

# Croydon Council

For General Release

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>8 February 2016</b>
<b>AGENDA ITEM NO:</b>	<b>6</b>
<b>SUBJECT:</b>	<b>REGULATION OF INVESTIGATORY POWERS ACT 2000</b>
<b>LEAD OFFICER:</b>	<b>ACTING DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES &amp; MONITORING OFFICER</b>
<b>CABINET MEMBER:</b>	
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> Monitoring compliance with the Regulation of Investigatory Powers Act supports the Council's approach to corporate governance.	
<b>FINANCIAL IMPACT</b> The recommendation contained in this report has no financial implications	
<b>FORWARD PLAN KEY DECISION REFERENCE NO:</b> This is not a key decision	

## 1. RECOMMENDATION

1.1 The Committee is asked to note the use of the Regulation of Investigatory Powers Act 2000 by the Council during 2013/14 and 2014/15.

## 2. EXECUTIVE SUMMARY

2.1 The purpose of this report is to inform the Committee how the powers available to the Council under RIPA have been used over the last two financial years.

## 3. DETAIL

3.1 RIPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist the detection and prevention of crime in relation to an authorities core functions. Evidence obtained by any covert surveillance could be subject to challenges under Article 8 of the European Convention on Human Rights (ECHR) - the right to respect for private and family life. However, properly authorised covert surveillance under RIPA makes lawful what might otherwise be a breach of Article 8 of the ECHR and protects the Council from any civil liability. A public authorities

“core functions” are the specific public functions it undertakes when providing services, in contrast to the “ordinary functions” which are those undertaken by all authorities (e.g. employment issues, contractual arrangements etc). Therefore a public authority may only engage in the use of RIPA when in performance of its “core functions”.

**3.2** Using RIPA, but only for the purpose of investigating crime and disorder, the Council is able to:

- Carry out covert directed surveillance;
- Use covert human intelligence sources;
- Acquire data relating to communications (e.g. telephone subscriber information).

**3.3** ‘Covert’ in this context means carried out in a manner calculated to ensure that those subject to the surveillance are unaware that it is or may be taking place. It usually involves personal observation, the use of CCTV, or accessing communications data such as mobile phone number subscriber or website details (see paragraph 3.5 below). However, even using these powers, the Council cannot carry out intrusive surveillance, such as putting a hidden camera in a suspect’s home to observe them, or listening to or obtaining the contents of telephone call or emails; such intrusive surveillance can only be carried out by the Police and government security services.

**3.3** Further, even where the covert investigations are for the purpose of preventing crime and disorder, the Council must also show that the surveillance is necessary and proportionate and can be balanced against an individual’s right to their private and family life. The proper consideration of these issues is evidenced in each case by use of an authorisation process that follows a template issued by the either Office of the Surveillance Commissioner (OSC) or Interception of Communications Commissioner's Office (IOCCO). There are also templates for the review and cancellation of authorisations. The process for the giving of such authorisations is detailed in paragraph 4 below.

**3.4** Covert Human Intelligence Sources (CHIS) are individuals who by the nature of the situation they are in are able to provide information in a covert manner to aid an investigation. The use of CHIS is very tightly controlled under RIPA and historically the Council has not made use of this aspect of RIPA.

**3.5** It should also be noted that in respect of communications data, no information regarding the actual content of the communication can be obtained by a local authority. All that is obtained and provided is information regarding who pays the bill for a phone, website or where an item of post originated etc. This type of information is most often obtained as part of a Trading Standards investigation where, for example, they are trying to identify and/or locate a trader in counterfeit goods operating from a website, or rogue trader who has billed (often a vulnerable) person for work and where the only point of contact is via a mobile phone number.

3.6 In respect of the use of the powers under RIPA the Council has had in place a Corporate Policy and Procedure to ensure their proper use. Local Authorities now require judicial approval from a Court for the use of covert directed surveillance, covert human intelligence sources (CHIS) and access to communications data (i.e. billing and subscriber information), and the use of RIPA to authorising directed surveillance is now limited to cases where the offence under investigation carries the possibility of minimum custodial sentence of 6 months or more being passed on conviction. When access to communications is sought or for test purchasing exercises (investigations into underage sales of alcohol and tobacco), this restriction does not apply.

### 3.8 **Authorisation Arrangements**

Overall supervision of the Council's use of RIPA lies with the Director of Legal and Democratic Services as Solicitor to the Council. Day to day monitoring of and advice on authorisations, to ensure that the issues of necessity and proportionality are fully considered and to ensure that all applications meet the necessarily high standard that is required, is provided by the Head of Corporate Law. The application is then made to the Magistrates by an authorised officer in the Corporate Legal Team. In accordance with statutory requirements, this team also maintains the Council's Central Register of covert surveillance applications. Currently there are 5 Council officers nominated by their Executive Directors who are able to authorise an application for the use of the powers available under RIPA. These officers are those whose services undertake specific enforcement activities and/or investigations.

## 4.0 **Use of RIPA**

4.1 The occasions and outcomes where the use of the powers available under RIPA to aid investigations was authorised during 2013/14 are set out below:

### **Directed Surveillance** - 2 Investigations

- Allegation of fraud - evidence obtained passed to Department of Work and Pensions; and
- Allegation of fly-tipping - no evidence obtained to support allegation.

### **Communications Data** - 3 Investigations

- Allegation of illegal sub-letting - possession of sublet property was recovered;
- Allegation of environmental offence - formal warning issued; and
- Trading Standards - Prosecution.

4.2 The occasions where the use of powers available under RIPA to aid investigations was authorised during 2014/15 are set out below:

**Directed Surveillance - 1 Investigation**

- No evidence obtained to support an allegation of illegal waste transfer.

**Communications Data - 2 Investigations**

- No evidence obtained to support allegation of fly-tipping; and
- Fraud investigation - this investigation is still ongoing.

**5.0 Office of the Surveillance Commissioner and Interception of Communications Commissioner Inspections**

5.1 The Council's use of these powers, its policy and procedures are subject to inspection and audit by the OSC in respect of covert surveillance authorisations under RIPA and the IOCCO in respect of communications data. During these inspections individual applications and authorisations are also closely examined and Authorising Officers are interviewed by the inspectors.

**6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

6.1 There are no direct financial implications arising from this report.

**7. LEGAL IMPLICATIONS**

7.1 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

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**BACKGROUND DOCUMENTS:**

None