



Executive Decision Report

Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken	Full Cabinet Date of decision: 3 November 2014 Forward Plan reference: <i>N/A</i>	
	Full Cabinet Date of decision 18 September 2014 Forward Plan reference:	
Report title (decision subject)	REGULATION OF INVESTIGATORY POWERS (RIPA)	
Reporting of	Deputy Leader – Councillor Michael Cartwright	
Reporting officer	Tasnim Shawkat - Bi-Borough Director of Law	
Key decision	Yes	
Access to information classification	Open Report	

1. EXECUTIVE SUMMARY

- 1.1. This report concerns joint working arrangements between the London Borough of Hammersmith & Fulham (LBHF) and the Royal Borough of Kensington and Chelsea (RBKC) for the exercise of functions under the Regulation of Investigatory Powers Act 2000 (RIPA).

2. RECOMMENDATIONS

- 2.1. That approval be given to a Joint Working Agreement for the exercise of RIPA powers, including sharing officers under section 113 of the Local Government Act 1972.
- 2.2. That approval be given to a joint policy on the use of surveillance powers including the use of surveillance not regulated by RIPA.

3. REASONS FOR DECISION

- 3.1 Officers have identified the possibility for more efficient working and a reduction in costs by combining their arrangements for authorising surveillance work and access to communication data. A joint policy with a shared regime of oversight will assist enforcement officers working in Bi-Borough services.
- 3.2 The Code of Guidance published by the Secretary of State under section 91 of RIPA advises local authority members to review the use of the Act and set the policy.

4. BACKGROUND

- 4.1. Both authorities occasionally use RIPA to undertake directed surveillance and access communication data in order to detect and prevent crimes such as fraud, rogue trading and 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 fraud and to prevent the sale of prohibited goods to minors (more details can be found in Appendix 1).
- 4.2. The Authorities can access communication data from Communication Service Providers (CSP's) e.g. Royal Mail, BT and the mobile phone companies. RIPA does not allow for the interception of communications, it enables the Council to seek information about who someone has phoned not what they say. This includes information, itemised phone bills, periods of subscription and billing addresses. CSP's will only respond to requests for information via designated contacts that must have undertaken and passed a Home Office approved course. Both Councils use the NAFN (National anti-fraud network) service. Hammersmith and Fulham have only used this power twice since 2012 and this related to an investigation into a multi-million pound fraud.
- 4.3. 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."

- 4.4. 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.
- 4.5. Use of covert surveillance by local authorities is a politically sensitive subject and has received a lot of press attention.
- 4.6. The number of authorisations approved in the two boroughs since the start of 2012 is set out in Appendix 1. The main use of directed surveillance in the London Borough of Hammersmith & Fulham has been directed at preventing anti-social behaviour.
- 4.7. In the Royal Borough of Kensington and Chelsea surveillance, techniques have been used to detect fraud such as unlawful use of disabled parking facilities and benefit fraud and in operations to prevent sales of alcohol, tobacco and knives to children.

Judicial Consent

- 4.8. Since 1st November 2012 a local authority wanting to use covert surveillance, acquire communications data or use human intelligence sources under RIPA are required to obtain an order approving their authorisation from a JP (District Judge or lay magistrate).

Crime Threshold

- 4.9. The other major change since November 2012 is that local authorities can only authorise covert surveillance under RIPA when investigating criminal offences that are either punishable by at least 6 months' imprisonment or are related to the underage sale of various prohibited items.

5. PROPOSAL AND ISSUES

- 5.1. RIPA sets out the process of authorising and monitoring surveillance activity and obtaining communication data. The Home Office has prescribed forms for the granting, review, renewal and cancellation of authorisations. The Council's joint policy puts these into effect.
- 5.2. Complying with RIPA involves a substantial commitment of resources by each Council. Records of each authorisation, its grant, review, renewal and cancellation must be kept for three years and a central register of authorisations and a register of officer training must be

maintained. A Senior Responsible Officer (SRO) must review all RIPA activity and every two years there is an inspection by the Office of Surveillance Commissioners (OSC). For a relatively few operations involving surveillance this does take a disproportionate amount of time. It is hoped that by combining the two authorities' arrangements we will reduce this. The OSC inspector has endorsed greater assimilation of policy and practice between the two Councils and commented that each Council may gain from the experience of the other.

- 5.3. It is therefore intended that the two Councils adopt the same policy and procedures for the use RIPA and non-RIPA (see 8.7 below) surveillance. The Bi-Borough Chief Solicitor will be the single SRO, five senior officers (three from LBHF and two from RBKC) will be Authorising Officers capable of granting authorisation to officers of either Council. A single central register will be maintained by Legal Services. A Joint Working Agreement enabling this and the sharing of officers under section 113 Local Government Act 1972.

The Authorisation Process

- 5.4. An investigating officer who wishes to use covert surveillance must apply in writing to one of five Authorising Officers on a form describing 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 the intrusion 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 surveillance is proportionate to the aims of the operation.
- 5.5. 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 surveillance. 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 and will either him or herself apply to a local JP or instruct the investigating officer to apply.
- 5.6. None of the authorisations made by either Council has so far been rejected by a JP which is a good indication that the Councils are using the powers responsibly.

