

Committee: Standards and General Purposes

Date: 8 September 2016

Wards: All

Subject: Regulation of Investigatory Powers Act

Lead officer: Graham Owen, Interim Head of Information Governance

Lead member: Councillor Peter McCabe,
Chair of Standards and General Purposes Committee

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Recommendations:

- A. That Standards and General Purposes Committee note the action taken to address the recommendations of an inspection report of the council's arrangements for dealing with applications under the Regulation of Investigatory Powers Act.
- B. That the Standards and General Purposes Committee recommend to Council the update to Part 3-F of the Constitution, detailed within this report.
- C. That Standards and General Purposes Committee approve the revised Regulation of Investigatory Powers Act policy and procedure.
- D. That Standards and General Purposes Committee note the purposes for which investigations have been authorised under the Regulation of Investigatory Powers Act (RIPA) 2000.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To inform the Committee of the actions taken to address the recommendations of an inspection of the Council's arrangements for covert surveillance to comply with the Regulation of Investigatory Powers Act (RIPA).
- 1.2. To report to Members on investigations authorised since February 2016 under RIPA.
- 1.3. To ask the Committee to recommend to Council an amendment to the Constitution to change the Senior Responsible Officer

2 DETAILS

- 2.1 The Office of the Surveillance Commissioners (OSC) carries out periodic inspections of local authorities' arrangements for dealing with applications under RIPA. An OSC inspection of Merton was carried out in January 2016. The report of the inspection contained four recommendations which have been acted upon by the council. The recommendations are to:

- 1. revise and update the council's RIPA policy and procedure to reflect current guidance and legal requirements;

2. review the RIPA training needs of authorising officers and arrange necessary training involved in making and approving applications for RIPA
 3. ensure that future cancellations comply with OSC procedures and guidance;
 4. keep under review whether juvenile test purchase operations should be carried out under RIPA.
- 2.2 The OSC inspector also discussed in his report the role of the Senior Responsible Officer (SRO) in the council. The role of SRO is responsible for the effective operation of RIPA within the authority. The code of practice advises the SRO should be a member of the corporate leadership team and should be responsible for ensuring that all authorising officers are of an appropriate standard.
- 2.3 In Merton the Chief Executive is designated this role, however, it was noted by the inspector that the Assistant Director Corporate Governance has delegated powers to appoint authorising officers under RIPA and has been involved in past and current inspections, exercising de facto responsibility for RIPA matters. The inspector indicated it may be opportune therefore to appoint the Assistant Director Corporate Governance as SRO. He did not however make a formal recommendation in his report to this effect.
- 2.4 Officers propose that this change should be formalised as the arrangement is happening in practice. Accordingly it is proposed to designate the Assistant Director Corporate Governance as the SRO. To achieve this, the Committee is asked to agree that Part 3-F, Section 2 of the Constitution is updated to reflect the change in delegation to the Chief Legal Officer, and the Committee is asked to recommend to Council the following amendment:

The delegation should be: Assistant Director Corporate Governance
The current delegation is: Chief Executive

Recommendation 1 - revise and update RIPA policy

- 2.5 In his 2015/16 Annual Report the Chief Surveillance Commissioner noted a decline in the use of directed surveillance by local authorities. Inspection feedback has provided the reasons for the decline as reduced funding and limited resources, staffing shortages; partnership working with other bodies; more overt enforcement in town centres and local neighbourhoods; and the consequences of the reduced powers available to local authorities. However, the Chief Surveillance Commissioner makes clear that he expects local authorities to maintain what has been called 'match fitness' and have "appropriate structures and officials with the requisite training" to respond if called upon. In this context, the report of Merton's inspection recommends that the council revise and update its policy to reflect changes brought about by the Protection of Freedoms Act and by the growth in the use of social media.

The revised policy is attached in Appendix 1.

Recommendation 2 - training

- 2.6 Training for appropriate officers was recommended in the inspection report to ensure that appropriate council officers maintain an up to date knowledge of RIPA matters and that authorising officers can make informed decisions on RIPA applications.

