

Non-Executive Report of the:  <b>Audit Committee</b>  23 <sup>rd</sup> November 2023	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Janet Fasan, Director of Legal & Monitoring Officer	<b>Classification:</b> Unrestricted
<b>Report of Investigations under the Regulation of Investigatory Powers Act (RIPA)</b>	

<b>Originating Officer(s)</b>	Jonathan Melnick, Principal Lawyer – Enforcement, Legal Services
<b>Wards affected</b>	All wards

### Special Circumstances Justifying Urgent Consideration

Due to administrative problems this report was not available to the Clerk at the time of publication of the agenda for the meeting. However, it is important for the Committee to receive updates on the RIPA policy in a timely manner and so this noting report is being presented to the Committee at this time particularly as a separate report on updating the Policy is also being presented at the same time.

### 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:

Audit Committee is recommended to:

1. Consider and note 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 REPORT**

### **3.1 Covert investigation and RIPA**

- 3.2 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 s.48 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.

- 3.3 RIPA was enacted to provide a framework within which a public authority may use covert investigative techniques 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**

The Director of Legal Services & Monitoring Officer is the Senior Responsible Officer for ensuring the Council complies with RIPA and IPA.

- 3.4 The Council has policies on the use of directed surveillance, covert human intelligence sources (CHIS), and social media. The current versions of these policies were approved by Cabinet on 24 April 2019, as appendices to the Council's enforcement policy. 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 social housing fraud
  - Illegal money-lending and related offending
  - Breach of licences

- 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 92 of the Children and Families Act 2014 (sale of nicotine inhaling products to persons under eighteen).
- 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 or using a CHIS.
- 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 CHISs (authorisations under Part 2 of RIPA). The Council provides an annual return to the Investigatory Powers Commissioner's Office (which 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 Investigation Manager, Risk Management & Audit may act as Gatekeeper in their absence. 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 (Director of Public Realm, Director of Community Safety), who have responsibility for considering applications to use directed surveillance or CHISs. The policies provide that the Head of Audit & Risk and the Head of Community Safety may act as authorising officer in the absence of the Directors and where Director of Legal and Monitoring Officer considers it appropriate.
- 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.
- 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 Updated training is to be arranged by March 2024 and refresher training will be provided on an annual basis thereafter.

### **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 Director of Legal and Monitoring Officer 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 fact of communication that can be acquired. For example, if, during a Council investigation into criminal activity, officers needed to ascertain who a particular mobile telephone was registered to, 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 have been three authorisations for communications data since 2017. One was granted in December 2019 and related to a Trading Standards matter. The other two were granted in April 2023 and related to a Health and Housing matter and a Trading Standards matter.

#### **Inspections**

- 3.23 The Council was last inspected by the Investigatory Powers Commissioner in September 2023. The next inspection is due to take place in 2026.

#### **4. EQUALITIES IMPLICATIONS**

- 4.1 There are no equalities issues arising from the proposed changes.

#### **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.
- 5.2 Best Value: The report assists with the regularising decision-making in areas in which the Council is already active. The RIPA policy seeks to ensure that covert surveillance is targeted to the Council's policy objectives. This is likely to lead to efficient enforcement action rather than a less-controlled enforcement effort.
- 5.3 Environmental: The Enforcement policy which the RIPA Policy is attached to seeks to support the strategic plan which promotes and improves the economic, social and environmental wellbeing of Tower Hamlets. The extent that the Enforcement Policy aligns enforcement action with the Strategic Plan will tend to promote sustainable action for the environment.
- 5.4 Risk Management: Enforcement action has a variety of inherent risks, including the potential for over or under-enforcement, discrimination, adverse

cost orders and damage to the Council's reputation. The principles of enforcement contained in the policy provide a sound basis for decision making that will reduce the likelihood of any adverse outcomes.

- 5.5 Crime reduction and Safeguarding: Enforcement in its broadest sense acts as a deterrent for crime and will therefore likely reduce all form of crime within the Borough. The RIPA policy indicates that the Council will use all enforcement tools available to it, where appropriate, in order to prevent and detect crime and prosecute offenders.

## **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. LEGAL COMMENTS**

- 7.1 Legal implications are addressed in the body of the report. There are no specific legal implications arising from this report.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

- Draft summary of RIPA Authorisations

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

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

- NONE

### **Officer contact details for documents:**

- N/A

## APPENDIX 1 - SUMMARY OF RIPA AUTHORISATIONS

<b>CS0001</b>	<b>Summary information</b>
Service area:	
Date URN granted:	
Application on correct form?	
Date of gatekeeper clearance:	
Date of authorisation:	
Date of Court approval	
Expiry date and time:	
Scheduled review date(s):	
Dates of reviews:	
Cancellation:	
Total time open:	
Type of covert investigation:	
Subject matter of investigation:	
Necessity:	
Proportionality:	
Collateral intrusion:	
Outcome:	