

Item No.	Classification: Open	Date: 13 July 2015	Decision Taker: Cabinet Member for Communities and Safety
Report title:		Review of Regulation of Investigatory Powers Act (RIPA)	
Ward(s) or groups affected:		ALL	
From:		Director of Legal Services	

RECOMMENDATION

That the cabinet member for communities and safety

1. Approve the revised Policy.

BACKGROUND INFORMATION

2. The primary function of local government enforcement work is to protect the public, the environment and groups such as consumers and workers. Carrying out regulatory functions and enforcement in an equitable, practical and consistent manner helps to promote a thriving national and local economy, and can help prevent and detect crime and disorder.
3. Southwark Council will on occasion need to use covert surveillance as allowed for by the Regulation of Investigatory Powers Act (RIPA) in order to carry out its enforcement functions effectively. Examples of enforcement activities which may require the use of RIPA include trading standards enforcement activities against rogue traders and fraud investigations and child protection.
4. The Regulation of Investigatory Powers Act 2000 (RIPA) provides the framework under which authorised regulators are able to carry out surveillance activities which would otherwise not be legal because of the impact on human rights.
5. RIPA provides safeguards to ensure that where councils undertake directed surveillance, use covert human intelligence sources (CHIS) or access communications data, their usage is always recorded and fully transparent.
6. Furthermore, RIPA regulates councils in a manner that is compatible with the European Convention of Human Rights and Fundamental Freedoms, which is incorporated into domestic law by the Human Rights Act 1998.

KEY ISSUES FOR CONSIDERATION

7. Some local authorities have been criticised in the past for using surveillance powers in low level cases such as school catchment areas or bin collections. On 1 November 2012 legislative changes were introduced governing how local authorities use RIPA. Amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations under RIPA can only be given effect once an order approving the authorisation has been granted by a Justice of the

Peace (JP).

8. In addition a local authority may only seek authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences that could attract a custodial sentence of 6 months or more, or relate to knife, tobacco or alcohol sales to children.
9. The Council policy on RIPA was updated to reflect these legislative changes were agreed in 2013.
10. On 10th December 2014 revised versions of the two codes of practice under Part 2 of the Regulation of Investigatory Powers Act 2000 (RIPA) came into force.
11. Further the Chief Surveillance Commissioner in his annual report, published on 4th September 2014, drew special attention to the use of the Internet for investigations, particularly involving social networking sites. He suggests that a RIPA authorisation may be required for some online investigations. Paragraph 2.29 of the revised covert surveillance code states:

“2.29 The use of the internet may be required to gather information prior to and/or during an operation, which may amount to directed surveillance. Whenever a public authority intends to use the internet as part of an investigation, they must first consider whether the proposed activity is likely to interfere with a person’s Article 8 rights, including the effect of any collateral intrusion. Any activity likely to interfere with an individual’s Article 8 rights should only be used when necessary and proportionate to meet the objectives of a specific case. Where it is considered that private information is likely to be obtained, an authorisation (combined or separate) must be sought as set out elsewhere in this Code. Where an investigator may need to communicate covertly online, for example contacting individuals using social media websites, a CHIS authorisation should be considered.”

12. Paragraph 4.32 of the revised CHIS code states:

“4.32 The use of the internet may be required to gather information prior to and/ or during a CHIS operation, which may amount to directed surveillance. Alternatively the CHIS may need to communicate online, for example this may involve contacting individuals using social media websites. Whenever a public authority intends to use the internet as part of an investigation, they must first consider whether the proposed activity is likely to interfere with a person’s Article 8 rights, including the effect of any collateral intrusion. Any activity likely to interfere with an individual’s Article 8 rights should only be used when necessary and proportionate to meet the objectives of a specific case. Where it is considered that private information is likely to be obtained, an authorisation (combined or separate) must be sought as set out elsewhere in this Code.”

13. As a result a new Part F has been added to the council’s policy to regulate directed surveillance on the internet. This Part reflects the use of the internet to gather information prior to and/or during an operation, may amount to directed surveillance. In addition, where an investigator may need to communicate covertly online, for example contacting individuals using social media websites, that a CHIS authorisation should be considered.”

Community impact statement

14. The content of this report in itself will not have any significant impact for citizens in Southwark. However use of surveillance activities by the council must be lawful and proportionate otherwise it will impact on human rights. Proportionate use of the powers however, particularly to tackle fraud, will benefit all citizens in Southwark as the council will be able to ensure that the public funds are protected and only paid to those who are properly entitled to receive the same.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

15. RIPA provides a legal framework for a local authority to conduct covert surveillance techniques. The legislation ensures that any surveillance activity conducted by the council is legal, proportionate and necessary.
16. The recent legislative changes provide further protection to individuals to ensure that covert surveillance techniques are only used if they are judicially approved and are required to detect or prevent serious crime.
17. The proposed policy helps safeguard the council in its use of RIPA and when followed will ensure we comply with the law. Should the council fail to approve the policy or a similar revised legally compliant policy we would be at real risk of legal challenge in our subsequent use of RIPA.

Strategic Director of Finance and Corporate Services

18. There are no financial or value for money implications as a result to the change in policy.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
N/a		

APPENDICES

No.	Title
Appendix 1	POLICY, PROCEDURES & FORMS on DIRECTED SURVEILLANCE and use of COVERT HUMAN INTELLIGENCE SOURCES under the REGULATION OF INVESTIGATORY POWERS ACT 2000 version 12

AUDIT TRAIL

Lead Officer	Director of Legal Services	
Report Author	Norman Coombe, Head of Corporate Team	
Version	Final	
Dated	19 June 2015	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Cabinet Member	Yes	No
Date final report sent to Constitutional Team	13 July 2015	