

# REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - CHANGES TO STATUTORY CODES OF PRACTICE

<b>Cabinet Members</b>	Councillor Ray Puddifoot Councillor Scott Seaman-Digby
<b>Cabinet Portfolios</b>	Leader of the Council Co-ordination and Central Services
<b>Officer Contact</b>	Glen Egan, Deputy Chief Executive's Office
<b>Papers with report</b>	Appendix 1 – Regulation of Investigatory Powers Act (RIPA) Policy and Procedure
<b>Purpose of report</b>	To advise Cabinet of changes to the RIPA Codes of Practice and to seek approval to update the Council's RIPA Policy.
<b>Contribution to our plans and strategies</b>	Surveillance authorised by RIPA plays an important role in preventing and detecting crime and helps keep the community safe.
<b>Financial Cost</b>	It is anticipated that any additional costs will be contained within existing budgets.
<b>Relevant Policy Overview Committee</b>	Corporate Services & Partnerships
<b>Ward(s) affected</b>	All

## RECOMMENDATIONS

That Cabinet:

1. **Notes that regulations amending the Codes of Practice under the Regulation of Investigatory Powers Act 2000 (RIPA) come into effect on 06 April 2010.**
2. **Approves the draft Policy Document to reflect the above changes (Appendix A) such policy to be reviewed annually by Cabinet.**
3. **Authorises the Legal Services Office Managing Partner to fulfil the role of Senior Responsible Officer with regard to all RIPA matters.**

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4. **Authorises the Leader to receive and consider quarterly audit reports from the Senior Responsible Officer relating to the Council's use of RIPA. Where necessary, the Leader may direct changes / improvements to be implemented by the Senior Responsible Officer.**
5. **Directs that the Leader, Chief Executive and Deputy Chief Executive be notified immediately of any application for surveillance that an Authorising Officer is minded to grant. If the application covers an emergency situation, the notification to occur within 24 hours of the authorisation being granted.**

### **Reasons for recommendation**

In light of the recent amendments to the Regulation of Investigatory Powers Act 2000 (RIPA), the introduction of a new Corporate Policy will ensure that the Council continues to comply fully with the requirements of RIPA and strengthen the existing monitoring of RIPA.

### **Alternative options considered / risk management**

None. Section 72 of RIPA requires the Council to adhere to the Statutory Codes of Practice. Failure to do so will place the Council at risk of legal challenge, jeopardise the admissibility of evidence and render the Council liable to pay compensation.

### **Comments of Policy Overview Committee(s)**

None at this stage.

### **Supporting Information**

1. RIPA is divided into 5 parts:
  - a. Part I - Interception of communications / Accessing Communications Data;
  - b. Part ii - Intrusive and Directed Surveillance / Conduct of a Human Information Source (CHIS)
  - c. Part iii - Investigation of electronic data protected by encryption
  - d. Part iv - Oversight mechanism / complaints procedure and Codes of Practice
  - e. Part v - Miscellaneous
2. In the main, the Council's RIPA powers are exercised under Part II relating to intrusive and directed surveillance or Conduct of a Human Information Source (CHIS). Currently, the Council's Trading Standards, Fraud Investigations and Anti-social Behaviour Teams are the main applicants seeking permission to carry out RIPA surveillance of criminal activity.
3. RIPA surveillance may be authorised for the purpose of preventing crime and disorder provided that the surveillance is necessary and proportionate and can be balanced against an individual's right to their private and family life.
4. The Council's current RIPA Policy and Procedure was adopted by Cabinet on 16 October 2009. All approved applications have complied with this Policy.
5. As a result of a public consultation in 2009 into the use of RIPA powers by public authorities, the government announced changes on 20 January 2010 to the existing

RIPA Codes of Practice. The new codes extend to over 200 pages and come into effect on 06 April 2010. It is anticipated that those activities requiring authorisation under RIPA will now be considerably greater.

