

LONDON BOROUGH OF CROYDON

REPORT	GENERAL PURPOSES COMMITTEE	
DATE OF DECISION	10 June 2024	
REPORT TITLE	USE OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND INVESTIGATORY POWERS ACT 2016	
CORPORATE DIRECTOR:	JANE WEST CORPORATE DIRECTOR RESOURCES & S151 OFFICER	
LEAD OFFICER	STEPHEN LAWRENCE-ORUMWENSE DIRECTOR OF LEGAL SERVICES & MONITORING OFFICER	
AUTHORITY TO TAKE DECISION:	Under Part 3 of the Constitution it is a function of General Purposes Committee to receive reports relating to the Council's use of powers under the Regulation of Investigatory Powers Act 2000.	
CONTAINS EXEMPT INFORMATION	No	Public
WARDS AFFECTED:	N/A	

1 SUMMARY OF REPORT

- 1.1. Monitoring compliance with the Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016 (IPA) to support the Council's approach to corporate governance.

2 RECOMMENDATIONS

- 1.2. For the reasons set out in the report and its appendices the General Purposes Committee is recommended to:
- 1.1 Note the use of the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 by the Council in previous years and the Covert Activities Policy, Appendix A to this report; and
 - 2.1 Note the outcomes of an inspection by the Investigatory Powers Commissioner's Office.

3 BACKGROUND AND DETAILS

- 3.1 Both RIPA and IPA enable 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

authority's core functions. Evidence obtained by any covert surveillance could be subject to challenges under data protection law and Article 8 of the European Convention on Human Rights (ECHR) - the right to respect for private and family life and an individual's home. 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.

3.2 A public authority's "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 an authorisation under RIPA/IPA when in performance of its "core functions".

Local authorities are only permitted to use RIPA/IPA for the purpose of investigating or detecting crime and disorder and in doing so the Council can:

- Carry out covert directed surveillance (e.g. taking up an observation post or following someone to see where they are going or using hidden CCTV);
- Use covert human intelligence sources (e.g. use of informants or undercover officers); and/or
- Acquire data relating to communications (e.g. information held by telephone and internet service providers such as the name and address of the account holder or billing data or list of web sites visited).

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. However, even using these powers, the Council cannot carry out intrusive surveillance, such as putting a hidden camera in a suspect's home or vehicle 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.

3.4 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.

3.5 Covert Human Intelligence Sources (CHIS) are individuals who by the nature of their situation 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.

3.6 Local Authorities require judicial approval from a Magistrates' Court for the use of covert directed surveillance and CHIS.

3.7 Access to communications data must now be authorised by a Service Manager and is obtained via the Council's 'Single Point of Contact' who are National Anti-Fraud Network (NAFN). However rather than seeking the approval of the Magistrates' Court the request is passed by NAFN to the Investigatory Powers Commissioner's Office (IPCO) having recently merged with the Office for Communications Data Authorisations, who then scrutinise the application and if they are satisfied approve the request and provide the approval for the request.

3.8 Overall supervision of the Council's use of RIPA/IPA lies with the Corporate Director Resources who for the purposes of RIPA/IPA is the Senior Responsible Officer. This is exercised on a day to day basis by the Director of Legal Services & Monitoring Officer, who provides 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.

4 The Council has adopted a Covert Activities Policy which is included as part of this report as Appendix A. As detailed above, in order to comply with surveillance legislation, it is vital that officers carrying out activities under its powers must have full regard to the codes of practice and guidance issued by the Home Office and IPCO.

4.1 Investigations which fall within the scope of the surveillance powers, but which are not correctly authorised could leave the Council open to legal challenge by individuals who consider that there has been an intrusion into their private lives or infringement of their right to a fair trial. This could have adverse financial implications for the Council as well as pose a risk of reputational damage to the Council if misused.

4.2 The purpose of the Council's policy and procedure on the use of these surveillance powers is to reinforce their requirements, and relevant Codes of Practice, provide guidance to officers to minimise the risk of legal challenge to the Council and protect the rights of individuals. As a result, this Policy not only details the powers available and their application but also sets out the processes to be followed in the event that an investigating officer wished to make use of them.

