

Non-Executive Report of the: Audit Committee 7 th April 2021	 TOWER HAMLETS
Report of: Janet Fasan, Divisional Director Legal & Interim Monitoring Officer	Classification: Unrestricted
Report of Investigations under the Regulation of Investigatory Powers Act (RIPA)	

Originating Officer(s)	Agnes Adrien – Head of Litigation
Wards affected	All wards

Executive Summary

The codes of practice issued by the Home Office in relation to Part 2 of the Regulation of Investigatory Powers Act 2000 (“**RIPA**”) recommend that elected members have oversight of the Council’s use of these provisions. This report summarises the Council’s use of those powers but also other activities under RIPA.

The Investigatory Powers Act 2016 (“**IPA**”) is the main legislation governing the acquisition of communications data. It is recommended that the elected members receive reports on the use of the IPA.

Recommendations:

The Audit Committee is recommended to:

1. Consider and comment upon the information provided in the report.

1. **REASONS FOR THE DECISIONS**

- 1.1 The information in the report is provided so that elected and independent members may oversee the Council’s use of powers under RIPA and IPA.

2. **ALTERNATIVE OPTIONS**

- 2.1 It is open to members to provide such comments on the Council’s use of RIPA powers as they consider appropriate.

3. **DETAILS OF THE REPORT**

Covert investigation and RIPA

- 3.1 The Council has broad statutory functions and takes targeted enforcement action in relation to those functions, having regard to the Tower Hamlets Plan adopted by S48 Local Government Act 2000, the Council's Strategic Plan any external targets or requirements imposed under relevant legislation and the Council's enforcement policy. There may be circumstances in the discharge of its statutory functions in which it is necessary for the Council to conduct directed surveillance or use a covert human intelligence source for the purpose of preventing crime or disorder.
- 3.2 RIPA was enacted to provide a framework within which a public authority may use covert investigation for the purpose of preventing or detecting crime or of preventing disorder. It is designed to ensure that public authorities do not contravene the obligation in section 6(1) of the Human Rights Act 1998 not to act in a way which is incompatible with an individual's rights under the European Convention on Human Rights ("ECHR"). It is particularly concerned to prevent contravention of the qualified right in Article 8 of the ECHR to respect for private and family life, home and correspondence.

The Council's use of RIPA

- 3.3 The Divisional Director Legal Services & Interim Monitoring Officer is the senior responsible officer for ensuring the Council complies with RIPA.
- 3.4 The Council has policies on the use of directed surveillance or covert human intelligence sources. The current versions of these policies were approved by Cabinet on 24 April 2019, as appendices to the Council's enforcement policy. The Council has in place guidance manuals to assist officers in the authorisation process. The Enforcement policy was reviewed in April 2019.
- 3.5 The Council's current priorities for using RIPA, as specified in its policies are –
- Fly-tipping
 - Underage sales of knives, tobacco, alcohol and fireworks
 - Fraud, including misuse of disabled parking badges and claims for housing benefit
 - Illegal money-lending and related offending
 - Breach of licences
 - Touting
- 3.6 The Council may only use covert investigation for the purposes of serious offences. This means an offence of the following kind –
- An offence punishable by a maximum term of at least 6 months of imprisonment.

- An offence under section 146 of the Licensing Act 2003 (sale of alcohol to children).
 - An offence under section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children).
 - An offence under section 147A of the Licensing Act 2003 (persistently selling alcohol to children).
 - An offence under section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc. to persons under eighteen).
 - An offence under section 141A of the Criminal Justice Act 1988 (sale of knives and certain articles with blade or point to persons under sixteen)
 - An offence under Regulation 31 of the Pyrotechnic Articles (Safety) Regulations 2015 (prohibition on making fireworks & other pyrotechnic articles available to persons younger than the minimum age limit)
- 3.7 The Council must also have approval from a court, in addition to an internal authorisation granted by its authorising officer, before carrying out covert surveillance.
- 3.8 In accordance with the Council's policies and manuals, a central record is maintained in Legal Services of all authorisations and approvals granted to carry out either directed surveillance or to use covert human intelligence sources (authorisations under Part 2 of RIPA). The Council provides an annual return to the Investigatory Powers Commissioners (who replaced the Office of Surveillance Commissioners ("OSC")), based on the central record.
- 3.9 In order to ensure that applications for RIPA authorisation are of an appropriate standard, the Council's policies and manuals provide that all applications for authorisation to conduct directed surveillance or to use covert human intelligence sources should be considered by a gatekeeper before being passed on to the authorising officer. The Council's gatekeeper is the Head of Community Safety within the Community Safety Service) and the Intelligence Team Leader Risk Management may act as Gatekeeper in their absence. It is proposed that the latter post is to be changed to the Investigation Manager following a restructure. The gatekeeper must work with applicant officers to ensure an appropriate standard of applications, including that applications use the current template, correctly identify known targets and properly address issues of necessity, proportionality and collateral intrusion.
- 3.10 The Council has two authorising officers (Divisional Director Public Realm, Divisional Director Community Safety), who have responsibility for considering applications to use directed surveillance or covert human intelligence sources. The policies provide that the Head of Fraud & Risk may stand in for the Service Head, Safer Communities where the Divisional Director and Interim Monitoring Officer considers it necessary.
- 3.11 The Council's policies and manuals require officers who apply for RIPA authorisations to expeditiously forward copies of authorisations, reviews and cancellations to Legal Services for the central record. Where officers propose to undertake covert surveillance, tasking meetings will take place to ensure

the central record is being kept up to date. The Council's authorising officer and gatekeeper will attend. The meetings will provide an opportunity to check the status of applications and authorisations under RIPA and a forum at which officers may present any operations plans where covert investigation may be required and seek a steer from those at the meeting.

