

# Finance and Governance Cabinet Advisory Board

29 May 2018

Is the final decision on the recommendations in this report to be made at this meeting?

No

## Annual Report on the Use of the Regulation of Investigatory Powers Act (RIPA)

|                                   |   |
|-----------------------------------|---|
| <b>Final Decision-Maker</b>       | Cabinet   |
| <b>Portfolio Holder(s)</b>        | Portfolio Holder for Finance and Governance                                   |
| <b>Lead Director</b>              | Lee Colyer, Director of Finance, Policy and Development (Section 151 Officer) |
| <b>Head of Service</b>            | Patricia Narebor, Head of Legal Partnership                                   |
| <b>Lead Officer/Report Author</b> | Keith Trowell, Senior Lawyer (Corporate Governance)                           |
| <b>Classification</b>             | Non-exempt  |
| <b>Wards affected</b>             | All   |

**This report makes the following recommendations to the final decision-maker:**

That the report be noted.

**This report relates to the following Five Year Plan Key Objectives:**

- A Confident Borough

The report contributes to providing value to our community by demonstrating that we are open, transparent and accountable.

### Timetable

| <b>Meeting</b>                              | <b>Date</b>  |
|---|--------------|
| Finance & Governance Cabinet Advisory Board | 29 May 2018  |
| Cabinet                                     | 21 June 2018 |

# Annual Report on the Use of the Regulation of Investigatory Powers Act (RIPA)

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This annual report provides details of the use of covert surveillance under the Regulation of Investigatory Powers Act by Tunbridge Wells Borough Council.
  - 1.2 The report will be published on the Council's website.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Regulation of Investigatory Powers Act (RIPA) was enacted in 2000 to regulate the manner in which certain public bodies may conduct surveillance and access a person's electronic communications and to ensure that the relevant investigatory powers are used in accordance with human rights. The provisions of the Act include:
  - the interception of communications;
  - the acquisition of communications data (e.g. billing data);
  - directed and intrusive surveillance (on residential premises/in private vehicles);
  - covert surveillance in the course of specific operations;
  - the use of covert human intelligence sources (agents, informants, undercover officers); and
  - access to encrypted data.
- 2.2 The revised Code of Practice for Covert Surveillance and Property Interference published by the Home Office in December 2014 states that as a general rule elected members of an authority should review the authority's use of RIPA and set the policy at least once a year.
- 2.3 The Council very rarely makes use of its RIPA powers and only in circumstances where the use is proportionate. In the last eight years, there has only been one RIPA application. This was authorised in March 2011 and related to a benefit fraud investigation that resulted in evidence leading to a conviction being passed to the Department for Work and Pensions. There have been no authorisations requested since then.
- 2.4 Prior to 2011, most authorisations were used to obtain evidence to support allegations of benefit fraud. Local RIPA authorisations (i.e. from the Council) no longer need to be sought for benefit investigations as evidence-gathering activities are now co-ordinated through a single national gateway (the National Anti-Fraud Network, or NAFN) therefore the total number of RIPA authorisations across local authorities is significantly reduced.

- 2.5 There is also increased awareness of the scope of RIPA and of the alternatives to covert surveillance as a result of training delivered to all investigating and authorising officers in recent years.
- 2.6 The Chief Executive is the person responsible for RIPA. He acts as the Senior Responsible Officer referred to in Part 3 of the revised Code of Practice. The Monitoring Officer maintains a register of authorisations applied for and granted and the Council's systems and procedures are overseen by the Head of Audit Partnership.
- 2.7 The Council receives regular inspections from the Investigatory Powers Commissioner's Office (IPCO). The most recent inspection was earlier this year with the Inspector's Report being issued on 31 January 2018. The Council takes account of the OSC's conclusions and recommendations when formulating and revising RIPA practice and policy. A RIPA policy is in the course of preparation and will be submitted to Cabinet for approval.
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### **3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 3.1 This is an annual report for Cabinet's information, in compliance with the Code of Practice for Covert Surveillance and Property Interference published by the Home Office.
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### **4. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 4.1 The report is for noting only.
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### **5. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 5.1 If the report is approved it will be published on the Council's website.
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### **6. CROSS-CUTTING ISSUES AND IMPLICATIONS**

| <b>Issue</b>                            | <b>Implications</b>   | <b>Sign-off<br/>(name of officer<br/>and date)</b>                    |
|---|---|---|
| <b>Legal</b> including Human Rights Act | This report meets the requirement to produce an annual report on the use of RIPA powers. The use of RIPA powers can result in a direct interference with a person's human rights. The Council must comply with its procedures and any authorisations must be proportionate in order to justify such interference. | Keith Trowell,<br>Senior Lawyer<br>(Corporate Governance)<br>29.03.18 |
| <b>Finance</b> and other resources      | It is necessary that a sufficient budget is available for RIPA training. There are no value-for-money considerations arising from this report other than  | Jane Fineman,<br>Head of Finance<br>and Procurement                   |

|                                       |  |  |
|---------------------------------------|--|--|
|                                       | to ensure that the Council is acting according to best practice.   | 10.05.18   |
| <b>Staffing establishment</b>         | No implications  | Nicky Carter,<br>Head of HR<br>10.5.18                             |
| <b>Risk management</b>                | There are some risks associated with RIPA, most notably reputational risks arising from possible adverse media coverage however, use of RIPA is now minimal and the Council can minimise the risk by ensuring that the use of RIPA is proportionate and appropriate. | Rich Clarke,<br>Shared Head of Audit<br>10.05.18                   |
| <b>Environment and sustainability</b> | No implications  | Gary Stevenson,<br>Head of Environment and Street Scene<br>10.5.18 |
| <b>Community safety</b>               | The appropriate use of RIPA can assist in the prevention and detection of crime in the Borough thereby demonstrating compliance with the duty under Section 17 of the Crime and Disorder Act 1998.   | Terry Hughes,<br>Community Safety Unit Manager<br>09.05.18         |
| <b>Health and Safety</b>              | No implications  | Mike Catling,<br>Health and Safety Advisor<br>10.05.18.            |
| <b>Health and wellbeing</b>           | No implications  |  |
| <b>Equalities</b>                     | No implications  |  |

## 7. BACKGROUND PAPERS

None