5 THE USE OF THE POWERS AVAILABLE

5.1 The Council has made relatively little use of the powers available under RIPA/IPA:

- **Directed Surveillance:** no authorisations, have been sought since 2016. The Council has never sought an authorisation to use CHIS.
- Requests to **Access Communications Data:**

Calendar Year	Number of Authorisations
2022	0
2023	0

- 5.2 There are a number of contributing factors to the low use of the RIPA/IPA. With the changes resulting from the introduction of Universal Credit, the ability for the Council to investigate benefit fraud was largely removed. The significant disruption to business, resulting from COVID, and the issuing of Section 114 Notices, has also contributed to this reduction.
- 5.3 A significant change has also been the increase in data sharing between public authorities and government agencies and also between public authorities, which provide alternative methods of investigation and evidence gathering. This is an important consideration as the use of covert methods should only be considered where there is no alternative, and this increased data sharing does provide such a less intrusive alternative method.

6 INSPECTION BY THE INVESTIGATORY POWERS COMMISSIONER'S OFFICE (IPCO)

- 6.1 The Council was inspected by the IPCO on its use of the Powers in 2023. Following which the IPCO responded in December 2023:

“... I am satisfied that your reply provides your assurance that ongoing compliance with RIPA 2000 and the Investigatory Powers Act 2016 will be maintained. As such, your Council has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection.

I would ask that you ensure that the key compliance issues continue to receive the necessary internal governance and oversight through yourself and your Senior Responsible Officer: policy refreshes; annual updates to your Elected Members; ongoing training and awareness raising; internal compliance monitoring by lead managers within their business areas; and the retention, review and destruction (RRD) of any product obtained through the use of covert powers (Records and Product Management in accordance with the Safeguards Chapters of the relevant Codes of Practice).

Your Council will be due its next inspection in 2026,..”

- 6.2 To achieve this a Work Plan is being developed to ensure ongoing compliance and to develop a strong internal governance.
- 6.3 This will include:
- Regular reviews of the use of the Powers;
 - Regular reports to CMT;
 - Annual Reports to General Purposes Committee;
 - Training Programme for Staff;
 - Reviews of the Internal processes and the retention and use of information obtained by the use of these Powers.

7 ALTERNATIVE OPTIONS CONSIDERED

- 7.1 Recommendations are for noting only.

8 CONSULTATION

8.1 Not applicable.

9 CONTRIBUTION TO COUNCIL PRIORITIES

9.1 The lawful and responsible use of RIPA/IPA powers as detailed within this report aligns with the Mayor's Business Plan 2022-26 "Priority 4: Ensure good governance is embedded and adopt best practice".

10 IMPLICATIONS

10.1 FINANCIAL IMPLICATIONS

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

Comments approved by Lesley Shields, Head of Finance for Assistant Chief Executive and Resources on behalf of the Director of Finance. (Date 23/05/2024)

11 LEGAL IMPLICATIONS

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

Comments approved by the Head of Litigation and Corporate Law on behalf of the Director of Legal Services and Monitoring Officer. (Date 16/05/2024)

12 EQUALITIES IMPLICATIONS

12.1 The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in the Section 149 of the Equality Act 2010. The Council must, in the performance of its functions, therefore, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Comments approved by Ken Orlukwu, Senior Equalities Officer, on behalf of Helen Reeves, Head of Strategy & Policy on 20/05/2024.

13 HUMAN RESOURCES IMPLICATIONS

- 13.1 Further to the reference to training for staff, there are no other immediate human resources considerations arising from this report for the Council's staff or employees.

Comments approved by Gillian Bevan, Head of HR Resources and Assistant Chief Executive's directorates on behalf of the Chief People Officer. (15/05/24)

14 CRIME AND DISORDER IMPLICATIONS

- 14.1 The correct use by the Council of its powers under the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 will ensure investigations are conducted in a transparent and legally compliant manner and will contribute to ensuring relevant/associated crime and disorder problems are effectively and successfully dealt with.
- 14.2 Section 17 of the Crime and Disorder Act 1988 requires that, without prejudice to any other obligation imposed on it, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area the likely effect of doing so and the need to do all it reasonably can to prevent crime and disorder in the area. This report sets out how the Council is fulfilling this duty in relation to the functions under the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016.

15 DATA PROTECTION IMPLICATIONS

- 15.1 The processing of the data used is subject to the strict controls arising from RIPA, IPA, and the external authorisation procedure, including as set out in the Covert Activities Policy, Appendix A. These controls are further supported by Home Office Guidance and that of the IPCO. Personal data in respect of those who may be subject to the use of these powers may also include victims, witnesses and other third parties who may be referred to within the authorisations and court records as well as those who may be subject to 'surveillance'.

Comments approved by the Head of Litigation and Corporate Law on behalf of the Director of Legal Services and Monitoring Officer. (Date 16/05/2024)

16 APPENDICES

Appendix A - Covert Activities Policy

17 BACKGROUND DOCUMENTS

- 17.1 None.