

19 September 2013		ITEM: 9
Standards and Audit Committee		
Regulation of Investigatory Powers Act 2000		
Report of: Fiona Taylor, Head of Legal Services and Monitoring Officer		
Wards and communities affected: N/A	Key Decision: N/A	
Accountable Head of Service: Fiona Taylor, Head of Legal Services and Monitoring Officer		
Accountable Director: Graham Farrant, Chief Executive		
This report is public		
Purpose of Report: To provide the Committee with an update in relation to the use of RIPA over the previous 18 months.		

EXECUTIVE SUMMARY

This report provides an update to the previous annual report dated 29 March 2012, in that it covers the Council's use of RIPA over the previous 18 months, as well as details of further actions taken to update the Corporate RIPA Policy in relation to legislative changes introduced by the Protection of Freedoms Act 2012.

1. RECOMMENDATIONS:

- 1.1 That the Committee note the statistical information relating to the use of RIPA from January 2012 to June 2013.**
- 1.2 That the Committee approves the further amendments to the Corporate RIPA policy, to incorporate the Magistrates Authorisation process enforced under sections 37 and 38 of the Protections of Freedoms Act 2012, as set out at Appendix B, and to update the details of recently appointed Directors.**

2. INTRODUCTION AND BACKGROUND:

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) legislates for the use of local authorities of covert methods of surveillance and information gathering to assist in the detection and prevention of crime in relation to an authority's core functions.**

- 2.2 The Council’s use of these powers is subject to regular inspection and audit by the Office of the Surveillance Commissioner (OSC) in respect of covert surveillance authorisations under RIPA, and the interception of Communications Commissioner (IOCCO) in respect of communications data. During these inspections, authorisations and procedures are closely examined and Authorising Officers are interviewed by the inspectors.
- 2.3 Following the OSC Inspection in 2011, the Committee approved amendments to a revised corporate RIPA policy, which was implemented in 2011.

3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:

3.1 Statistical Information:

January 2012- June 2013	No. of RIPA authorisations
Trading Standards	0
Fraud	4
Regulatory	0
No. Of CHIS authorisations	0
Total	4

- 3.2 Attached at **Appendix A** is an extract from the Central RIPA Matrix, providing further detail in relation to the above instances of covert surveillance.
- 3.3 Officers are encouraged to use overt surveillance wherever possible, and use RIPA as a last resort. Often necessary evidence can be obtained overtly, and if an officer makes his or her investigation visible, this alone can have the desired effect of compliance.

Training

- 3.4 There is a general update training session that has been organised for Directors and Council officers, which is to be conducted during September 2013, exact date to be confirmed.

Magistrates Court Authorisation and Crime Threshold

- 3.5 Sections 37 and 38 of the Protection of Freedoms Act 2012 came into force from 1 November 2012. This now means that a Local Authority that wishes to authorise the use of directed surveillance, acquisition of communication data and use of a CHIS (Covert Human Intelligence Source) under RIPA will need to obtain an order approving the grant or renewal of an authorisation or notice from a JP (a District Judge or lay magistrate) before it can take effect. If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate, they will then issue an order

approving the grant or renewal for the use of the technique as described in the application.

- 3.6 The new judicial approval mechanism is in addition to the Council's internal authorisation process. The current internal process of assessing necessity and proportionality, completing the RIPA authorisation/application form and seeking approval from an authorising officer/designated person will therefore remain the same.
- 3.7 The additional process that Council officers will need to follow to obtain the approval by the JP is set out in more detail in the extract attached at **Appendix B**.
- 3.8 A further change has been introduced by the Protection of Freedoms Act 2012, introducing a "Crime Threshold", whereby local authorities can only engage in directed surveillance for matters that involve a criminal offence punishable by a maximum term of at least 6 months imprisonment or whose approval is being sought for the purpose of preventing or detecting specific criminal offences relating to the underage sale of tobacco or alcohol.
- 3.9 It is recommended that the Corporate RIPA policy be amended to incorporate the above legal changes, to provide improved guidance for Council officers. The Committee is therefore asked to approve the attached precise headed "Magistrates Court Authorisation and Crime Threshold" (attached and marked as APPENDIX B) be inserted into the Corporate RIPA policy.
- 3.10 It is also recommended that the RIPA policy be updated to add the details of new Directors within the Council as officers may authorise RIPA matters.

4. REASONS FOR RECOMMENDATION:

- 4.1 This report provides a further update to the annual report dated 29 March 2012, in that it covers the Council's use of RIPA over the previous 18 months, as well as details of further actions to implement the Magistrates Authorisation procedure, required by the Protection of Freedoms Act 2012.

