

Item No.	Classification: Open	Date: 1 April 2014	Decision Taker: Cabinet Member for Finance, Resources and Community Safety
Report title:		Review of Policy to Access Communications Data Under the Regulation of Investigatory Powers Act 2000	
Ward(s) or groups affected:		All	
From:		Director of Legal Services	

RECOMMENDATIONS

That the cabinet member for finance, resources and community safety

1. Note the current legal position with regard to the Protection of Freedoms Act 2012 and approves the revised Accessing Communications Data Policy (Appendix A).
2. Note the inspection report of the Office of Surveillance Commissioners (OSC) (Appendix C) and approves the revised policy on directed surveillance and use of covert human intelligence sources (Appendix B).

BACKGROUND INFORMATION

3. 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.

Access communications data

4. The Regulation of Investigatory Powers Act 2000 ('RIPA') provides a mechanism for authorising council staff to access limited information from telecommunications companies. It aims to ensure that any interference with individual's privacy is necessary and proportionate, and that both the public interest and the human rights of individuals are protected.
5. Communications data (CD) is the 'who', 'when' and 'where' of a communication, but not the 'what' (i.e. the content of what was said or written). RIPA groups CD into three types:
 - "traffic data" (which includes information about where the communications are made or received);
 - "service use information" (such as the type of communication, time sent and its duration); and

- “subscriber information” (which includes billing information such as the name, address and bank details of the subscriber of telephone or internet services).
6. Access to communications data is most likely to be needed to identify the owner of a particular telephone number or internet address. All requests seeking to obtain communications data must be properly authorised using the procedure set out in this document.
 7. Southwark Council will on occasion need to access communications data 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.
 8. The Regulation of Investigatory Powers Act 2000 (RIPA) provides the framework under which authorised regulators are able to carry out these activities which would otherwise not be legal because of the impact on human rights.
 9. RIPA provides safeguards to ensure that where councils access communications data, their usage is always recorded and fully transparent. 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

10. 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).
11. In addition a local authority may only seek authorisation under RIPA to access communications data 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. In recent years Southwark has only used RIPA for these types of activities.
12. Local authorities will no longer be able to access communications data in some cases where it was previously authorised. But this does not mean that it will not be possible to investigate these areas with a view to stopping offending behaviour.
13. RIPA applications must still go through the current internal authorisation process and be authorised by one of the specified authorising officers. The authorised RIPA application must then be presented to the Justice of the Peace for judicial approval.
14. The Council policy on Accessing Communication Data under the Regulation of Investigatory Powers Act 2000 as amended by the Protection of Freedoms Act 2012 has been updated to reflect these changes and is included as Appendix A.

Directed surveillance and use of covert human intelligence sources

15. Last year the policy on directed surveillance and use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000 as amended by the protection of freedoms act 2012 was agreed by the cabinet member for finance, resources and community safety.
16. The Office of Surveillance Commissioners (OSC) is responsible for overseeing the use of covert surveillance by designated public authorities and on 20 September 2013 OSC carried out a routine inspection. As part of the process the monitoring officer and authorising officers met with the inspector. Current policy arrangements and training strategy were among the topics discussed.
17. A copy of the inspectors report is attached as Appendix B to this report. The inspector's recommendations are set out in paragraph 33 of the same.
18. To comply with these the policy on directed surveillance and use of covert human intelligence sources under the regulation of investigatory powers act 2000 has been updated.
19. The revised council policy on directed surveillance and use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000 as amended by the Protection of Freedoms Act 2012 has been updated to reflect these changes and is included as Appendix C.

Community impact statement

20. 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

21. RIPA provides a legal framework for a local authority both to access communications data and directed surveillance. The legislation ensures that any investigatory activity conducted by the council is legal, proportionate and necessary.
22. The recent legislative changes provide further protection to individuals to ensure that accessing communications data can only to place if they are judicially approved and are required to detect or prevent serious crime.
23. The proposed policies 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

24. There are no financial or value for money implications as a result to the change in policy due to legislative changes in the Protection of Freedoms Act 2012.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix A	Policy & Procedures on Accessing Communications Data under the Regulation of Investigatory Powers Act 2000 as amended by The Protection of Freedoms Act 2012
Appendix B	Report of Office of Surveillance Commissioners (OSC)
Appendix C	Policy on Directed Surveillance and use of Covert Human Intelligence Sources under the Regulation of Investigatory Powers Act 2000 as amended by The Protection of Freedoms Act 2012

AUDIT TRAIL

Lead Officer	Director of Legal Services	
Report Author	Norman Coombe, Head of Corporate Team	
Version	Final	
Dated	24 March 2014	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
	Officer Title	Comments Sought
	Director of Legal Services	Yes
	Strategic Director of Finance and Corporate Services	Yes
	Cabinet Member	Yes
		No
	Date final report sent to Constitutional Team	24 March 2014