

Committee	STANDARDS COMMITTEE	Item No	4
Report Title	REVIEW OF USE OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000		
Ward	ALL		
Contributors	HEAD OF LAW		
Class	PART 1	Date	17 OCTOBER 2017

1. Summary

The report sets out the current use of and powers available to the Local Authority pursuant to the Regulation of Investigatory Powers Act 2000, "RIPA".

2. Purpose

The purpose of this report is to review Lewisham's use of RIPA for the last 18 months and to inform Members of the obligations imposed by its provisions.

3. Recommendation

To note the contents of this report

4 Background

- 4.1. Local authorities carry out statutory functions including investigating and issuing criminal proceedings where appropriate. Gathering evidence is a necessary ancillary tool for investigators as part of that process. Section 111 of the Local Government Act 1972, provides such subsidiary powers to local authorities, so as to facilitate the discharge of their statutory functions.
- 4.2. Investigations by local authorities for the purposes of criminal proceedings, generally described as "regulatory" offences, were carried out prior to the 2000 Regulation of Investigatory Powers Act. Such offences are numerous and include (but are not limited to) breaches of statutory provisions relating to trading standards, housing legislation, health and safety, licensing, planning and other statutory provisions which may extend to theft and fraud.
- 4.3. A necessary part of such investigations may include the carrying out of surveillance. Surveillance generally falls into two categories, overt and covert.
 - Overt surveillance is investigating openly, which can include for example interviewing a suspect, obtaining public documents such as copies of driving licences and land registry information and also having cctv obviously apparent or visible in open spaces.

- Covert surveillance is investigating discreetly, without being obvious. This can include the use of videos, CCTV which is not clearly displayed and apparent.

4.4 In 2000, the Human Rights Act came into force. Article 8 of the European Convention on Human Rights which was incorporated into domestic law by the Human Rights Act, provides that “everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others.”

4.5 Also in 2000, the Regulation of Investigatory Powers Act “RIPA”, came into force. Contrary to reporting in the press at the time that the legislation was a ‘snoopers’ charter’, it was introduced to provide protection to individuals against potential abuse by public bodies when they may be carrying out investigations. The protection sought to be provided by RIPA is the protection of privacy. It reinforced the right to privacy which is enshrined within Article 8.

5. RIPA

5.1 Surveillance, pursuant to the provisions of RIPA, (section 26) is defined as “directed if it is covert but not intrusive and is undertaken for the purposes of a specific investigation or a specific operation, in such a manner as is likely to result in the obtaining of private information about a person...and otherwise than by way of an immediate response to events or circumstances...”

5.2 It is important to note that the single lawful use of covert surveillance under RIPA by local authorities, (and the only purpose for which covert surveillance under RIPA is used by the Council) is to gather evidence for the “prevention or detection of a crime or serious disorder”. By way of example, such investigations could include illegal sub-letting and fraud.

6. RIPA PROTECTIONS

6.1 When RIPA came into force in 2000, it provided a statutory mechanism to ensure that, where it was necessary to undertake covert surveillance which would be directed at an individual, certain safeguards must be put in place. RIPA obliges public bodies, including local authorities, to have procedures and policies in place to demonstrate compliance and commitment to the statutory requirements of RIPA. Our current RIPA Policy and Procedures document is appended to this Report marked “Appendix A”. The Council’s RIPA policy and procedures support and maintain the right to privacy set out within Article 8 wherever lawfully possible.

- 6.2 A system is required to be in place within each public body for the operation of RIPA. Investigating Officers must to be trained to gather evidence in compliance with its provisions. Senior officers provide an added level of assurance and due diligence to ensure the use of covert surveillance is necessary and proportionate, well planned, reviewed and recorded using standard approval forms which must be retained for the purposes of proving compliance with RIPA.
- 6.3 A copy of the most recent power point training presentation provided to Investigating officers and their line managers is attached, marked "Appendix B".
- 6.4 Failure by a local authority to comply with the provisions of RIPA when gathering evidence by means of covert surveillance for the purposes of preventing or detecting a criminal offence may render the evidence gathered as inadmissible in court and / or result in a claim for damages by the person whose privacy has been allegedly breached.
- 6.5 Since 1st November 2012, RIPA has been amended by the Protection of Freedoms Act 2012 which inserted further safeguards into the procedures undertaken by public bodies when they carry out lawful covert surveillance in respect of a narrower category of activities.
- 6.6 There are two main implications arising from the 2012 Act:
1. The RIPA protections now apply to covert surveillance "to prevent or detect criminal offences that are either punishable by a minimum of 6 months custodial sentence, or are related to the underage sale of alcohol or tobacco". RIPA powers may no longer be used in relation to any suspected crime and neither may they be used for the purpose of preventing disorder- unless that disorder itself is likely to result in a sentence which meets the new sentencing minimum level.
 2. Authorisation of covert surveillance in the above circumstances now requires judicial approval. All applications for the carrying out of covert surveillance under RIPA must now be approved first at a senior level by Council trained managers, and then separately by a District Judge in a Magistrates' Court.
- 6.7 As a consequence of the 2012 Act, the Council revised its policy and procedures and have provided further bespoke training to investigating officers and managers.