Non-RIPA Surveillance

- 5.7. In certain circumstances, officers may use surveillance techniques where the protection offered by RIPA is not available. For example, on rare occasions it may be appropriate to carry out surveillance on an employee when investigating a disciplinary offence. Case law has established that in such circumstances RIPA authorisation is not

necessary because the Council is acting as an employer that than carrying out a “core” function such as the investigation of a criminal offence.

- 5.8. The Government introduced the “crime threshold” following concerns that local authorities had been using directed surveillance techniques in less serious investigations, for example to tackle dog fouling or checking an individual resides in a school catchment area. Therefore, it is not possible for Officer to rely on RIPA to carry out surveillance when investigating incidents of anti-social behaviour such as vandalism, and noisy or abusive behaviour. It is accepted that even such ‘low level’ anti-social behaviour, when targeted and persistent, can have a devastating effect on a victim and Officers consider that in some circumstances it will be appropriate to conduct surveillance that does not satisfy the crime threshold requirement of RIPA
- 5.9. It is lawful to carry out covert surveillance without RIPA approval but Members should be aware that this does come with some risks, for example, evidence may be ruled inadmissible in a trial; there may be a claim for damages for breach of Article 8 rights, a complaint to the Local Government Ombudsman or adverse publicity.
- 5.10. The proposed joint policy permits non-RIPA surveillance but only when it is approved by a RIPA Authorising Officer. Investigating Officers will be required to demonstrate that their proposed surveillance is lawful and necessary in terms of the qualification in Article 8(2) by carefully considering exactly the same factors of necessity and proportionality which are required under RIPA, The Investigating Officers will be required to complete a form identical in its details to a RIPA application form and to follow a system of review, renewal and cancellation identical to that found in RIPA. The principal difference in process is that a JP’s consent is not obtained. A central record of the surveillance will be maintained by Legal Services.

6. OPTIONS AND ANALYSIS

- 6.1. The current arrangements for RIPA are working satisfactorily. There have been no claims against either authority for breach of privacy whilst using covert surveillance and the OSC inspector has not found any instances of non-compliance. However, the evolving nature of Bi-borough enforcement activity in corporate services, audit, environmental health and other directorates will be improved by joined up working on RIPA.
- 6.2. The new joint policy clarifies the use of non-RIPA surveillance but otherwise does not contain any significant change to the Councils’ existing separate enforcement priorities and policies.

7. CONSULTATION

- 7.1 The Cabinet Member for Community Safety in RBKC and the Cabinet Member for Residents Services and the Lead Member for Crime and Anti-Social Behaviour in LBHF have been consulted and support the recommendations. The joint Policy has also been considered by the Community Safety, Environment and Residents Services Policy and Accountability Committee on 2 September 2014.
- 7.2 The Officers in both Councils who currently authorise RIPA surveillance have been consulted and they support the recommendation.

8. EQUALITY IMPLICATIONS

- 8.1 The recommendations do not impact either Council's equality duties.

9. LEGAL IMPLICATIONS

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

10 FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1 There are no financial implications for this report however, there will be resource and efficiency savings arising from bi borough working. For example in July 2013 the OSC inspector visited Hammersmith on one day and Kensington on the next and saw the same Officers on both days. In future, the OSC will only be required to carry out one inspection of both Authorities saving Officer time and the time of the OSC.

11 RISK MANAGEMENT

- 11.1 The report proposals promote local accountability and comply with the government's approach on openness and transparency. As such reporting to Committee provides independent assurance for the public on the application of the policy and its compliance across the councils departments. A local authority is required to show that an interference with an individual's right to privacy is justifiable, to the extent that it is both necessary and proportionate and as such it is bound by a risk assessment. Current use of the Act by local councils, and the cost implications, are also closely monitored by campaign groups and have attracted national media interest. Use of the Act contributes to the current entry on the councils Strategic risk and assurance register, risk number 7 Managing Statutory (non-compliance with law and regulations) and risk number 9, (management of fraud)

11.2 Implications verified/completed by: (Michael Sloniowski, Bi-borough
Risk Manager Tel: 020 8753 2587)

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.	None		

Appendix 1

Number of RIPA Authorisations Granted

LBHF 2014	RBKC 2014	LBHF 2013	RBKC 2013	LBHF 2012	RBKC 2012
Jan – June 6	0	16	4	7	9
Covert CCTV cameras and Visual Surveillance to identify perpetrators of ASB, criminal damage and drug dealing(5)		Covert CCTV cameras and Visual Surveillance to identify perpetrators of ASB, criminal damage and drug dealing (12)	test purchase for alcohol x 4	Covert CCTV cameras and Visual Surveillance to identify perpetrators of ASB, criminal damage and drug dealing	Personal injury fraud x2
Investigation into theft from parking meters (1)		Age restricted products test purchasing (1)			Blue badge fraud
		Investigation into theft from parking meters (1)			HB fraud x3
		Communication data: Investigation and prosecution relating to serious fraud (2)			Test purchase x3