The Council's RIPA applications since 2017

- 3.12 Since 2017 no applications have been made to court for RIPA authorisations.
- 3.13 The council have used the resources of the police and their statutory powers to tackle many issues since 2014/2015. In addition, the change can also be accounted for owing to more use of overt uniformed enforcement officers dealing with a wider range of offences and more combined partnership working with the police. Joint working has been suspended over the last year due to COVID 19.
- 3.14 Training was provided in September 2020 for authorising officers, gatekeepers, officers in Trading Standards, licensing, social workers, ASB, and officer in Community Safety.
- 3.15 Refresher training will be provided on an annual basis.

Covert Human Intelligence Sources

- 3.16 There were no authorisations granted for authorisation to use covert human intelligence sources. This is consistent with the Council's policy, which requires officers to first demonstrate to the satisfaction of the Divisional Director Legal Services that they have the skill and experience to handle a covert human intelligence source, before seeking authority to use a covert human intelligence source.

Interception of communications

- 3.17 The Investigatory Powers Act 2016 ("IPA") came into force on 11 June 2019. This is the main legislation governing the acquisition of communications data. The interception of communications is regulated by the Office for Data Communication Authorisation (OCDA).
- 3.18 Communications data is information about communications: the 'who', 'where', 'with whom' and 'how' of a communication but not the content i.e. Not what was actually said or written. It is the communication that can be acquired. E.g. if during a Council investigation into criminal activity, who a particular mobile telephone was registered to was required, this information could be obtained. This would be communications data.

- 3.19 The IPA introduced offences for the unlawful acquisition and disclosure of communications data. The most relevant offence to local authorities is unlawfully obtaining communications data. For an offence to take place, providing communications or unlawfully obtaining data must be done either knowingly (i.e. acting voluntarily or intentionally) or recklessly (e.g. with obvious/foreseeable consequences). Making an honest mistake is not an offence.
- 3.20 A person who is guilty of an offence on summary conviction is liable to a fine or on indictment to imprisonment to a term not exceeding 2 years to a fine, or both.
- 3.21 The acquisition of communications data by local authority officers is no longer subject to judicial approval by a magistrate. There is a requirement for a local authority making an application to ensure that someone at least the rank of Service Manager is aware that the application is being made before it is submitted to OCDA. An authorising officer in OCDA can authorise any lawful request for any of the specified purposes from any listed public authority.
- 3.22 There has been one authorisation for communications data since 2017. This was granted in December 2019 and related to a Trading Standards matter.

Inspections in 2020

- 3.23 The Council was last inspected by the Investigatory Powers Commissioner in April 2020. The next inspection is due to take place in 2023.

4. EQUALITIES IMPLICATIONS

- 4.1 [Report authors should identify from analysis and engagement how the proposals will address equality implications arising from the proposal.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.
 - Data Protection / Privacy Impact Assessment

- 5.2 Enforcement action that complies with the seven principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.
- 5.3 The enforcement policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Tower Hamlets Plan and other key documents such as the local area agreement and the Tower Hamlets Strategic Plan, Tower Hamlets Local Plan. For example, one of the key Tower Hamlets Plan themes is A Great Place to Live. Within this theme there are objectives such as reducing graffiti and litter. The enforcement policy makes clear the need to target enforcement action towards such perceived problems. At the same time, the enforcement policy should discourage enforcement action that is inconsistent with the Council's objectives.
- 5.4 Enforcement action may lead to indirect discrimination in limited circumstances, but this will be justified where the action is necessary and proportionate. Necessity and proportionality are key considerations in respect of every application for authorisation under RIPA.

BEST VALUE (BV) IMPLICATIONS

- 5.5 The report does not propose any direct expenditure. Rather, it is concerned with regularising decision-making in areas in which the Council is already active. The enforcement policy seeks to ensure that enforcement action is targeted to the Council's policy objectives. This is more likely to lead to efficient enforcement action than a less-controlled enforcement effort. It is also proposed that members will have an oversight role through the Audit Committee. This will provide an opportunity to judge whether the Council's enforcement action is being conducted efficiently.

SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 5.6 The enforcement policy seeks to target the Council's enforcement action in accordance with the Community Plan. The Community Plan contains the Council's sustainable community strategy for promoting or improving the economic, social and environmental well-being of Tower Hamlets and contributing to the achievement of sustainable development in the United Kingdom. To the extent that the enforcement policy aligns enforcement action with the Tower Hamlets Plan it will tend to promote sustainable action for a greener environment.

RISK MANAGEMENT IMPLICATIONS

- 5.7 Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that proper adherence to RIPA, the codes of practice, the Council's policies and guidance will ensure that risks are properly managed. Oversight by the

Audit Committee should also provide a useful check that risks are being appropriately managed.

CRIME AND DISORDER REDUCTION IMPLICATIONS

5.8 As set out in paragraphs 3.1 and 3.2 of the report, the Council's use of covert investigation may be a necessary part of its enforcement work but must be carried out having regard to the requirements of RIPA.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 This is a report of the Council's use of the Regulation of Investigatory Powers Act 2000 ("RIPA") and the use of the Investigatory Powers Act 2016 to the Audit Committee. There are no financial implications arising from the recommendations in this report.

7. COMMENTS OF LEGAL SERVICES

7.1 Legal implications are addressed in the body of the report.

Linked Reports, Appendices and Background Documents

Linked Report

- List any linked reports
-
- State NONE if none.

Appendices

- List any appendices [if Exempt, Forward Plan entry MUST warn of that]
- State NONE if none.

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- These must be sent to Democratic Services with the report
- State NONE if none.

Officer contact details for documents:

Or state N/A