5. CONSULTATION (including Overview and Scrutiny, if applicable)

- 5.1 Legal Services have been in contact with the relevant departments affected by the changes set out in this report.
- 5.2 The portfolio holder for Central Services is being updated in relation to the RIPA recommendation implementation, as a matter coming under his remit, and an ongoing meeting takes place with the Monitoring Officer in her role as Senior Responsible Officer for RIPA purposes.

6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 6.1 Monitoring compliance with the Regulation of Investigatory Powers Act 2000 supports the Council's approach to corporate governance. Ensuring the appropriate use of RIPA in taking action to tackle crime and disorder supports the corporate priority of ensuring a safe, clean and green environment.

7. IMPLICATIONS

7.1 Financial

Implications verified by: **Michael Jones**
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There are no financial implications directly related to this report.

7.2 Legal

Implications verified by: **Daniel Toohey**
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Legal implications comments are contained within this report above.

7.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
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There are no such implications directly related to this report. However the Council should monitor the application of this policy to ensure that no adverse impact is noted at a later stage.

7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

Compliance with the requirements of RIPA legislation will ensure the proper balance of maintaining order against protecting the rights of constituents within the borough. There are no implications other than them contained in this report.

BACKGROUND PAPERS USED IN PREPARING THIS REPORT

- Standards Committee Report dated 29 March 2012

APPENDICES TO THIS REPORT:

- Appendix A- Excerpt from Central Record RIPA Matrix
- Appendix B- precise headed "Magistrates Court Authorisation and Crime Threshold"

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Appendix A

CENTRAL RECORD

First Authorisation											
ID Number	Operation / Subject Name	Type of Application	Lead Officer	RIP1 Authorised by	Authorised officer Grade/Rank	Accepted/ Rejected	Urgent	Confidential	Self-Authorised	RIP1 date	Date RIP1 due to expire
2011/12											
116TS0611	Operation Pitstop 7- Proxy Sales	RIPA	Chris McAvoy	Bill Newman	Corporate Director	Accepted	No	No	No	01/07/2011	01/07/2011
117TS0811	Operation Pitstop	RIPA	Jim Coote	Bill Newman	Corporate Director	Accepted	No	No	No	26/08/2011	26/08/2011
118TS1011	Operation Pitstop	RIPA	Jim Coote	Bill Newman	Corporate Director	Accepted	No	No	No	07/10/2011	07/10/2011
119FRO112	8882	RIPA	Graham Rode	Martin Hone	Finance Director	Accepted	No	No	No	30/01/2012	24/04/2012
120FR0812	8882	RIPA	David Kleinberg	Martin Hone	Finance Director	Accepted	No	No	No	27/08/2012	16/09/2012
121FR0812	8882	RIPA	David Kleinberg	Martin Hone	Finance Director	Accepted	No	No	No	01/09/2012	22/09/2012
122FR0813	Operation Optima	RIPA	David Kleinberg	Graham Farrant	Chief Executive	Accepted	No	No	No	26/08/13	06/9/13

Appendix B

RIPA Policy Amendment- Extract regarding the Protection of Freedoms Act 2012- Amendment (this is to be inserted into the RIPA Policy)

Magistrate Authorisation and Crime Threshold

From 1 November 2012, sections 37 and 38 of the Protection of Freedoms Act 2012 are in force. This will mean that a local authority who wishes to authorise the use of directed surveillance, acquisition of communication data and use of a CHIS (Covert Human Intelligence Source) under RIPA will need to obtain an order approving the grant or renewal of an authorisation or notice from a JP (a District Judge or lay magistrate) before it can take effect. If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate he/she will issue an order approving the grant or renewal for the use of the technique as described in the application.

The new Judicial approval mechanism is in addition to the Council's internal existing authorisation process under the relevant parts of RIPA as outlined above and in this section. The current internal process of assessing necessity and proportionality, completing the RIPA authorisation/application form and seeking approval from an authorising officer/designated person will therefore remain the same.

The appropriate officer from Thurrock will provide the JP with a copy of the original RIPA authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the JP and should contain all information that is relied upon. For communications data requests the RIPA authorisation or notice may seek to acquire consequential acquisition of specific subscriber information. The necessity and proportionality of acquiring consequential acquisition will be assessed by the JP as part of his consideration.

The original RIPA authorisation or notice should be shown to the JP but also be retained by Thurrock Council so that it is available for inspection by the Commissioners' offices and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT). The Court may also wish to take a copy. Importantly, the appropriate officer will also need to provide the JP with a partially completed judicial application/order form.