7. NON-RIPA MATTERS

- 7.1 The Council, however, still retains the power to conduct covert surveillance in circumstances where RIPA does not apply. In accordance with best practice as recommended by the Office of Surveillance Commissioners, in such circumstances Lewisham maintains its procedures identical to those covered

by the provisions of RIPA, but without having the input of the Court to provide a final authorization. Training of officers as to the need to be aware of “necessity” and “proportionality” in all surveillance matters has been vigorously emphasised.

- 7.2 Outside of the provisions of RIPA, the local authority inevitably carries out surveillance, for the purposes of gathering evidence ancillary to its statutory functions. Such surveillance may be overt and/or covert for purposes other than in those circumstances covered by RIPA. It may be for example to obtain information evidence relating to civil proceedings. In such situations, this authority has acknowledged the necessary protections afforded by RIPA, so as to protect the rights of individuals to their privacy.
- 7.3 For purposes outside of Ripa, (“non-RIPA” matters,) whenever surveillance is carried out or considered, particularly within the nature of “covert” surveillance, the same/ identical procedures and safeguards are carried out and addressed by investigating officers and senior officers. Identical forms are completed and records kept. Training to that effect has been carried out.
- 7.4 A written policy and procedure document has been drafted for the use of Non-Ripa covert surveillance. A copy of that document is attached to this report marked as “Appendix C”.

8. EXTERNAL INSPECTION

- 8.1 Until the 30th August 2017, the oversight of RIPA was the responsibility of the Office of Surveillance Commissioners, who reported directly to the Government. On the 1st September 2017 the Office of Surveillance Commissioners was abolished by the Investigatory Powers Act 2016. The Investigatory Powers Commissioners Office is now responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.
- 8.2 The Office of Surveillance Commissioners inspected public bodies including local authorities every 2 or 3 years. Our most recent formal inspection was carried out on 11th March 2016 by the Assistant Surveillance Commissioner, Sir David Clarke. The outcome of that inspection was extremely positive.
- 8.3 In addition to keeping its policy and procedures documentation up to date, each year the Council has sent details of its use of RIPA to the Office of Surveillance Commissioners as required. That information is set out here for Members:
- For 2016/17 the number of RIPA authorisations approved internally and granted with judicial approval = 3.

All 3 of the above related to the supply of underage tobacco sales.

- For 2015/16 the number of RIPA authorisations approved internally and granted with judicial approval = 2

These 2 related to the supply of illegal meat importation.

- 8.4 For NON-RIPA matters, the number of authorisations approved internally for 2015 / 16 = 4.

Three of those matters related to the sale of “illegal tobacco” sales (from illegal importations).

One of those matters related to a covert surveillance carried out by the Council’s ‘No Recourse to Public Funds’ team as a consequence of a Court Order.

All 4 matters were authorized by senior Council officers who had undertaken RIPA training, using the standard national prescribed RIPA forms.

9. Legal considerations

- 9.1 These are largely contained within the body of the report, save for noting the provisions of the Equality Act 2010.

- 9.2 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 9.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

- 9.4 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

- 9.5 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

9.6 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

9.7 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

9.8 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

10. Financial considerations

There are no specific considerations

11. Crime and disorder implications

These are set out within the body of the report.

12. In conclusion

RIPA is a statutory provision aimed to ensure that public bodies, including local authorities, do not abuse their powers. It is also a clear method and tool for local authorities to use and adhere to so as to ensure that evidence which is gathered properly and with good cause is admitted into evidence within

criminal proceedings. It is a necessary safeguard for investigating bodies and for individuals.

For further information about this report please contact Kath Nicholson, Head of Law on 020 8314 7648.

Appendices A, B and C are attached.