Merton organised a training day in July 2016 for ten officers who are involved in enforcement, regulatory and legal services or who act as authorising officers or in the administration of RIPA. The training was provided by an accredited training agency. The names and posts of the officers who attended the training is shown in Appendix 2.

Recommendation 3 – cancellations

- 2.6 The inspection noted that cancellation of authorisations should comply with OSC Procedures and Guidance. Cancellation should record the following:
- date and times that surveillance took place and the order to cease the activity was made.
 - reason for cancellation.
 - that surveillance equipment has been removed and returned.
 - directions for the management of the product.
 - detail of property interfered with, or persons subjected to surveillance,
 - value of the surveillance or interference (i.e. whether the objectives as set in the authorisation were met).

The cancellation form has been amended to reflect these requirements.

Recommendation 4 – keep RIPA juvenile test purchases under review

- 2.7 The inspector noted that RIPA applications reduced to zero in 2014 and that most of the applications previously made concerned juvenile test purchase operations. The inspector was concerned about the likelihood of private information about a third party being picked up during such an operation (therefore making the operation subject to RIPA approval) and discussed that matter with officers. The inspector was satisfied that Merton did give consideration as to whether RIPA would apply on a case by case basis, but made a recommendation that the council keep under review the question of carrying out juvenile test purchase operations under RIPA authorisation.

To meet this recommendation the council will review decisions made with regard to juvenile test purchase operations in the previous year (RIPA and non RIPA) and identify if each decision was appropriate in the circumstances.

Requests for authorisation under RIPA

- 2.8 The council has a number of statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them. These functions include investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), benefit fraud, contraventions of trading standards, licensing and food safety legislation.
- 2.9 Whilst the majority of investigations are carried out openly, some investigations must be carried out using covert surveillance techniques or involve the acquisition of communications data. Communications data is information about the times of calls or internet use and the location and identity of the callers, but not the content of the calls or details of the websites viewed.
- 2.10 RIPA regulates the authorisation and monitoring of these investigations to safeguard the public from unwarranted intrusion of privacy. With effect from 1 November 2012, the Protection of Freedoms Act 2012 requires local authorities to obtain the approval of a magistrate for the use of covert surveillance.
- 2.11 RIPA is in place to help protect authorities from Human Rights Act claims when carrying out surveillance operations and as such would not be used when an overt surveillance option is available. Each time an operation is under consideration officers will weigh up the surveillance alternatives available to them. The RIPA authorisation process challenges the applicant to consider non-intrusive forms of surveillance and to justify why these options were not considered suitable before an approval may be given.
- 2.12 In line with the revised Code of Practice, reports detailing the use of RIPA are submitted to Standards and General Purposes Committee on a quarterly basis.
- 2.13 Since February 2016:
- no covert surveillance has been authorised;
 - no requests for CCTV footage for RIPA investigations have been received;
 - no RIPA authorisations have been rejected by the Magistrates Court;
 - no applications have been made for the acquisition of communications data.
- 2.14 The annual statistics return to report on the conduct and use of directed surveillance and covert human intelligence was returned to the Office of Surveillance Commissioner on 11 April 2016.

3 ALTERNATIVE OPTIONS

- 3.1. N/A.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. No consultation has been undertaken regarding this report.

5 TIMETABLE

5.1. N/A.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. None.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. All investigation using covert surveillance techniques or involving the acquisition of communications data is in line with the Regulation of Investigatory Powers Act 2000.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1.1 RIPA was introduced to regulate existing surveillance and investigations in order that they meet the requirements of Article 8 of the Human Rights Act. Article 8 states:

1) Everyone has the right for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is 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.

9 CRIME AND DISORDER IMPLICATIONS

9.1. RIPA investigations are authorised for the prevention or detection of crime or the prevention of disorder.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

1. RIPA Policy and Procedure
2. List of attendees at RIPA training – July 2016

12 BACKGROUND PAPERS

12.1. None.

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