Although the officer is required to provide a brief summary of the circumstances of the case on the judicial application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.

The order section of the form will be completed by the JP and will be the official record of the JP's decision. The officer from Thurrock will need to obtain judicial approval for all initial RIPA authorisations/applications and renewals and will need to retain a copy of the judicial application/order form after it has been signed by the JP. There is no requirement for the JP to consider either cancellations or internal reviews.

It will be important for each officer seeking authorisation to establish contact with HMCTS administration at the Magistrates' court. HMCTS administration will be the first point of contact for the officer when seeking a JP approval. Thurrock will need to inform HMCTS administration as soon as possible to request a hearing for this stage of the authorisation.

On the rare occasions where out of hours access to a JP is required then it will be for the officer to make local arrangements with the relevant HMCTS legal staff. In these cases we will need to provide two partially completed judicial application/order forms so that one can be retained by the JP. They should provide the Court with a copy of the signed judicial application/order form the next working day.

In most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. No RIPA authority is required in immediate response to events or situations where it is not reasonably practicable to obtain it (for instance when criminal activity is observed during routine duties and officers conceal themselves to observe what is happening).

Where renewals are timetabled to fall outside of court hours, for example during a holiday period, it is the local authority's responsibility to ensure that the renewal is completed ahead of the deadline. Out of hours procedures are for emergencies and should not be used because a renewal has not been processed in time.

The hearing is a 'legal proceeding' and therefore our officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the JP.

The hearing will be in private and heard by a single JP who will read and consider the RIPA authorisation or notice and the judicial application/order form. He/she may have questions to clarify points or require additional reassurance on particular matters.

The attending officer will need to be able to answer the JP's questions on the policy and practice of conducting covert operations and the detail of the case itself. Thurrock's officers may consider it appropriate for the SPoC (single point of contact) to attend for applications for CD RIPA authorisations. This does not, however, remove or reduce in any way the duty of the authorising officer to determine whether the tests of necessity and proportionality have been met. Similarly, it does not remove or reduce the need for the forms and supporting papers that the authorising officer has considered and which are provided to the JP to make the case (see paragraphs 47-48).

It is not Thurrock's policy that legally trained personnel are required to make the case to the JP.

The forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided. The JP may note on the form any additional information he or she has received during the course of the hearing but information fundamental to the case should not be submitted in this manner.

If more information is required to determine whether the authorisation or notice has met the tests then the JP will refuse the authorisation. If an application is refused the local authority should consider whether they can reapply, for example, if there was information to support the application which was available to the local authority, but not included in the papers provided at the hearing.

The JP will record his/her decision on the order section of the judicial application/order form. HMCTS administration will retain a copy of the local authority RIPA authorisation or notice and the judicial application/order form. This information will be retained securely. Magistrates' courts are not public authorities for the purposes of the Freedom of Information Act 2000.

Thurrock will need to provide a copy of the order to the communications the SPoC (Single Point of Contact) for all CD requests. SPoCs must not acquire the CD requested, either via the CSP or automated systems until the JP has signed the order approving the grant.

Urgency

Authorisations must be given in writing, except that in urgent cases, authorisations may be given orally by the authorising officer. In such cases, the applicant and the authorising officer should record in writing as soon as reasonably practicable that the authorising officer has expressly authorised the action. A written application must be submitted as soon as possible thereafter and within 72 hours, at the latest.

A case is not normally to be regarded as urgent unless the delay would, in the judgement of the person giving the authorisation, be likely to endanger life or jeopardise the investigation or operation. An authorisation is not considered urgent if the need for authorisation has been neglected or the urgency is due to the authorising officer or applicant's own doing.

Crime Threshold

An additional barrier to authorising directed surveillance was introduced by the Protection of Freedoms Act 2012. This introduces a 'Crime Threshold' whereby only crimes which are either punishable by a maximum term of at least 6 months' imprisonment (whether on summary conviction or indictment) or are related to the underage sale of alcohol or tobacco can be investigated through Directed Surveillance. The crime threshold applies only to the authorisation of directed surveillance by local authorities under RIPA, not to the authorisation of local authority use of CHIS or their acquisition of CD. The threshold came into effect on 1 November 2012.

Thurrock cannot authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.

Thurrock may therefore continue to authorise use of directed surveillance in more serious cases as long as the other tests are met – i.e. that it is necessary and

proportionate and where prior approval from a Magistrate has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of six months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.

Thurrock may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.

A local authority such as Thurrock may not authorise the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences.