

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 14 September 2022	<b>Decision Taker:</b> Cabinet Member for Communities, Equalities and Finance
<b>Report title:</b>		Review of the policy and procedures on the acquisition and retention of communications data under the Investigatory Powers Act 2006	
<b>Ward(s) or groups affected:</b>		ALL	
<b>From:</b>		Director of Law and Governance	

## RECOMMENDATION

1. That the Cabinet Member for Communities, Equalities and Finance approve the revised policy and procedures on the acquisition and retention of communications data under the Investigatory Powers Act 2006 attached as Appendix 1.

## 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. In connection with its regulatory and enforcement functions and when investigating fraud, Southwark Council will on occasion need to access limited information from telecommunications companies using an authorisation mechanism set out in the Investigatory Powers Act 2016 (IPA).
4. The Investigatory Powers Act 2016 (IPA) provides the framework under which information may be accessed and replaces a number of provisions in the Regulation of Investigatory Powers Act 2000 in relation to communications data. The Data Retention and Acquisition Regulations 2018 also brought into force the Communications Data Code of Practice under the IPA. Previously the acquisition of communications data was dealt with alongside all other RIPA powers under the 2000 Act.
5. IPA aims to ensure that any interference with an individual's privacy is necessary and proportionate and that the public interest and the human rights of individuals are protected.

6. Furthermore, IPA 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. The Council policy acquiring Communications Data is reviewed and updated as necessary. The last substantive update was in 2014. The policy now needs to be amended to reflect the changes in legislation (from RIPA to IPA) and the new requirements that have been introduced.

## **KEY ISSUES FOR CONSIDERATION**

8. In November 2018 the Communications Data Code of Practice was revised and updated. The Code of Practice relates to the exercise by the council of functions conferred by Parts 3 and 4 of IPA and the council must have regard to this code. The code provides guidance on different types of data, data acquisition and disclosure, data retention and general matters such as keeping records and complaints.
9. “Communications data” includes the ‘who’, ‘when’, ‘where’, and ‘how’ of a communication but not the content i.e. what was said or written. Communications data is generated, held or obtained in the provision, delivery and maintenance of communications services – i.e. postal services or telecommunications services.
10. If the correct procedures are not followed, evidence in a court case could be thrown out, a complaint of maladministration could be made to the Ombudsman, the council could be the subject of an adverse report by the Investigatory Powers Commissioner’s Office, or a claim could be made leading to the payment of compensation by the council. It is therefore important that the guidance and information available to council officers reflects current legislative requirements.
11. The amendments to the legislation include:
  - A new power for the Investigatory Powers Commissioner’s Office to authorise communications data requests made by the council. This power has been delegated to a new body – the Office for Communications Data Authorisations (OCDA). (The National Anti Fraud Network (NAFN) is still required to be used by councils as a single point of contact to coordinate and advise on applications and they will then send them to the OCDA for authorisation).
  - The acquisition of communications data by local authority officers is no longer subject to judicial approval by a magistrate
  - Applications for the acquisition of communications data are required to be verified by senior council officers of equivalent rank to the Senior Responsible Officer who is currently the Director of Law and Governance.

- New classifications of communications data: entity data and events data. Entity data is about entities (individuals, groups or objects) or links between them and a telecommunication service or system but does not include information about individual events. Events data describes events in relation to a telecommunication system which consist of one or more entities engaging in an activity at a specified point or points in time.
- A new threshold of “serious crime” which must be satisfied for applications relating to events data which includes offences where an adult may be sentenced to imprisonment for at least 12 months and an offence committed by a body corporate e.g. a company. For entity data there is no threshold but as previously the application can only be made for the purpose of preventing or detecting crime or of preventing disorder.

