

<b>Item No.</b> N/a	<b>Classification:</b> Open	<b>Date:</b> 3 September 2019	<b>Decision Taker:</b> Cabinet Member for Community Safety and Public Health
<b>Report title:</b>		Review of Regulation of Investigatory Powers Act (RIPA) Policy	
<b>Ward(s) or groups affected:</b>		ALL	
<b>From:</b>		Director of Law and Democracy	

## RECOMMENDATION

1. That the cabinet member for community safety and public health approve the revised Policy attached at Appendix 1 of the report.

## 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, 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.
7. Some local authorities were 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 in 2013. In December 2014 revised versions of the two codes of practice under Part 2 of the Regulation of Investigatory Powers Act 2000 (RIPA) will come into force. This led to the Council's policy being updated in 2015.

## KEY ISSUES FOR CONSIDERATION

10. In August 2018 the Codes of Practice for Covert Surveillance and Property Interference and Covert Human Intelligence Sources (CHIS) were revised and updated. These contain changes and additions which public authorities conducting surveillance under Part 2 of the Regulation of Investigatory Powers Act 2000 (RIPA).
11. The codes provide guidance on when an application should be made for a RIPA authorisation, the procedures that must be followed before surveillance activity takes place and how to handle any information obtained through such activity. They are admissible as evidence in criminal and civil proceedings. Any court or tribunal considering such proceedings, including the Investigatory Powers Tribunal, as well as the Investigatory Powers Commissioner's Office, responsible for overseeing the relevant powers and functions, may take the provisions of the codes into account.
12. Many of the changes in the revised codes reflect best practice guidance published in the OSC Procedures and Guidance Document, observations and commentary in OSC annual reports, and advice and guidance provided during inspections. Much of the best practice had already been adopted.
13. The changes include amendments to the role of the Senior Responsible Officer and a new error reporting procedure. The codes also reflect developments in surveillance and monitoring such as the use of the internet and social media, drones, etc. In summary the changes relate to:
  - **Private information**– further information and guidance relating to internet material and investigations.
  - **Social media and internet research** – new sections providing clarity and detail
  - **Use of CHIS** – amendments to reinforce protection of those acting as CHIS
  - **General Observation Duties**– Expanded section to include such activity on the internet
  - **CCTV and ANPR**– Additional information relating to the deployment of these technologies and the relevant codes and oversight
  - **Necessity and proportionality**– Expanded section.

## 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 Law and Democracy

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 compliance with the law. Should the council fail to approve the policy or a similar revised legally compliant policy the Council would be at real risk of legal challenge in our subsequent use of RIPA.

### Strategic Director of Finance and Governance

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
None		

## 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 13
Appendix 2	Track change version of Policy, Procedures & Forms on directed surveillance and use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000 version 13

## AUDIT TRAIL

<b>Lead Officer</b>	Doreen Forrester-Brown, Director of Law and Democracy		
<b>Report Author</b>	Norman Coombe, Head of Corporate Team		
<b>Version</b>	Final		
<b>Dated</b>	3 September 2019		
<b>Key Decision?</b>	Yes		
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>	
Director of Law and Democracy	Yes	Yes	
Strategic Director of Finance and Governance	Yes	Yes	
<b>Cabinet Member</b>	Yes	No	
<b>Date final report sent to Constitutional Team</b>		3 September 2019	