replacing Part I of Chapter 2 of RIPA.
- The council must access communications data in accordance with the Investigatory Powers Act 2016 and council policy.
- The council's use of covert surveillance was inspected by the Investigatory Powers Commissioner's Office (IPCO) in April 2020. The outcome of this inspection was positive and this report details the actions the council will take in response.

Recommendations

1. That Members review and comment on the council's RIPA (and IPA) policies and procedures and the use of RIPA and IPA functions by the council.
2. That members note the outcome of the IPCO inspection and provide any comments.

Wards Affected: All

H&F Priorities

Please state how the subject of the report relates to our priorities – delete those priorities which are not appropriate

Our Priorities	Summary of how this report aligns to the H&F Priorities
<ul style="list-style-type: none">• Creating a compassionate council	The council uses investigatory powers, where necessary and proportionate, to address antisocial behaviour, crime and disorder which can have a devastating impact of the lives of residents in H&F.

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Background Papers Used in Preparing This Report

None

1. Background

- In January 2020, the Investigatory Powers Commissioner's Office (IPCO) communicated its intention to conduct an inspection of the council's use of covert surveillance in April 2020.
- Covert surveillance is surveillance 'carried out in a manner calculated to ensure that persons who are subject to the surveillance are unaware that it is taking place'.
- Covert Human Intelligence Sources (CHIS) involve using an officer to establish or maintain a personal (or other) relationship with a person for the covert purpose of obtaining information, such as agents, informants or undercover officers. It is council policy not to use CHIS.
- The last inspection of Hammersmith & Fulham Council by the Office of Surveillance (OSC) took place in January 2017. Between October 2015 and July 2019 RIPA governance and functions in H&F were managed under a shared working arrangement with RBKC.

- Since then, H&F has implemented a new sovereign arrangement for the exercise of functions under RIPA, including developing and implementing sovereign RIPA policies, procedures and governance arrangements.
- Three separate policies have been developed since the last inspection and based on the councils' previous RIPA policy which cover:
 - a. Policy for Use of Direct Surveillance and Covert Human Intelligence Sources (Regulation of Investigatory Powers Act 2000) (**Appendix 1**)
 - b. Policy for Use of Direct Surveillance (without Judicial Approval / "Non-RIPA") (Regulation of Investigatory Powers Act 2000) (**Appendix 2**)
 - c. Policy for Accessing Communications Data (Investigatory Powers Act 2016) (**Appendix 3**)
- The council must report on the use of investigatory powers annually to the Community Safety and Environment Policy and Accountability Committee. The council's use of these powers since the last report are detailed below.

2. Frequency of Use:

2.1. Directed Surveillance (November 2018 – December 2019):

- Directed Surveillance 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 (and must meet the serious crime threshold which attracts a 6 month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco).

Department	Authorising Officer	Number of applications	Reason
The Environment: Safer Neighbourhoods Division	Strategic Lead for Environmental Health and Regulatory Services	1	Illegal supply of controlled drugs

2.2. Non-RIPA Surveillance (November 2018 – December 2019):

- Local authorities have an obligation to deal with anti-social behaviour (ASB), which involves day-to-day incidents of crime, nuisance and disorder. Even what is perceived as 'low level' ASB, when targeted and persistent, can have a devastating effect on a victim.

- Therefore, in some cases it may be necessary for Council Officers to conduct covert surveillance that does not satisfy the serious “crime threshold” (criminal offences that are either punishable by at least 6 months’ imprisonment or are related to the underage sale of various prohibited items) and cannot be authorised by RIPA.
- The council has a policy for the Use of Direct Surveillance without Judicial Approval / “Non-RIPA” which sets out the circumstances when officers may use surveillance techniques where the crime threshold is not met.

Department	Authorising Officer	Number of applications	Reason
The Environment: Safer Neighbourhoods Division	Strategic Lead for Environmental Health and Regulatory Services	4	Intimidation/harassment; Illegal supply of controlled drugs (unknown suspects)

2.3. Communications Data (October 2018 – December 2019)

- Under the Investigatory Powers Act (2016), local authorities can access certain communications data from Communications Service Providers for the purpose of preventing or detecting crime or preventing disorder. Independent, external authorisation must still be given before communications data can be obtained.
- Communications data is defined as the ‘who’, ‘when’, ‘where’ and ‘how’ of communication but not its content (i.e. it is not the interception of communications).

Department	Authorising Officer	Number of applications	Reason
The Environment: Trading Standards	Head of Fraud	1	Fraud

3. Inspection Report

- The Investigatory Powers Commissioners Office conducted an inspection of the council in April 2020.
- The feedback detailed in the inspection report was very positive and confirmed that the council has a good level of compliance with the legislation.
- In particular the report highlighted that:

- All recommendations made during the last inspection have been discharged;
- The council's RIPA policies had been revised, compliance with the policies is regularly checked, and an annual regime of RIPA training had been introduced;
- Quarterly meetings take place led by the RIPA Gatekeeper to critique the ongoing use of RIPA (this was noted as good practice);
- The directed surveillance authorisations reviewed were of good standard; and
- Robust processes are in place to securely retain surveillance products gathered as a result of covert activity (including a retention schedule to monitor the retention and destruction of this material).

3.1. Recommendations and Actions

- The inspector made five key recommendations in the report. The council has created an action plan to address each of these recommendations.
- Three of the recommendations related to additions to the council's investigatory powers policies. All the proposed changes have been made and the policies are attached as **Appendices 1-3**.
- A further recommendation related to establishing a process to review data retention and destruction. In response, the council has added data retention and destruction as a standing agenda item at the quarterly RIPA meetings.
- The final recommendation related to raising awareness of RIPA across the council (and, in particular, in service areas where RIPA considerations are not so immediately apparent). In response, the council has added RIPA awareness raising as a standing agenda item at the quarterly RIPA meetings.

List of Appendices:

Appendix 1 - Council Policy for Use of Direct Surveillance and Covert Human Intelligence Sources (Regulation of Investigatory Powers Act 2000)

Appendix 2 - Council for Use of Direct Surveillance (Without Judicial Approval / "Non-RIPA") (Regulation of Investigatory Powers Act 2000)

Appendix 3 - Council Policy for Accessing Communications Data (Investigatory Powers Act 2016)