12. Although authorisations have not been sought in recent years by Southwark Council officers, in the past mobile phone information has been requested in relation to trading standards and fraud investigations. The fraud team have indicated that as a result of changes in criminal methodology and the impact of the lockdown and work from home they anticipate that their enquiries will expand to require communications data including the details of the use of mobile phones. Trading Standards have recently been involved in a case where the Food Standards Agency made an application for communications data, where this was important evidence, but the council’s officers would have otherwise been making the request.

### **Policy Framework Implications**

13. Officers engaged in our regulatory functions and our fraud team are involved in work that supports Southwark’s values as set out in the Borough Plan, particularly

- Make Southwark a place to be proud of;
- Always work to make Southwark more equal and just
- Spend money as if it were from our own pocket

14. This policy provides a tool for those teams to carry out their functions effectively, enabling improved community safety, protecting the council’s resources, and contributing to a fair and just society.

### **Community, equalities (including socio-economic) and health impacts**

#### **Community impact statement**

15. Proportionate use of IPA powers, 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. The powers will also assist officers in their work to promote community safety particularly in the investigation of trading standards

concerns. However the acquisition and disclosure of communications data by the council must be lawful and proportionate otherwise it will impact on human rights.

### **Equalities (including socio-economic) impact statement**

16. In considering the public sector equality duty, there is no obvious adverse impact on any particular protected characteristic (including socio-economic) as a result of the changes being made to the policy as set out in this report. The regulatory activity, particularly of the trading standards teams, will often help to protect vulnerable people in the community, particularly those older or disabled, those who do not have English as their first language, and those who may suffer socio-economic disadvantage. In this regard the policy is likely to have a positive impact on individuals with protected characteristics of age, disability and race and with regard to the non-statutory socio-economic characteristic.

### **Health Impact Statement**

17. The powers included in the IPA are of assistance for officers engaged in regulatory functions, including those dealing with trading standards and food standards complaints where enforcement is important to ensure the safety of residents in the Borough.

### **Climate change implications**

18. The powers can be used by officers investigating fly-tipping and other environmental breaches which may otherwise lead to an adverse impact on the environment in the Borough.

### **Legal implications**

19. The legal context to these changes has been set out in the report.

### **Financial Implications**

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

### **Consultation**

21. Heads of service and Directors in services affected by these changes have been consulted and their comments taken account of in the updated policy and report. The Corporate Governance Panel has also been consulted on the report.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance**

22. IPA provides a legal framework for a local authority to acquire telecommunications data. The legislation ensures that any activity conducted by the council under the Act is legal, proportionate and necessary.
23. The legislative changes provide further protection to individuals to ensure that the acquisition of telecommunications data by the council is clearly set out in specific legislation which complies with EU law.
24. The proposed updated policy helps safeguard the council in its use of IPA and when followed will ensure compliance with the law. Should the council fail to approve such a policy the Council would be at real risk of legal challenge in any subsequent use of powers under the IPA.
25. The public sector equality duty in section 149 Equality Act 2010 has to be considered whenever the council exercises its functions, including taking any decisions. In summary, this means having due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act; advance equality of opportunity between people who share a protected characteristic and those who do not and foster good relations between people who share a protected characteristic and those who do not. The community impact statement above indicates that no obvious adverse impact for anyone with a protected characteristic has been identified by the changes introduced by this policy update and there are likely to be some positive impacts as a result of the exercise of the policy.

**Strategic Director of Finance and Governance**

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

**BACKGROUND DOCUMENTS**

Background Papers	Held At	Contact
None		

## APPENDICES

No.	Title
Appendix 1	Policy and Procedures on the acquisition and retention of communications data under the Investigatory Powers Act 2016 version 5.0

## AUDIT TRAIL

<b>Lead Officer</b>	Doreen Forrester-Brown, Director of Law and Governance	
<b>Report Author</b>	Allan Wells, Specialist Governance Lawyer	
<b>Version</b>	Final	
<b>Dated</b>	15 August 2022	
<b>Key Decision?</b>	No	
<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 Governance	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>		13 September 2022