

**Audit, Governance and
Standards Committee
2021**

29 July

Report title: Annual RIPA Update

Relevant Portfolio Holder	Councillor D. Thain
Portfolio Holder Consulted	Yes
Relevant Head of Service	Claire Felton
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Wards Affected	All
Ward Councillor(s) consulted	n/a
Relevant Strategic Purpose(s)	n/a
If you have any questions about this report, please contact the report author in advance of the meeting.	

1. RECOMMENDATIONS

The Committee is asked to RESOLVE that:-

2.1 the Council's RIPA Policy as updated and reviewed, be endorsed; and

2.2 the update on RIPA activity, described in this report, be noted.

NOTE Members are requested to read and review the Council's policy electronically. No hard copy is available as previously, as a precaution against the spread of infection.

2. BACKGROUND

2.1 The Regulation of Investigatory Powers Act 2000 ["RIPA"] gave local authorities powers to conduct covert surveillance under certain circumstances. The Act also regulates the use 'Covert Human Intelligence Sources' ["CHIS"] and obtaining certain Communications Data.

2.2 The revised Code of Practice for Covert Surveillance and Property Interference, 2018, at paragraph 4.47, advised that elected members should, at least on an annual basis, review the RIPA policy and the authority's use of the Act. This report is published in compliance with that requirement.

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- 2.3 Local Authority powers are at the lower end of the scale and changes in legislation since the Act was originally introduced, have resulted in further restrictions on their use:
- the use of surveillance restricted to criminal investigations;
 - the Protection of Freedoms Act 2012 required local authorities to get approval from the Magistrates Court for any proposed surveillance; and
 - the threshold for the level of crime being investigated was raised to include only 'serious crime' (as defined).
- 2.4 The regime is overseen by the Investigatory Powers Commissioner's Office, and includes inspections of organisations by an Inspector appointed by the Commissioner, usually about every three years.
- 2.5 Any organisation which has investigatory powers under RIPA is required to have in place a Policy governing all aspects of the regime, including the need for updating and officer training, regardless of whether the powers are exercised. The Council's Policy is regularly updated to comply with any changes in the legislation, guidance and codes of practice which apply to the regime. Changes are notified to the Council by an external RIPA expert, who also provides training and advice on RIPA issues.
- 2.6 From the outset, the Council's use of RIPA powers was always low. There were a number of reasons for this: A rigid process has to be followed to establish that a proposed surveillance activity is both "necessary" and "proportionate"; a senior officer has to evaluate the proposal against a number of criteria, and would then have to be referred to the Magistrates Court to be confirmed. If approved, there would have been major resource implications for any authorised surveillance to have been undertaken.
- 2.7 Since the changes introduced in 2012 as described in 2.3 above, the Council has not exercised its powers under RIPA at all. The Surveillance Commissioner has noted that in recent years authorities like ours have granted far fewer RIPA authorisations and some have granted none at all.
- 2.8 At the time of the Council's last physical inspection, in 2015, RIPA powers had not been exercised by the Council since 2012. In 2018, a further three years on, during which no RIPA activity had been undertaken, the Surveillance Commissioner conducted a remote, light-touch review.

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- 2.9 It is not possible for the Council to 'opt out' of the RIPA regime, which means that although we have not used these powers for years, we are still required by the Commissioner to keep our officers briefed on it, aware of its potential use and in the completion of applications and their approval. Corporate officer meetings are held every six months as part of the oversight and management of the regime and we can access the support of the external expert referred to at 2.5 above, when necessary.
- 2.10 The Council is a member of the National Anti-Fraud Network [NAFN], which is hosted by Thameside MBC and which provides data and intelligence services under the RIPA regime to public sector organisations in relation to fraud investigations. Over 90% of local authorities are members of NAFN. Membership enables the Council to avail of its expertise, without having to have our own staff for the purpose.

3. FINANCIAL IMPLICATIONS

- 3.1 None as a direct result of this report.

4. LEGAL IMPLICATIONS

- 4.1 The Council has not exercised its powers under RIPA since the last report to members in July 2020.
- 4.2 The only amendment made to the Policy has been the appointment of the Executive Director of Resources and s151 Officer, James Howse, as the Council's 'Senior Responsible Officer' for the RIPA regime, on taking up his appointment on 1 March 2021.

5. STRATEGIC PURPOSES - IMPLICATIONS

Relevant Strategic Purpose

- 5.1 'An Effective and Sustainable Council'

Climate Change Implications

- 5.2 None

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6. OTHER IMPLICATIONS

Equalities and Diversity Implications

6.1 There are no direct implications arising out of this report.

Operational Implications

6.2 Only as outlined in the report

7. RISK MANAGEMENT

7.1 The Council is required to comply with the statutory provisions and guidance governing the RIPA regime and any recommendation made by the Inspector on behalf of the Commissioner.

Officers need to be aware of the RIPA powers so that there is no risk of surveillance or CHIS activity being undertaken without the correct approvals being in place.

8. APPENDICES

None

BACKGROUND PAPERS

The Council's RIPA Policy

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9. REPORT SIGN OFF

Department	Name and Job Title	Date
Portfolio Holder	Cllr D. Thain	21.06.2021
Lead Director / Head of Service	Claire Felton	21.06.2021
Financial Services	James Howse	21.06.2021
Legal Services	Clare Flanagan	Report author
Policy Team (if equalities implications apply)	n/a	
Climate Change Officer (if climate change implications apply)	n/a	