6. The authorisation of surveillance under RIPA is crucial to the success of a prosecution or other legal proceedings. Non-compliance with the legislation will place the Council at risk of legal challenge.
7. It is necessary to amend the Council's RIPA policy procedures to bring them into line with the Codes of Practice which come into effect on 06 April 2010.
8. The Office of Surveillance Commissioners carries out inspections of all public authorities who may utilise RIPA powers. The matters that are inspected include compliance with the legislation and any relevant internal policy; the processes involved in RIPA authorisations and the knowledge and training of staff.
9. The Office of Surveillance Commissioners is scheduled to carry out its inspection of Hillingdon Council on 19 May 2010.

### **The London Borough of Hillingdon's use of RIPA**

10. The London Borough of Hillingdon has in previous years authorised an average of 20 applications per year. Most of these applications involve direct surveillance activity linked to public protection and the detection of crime.
11. There are relatively few applications for use of Covert Human Information Sources (that is, officers carrying out surveillance undercover). Applications involving this type of surveillance have successfully led to a number of prosecutions.
12. The Council has been especially robust in ensuring that RIPA is engaged only when other investigation methods have failed. For this financial year, 5 applications for RIPA authorisations have been approved.
13. All applications have demonstrated a direct link between the activity under surveillance and a potential criminal prosecution such as a benefit claimant being observed whilst working.

### **How will the new Codes of Practice impact on the Council's use of RIPA?**

14. The Codes extend the activities requiring authorisation under RIPA to include the following:
  - i. Planned and directed use of CCTV cameras in a public place to focus on individuals
  - ii. Test purchases by Trading Standards to establish whether goods are sold as described
  - iii. Surveillance of domestic premises to establish if a property is being used for business purposes in breach of planning legislation
  - iv. Obtaining private information which might be used in a criminal prosecution where the Council is seeking to protect a child or vulnerable person
  - v. Use of CCTV cameras to record anti-social behaviour by particular individuals

15. It is therefore inevitable that the number of requests for RIPA authorisations will increase. In readiness for this a training programme for all Enforcement Officers within the Council is underway.
16. The Codes prescribe that:
  - a. The rank of officers who may authorise RIPA will now be raised to "Director, Head of Service, Service Manager or equivalent".
  - b. Greater clarity has been provided on when the exercise of RIPA powers is necessary and proportionate. Applicants and Authorising Officers must ensure that any authorisation granted addresses the issue of necessity and proportionality in sufficient detail.
  - c. Member(s) should review the authority's use of RIPA and set the RIPA policy at least once a year.
  - d. The higher rank of Authorising Officers, coupled with the additional oversight removes the need for counter-signing or confirmation processes.
  - e. A Senior Responsible Officer (SRO) should be appointed to ensure compliance with the legislation. The SRO should audit the Council's RIPA authorisation on a quarterly basis. The results of this audit should be presented to the appointed Member(s) to ensure that authorisations are consistent and in line with the Council's Policy
17. The Senior Responsible Officer will act as the central co-ordinator for the Council's RIPA activities and be responsible to the Office of Surveillance Commissioners for the discharge of the Council's powers. The Codes recommend that the SRO should be a member of the Corporate Leadership Team. Given the demands already placed on CMT, it is considered that the role of SRO can effectively be carried out by the Office Managing Partner in Legal Services being a qualified lawyer. He in turn reports to the Monitoring Officer who is able to raise any concerns or issues directly with the Chief Executive and the Leader of the Council. The SRO will additionally report to the Leader of the Council on a quarterly basis on RIPA activity and to Cabinet on an annual basis.

## **Financial Implications**

18. It is anticipated that any additional costs will be contained within existing budgets.

## **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

### **What will be the effect of the recommendation?**

The policies will ensure that officers can successfully undertake enforcement action and so help prevent and detect crime in a proportionate manner.

### **Consultation Carried Out or Required**

This matter was considered by Corporate Directors on 10 March 2010.

## **CORPORATE IMPLICATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and is satisfied that there are no additional financial implications arising from the recommendations and that any additional costs will be contained within existing budgets.

### **Legal**

The legal implications are included in the body of the report.

## **BACKGROUND PAPERS**

- The Regulation of Investigatory Powers Act 2000.
- Codes of Practice issued on 20 January 2010