

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

For Management Board on 7 June 2022

Summary

Lead Member: Portfolio Holder for Finance and Governance

Lead Director: Lee Colyer, Director of Finance & Corporate Services (Section 151 Officer)

Head of Service: Claudette Valmond, Interim Head of Legal Partnership

Report Author: Gary Rowland, Senior Legal Adviser (Corporate Governance) and RIPA Co-ordinating Officer

Classification: Public document (non-exempt)

Wards Affected: All

Approval Timetable	Date
Management Board	19 May 2022
Finance and Governance Cabinet Advisory Board	7 June 2022
Cabinet	23 June 2022

Recommendations

Officer recommendations as supported by the Portfolio Holder:

1. That the report be noted by Finance and Governance Cabinet.

1. Introduction and Background

- 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.
- 1.3 The Regulation of Investigatory Powers Act (RIPA) was enacted in 2000 to regulate the way certain public bodies conduct surveillance and access a person's electronic communications and to ensure that the relevant investigatory powers are used in accordance with human rights. RIPA has been amended and repealed in part by the Investigatory Powers Act 2016. The provisions of RIPA that remain in force and have not been significantly amended include:
 - 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.
- 1.4 The revised Code of Practice for Covert Surveillance and Property Interference published by the Home Office in August 2018 states that as a general rule elected members of an authority should review the authority's use of RIPA once a year.
- 1.5 The Council very rarely makes use of its RIPA powers and would only do so in circumstances where the use is proportionate. No RIPA applications have been made or authorised since March 2011. The last authorisation 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.
- 1.6 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 all local authorities is significantly reduced.
- 1.7 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 RIPA Co-ordinating 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.

- 1.8 The Council continues to receive regular inspections from the Investigatory Powers Commissioner's Office (IPCO). The most recent inspection was carried out in March 2021. The Council takes account of IPCO's conclusions and recommendations when formulating and revising RIPA practice and policy. The RIPA policy was updated in February 2021 and is due for a further revision in February 2023. Refresher training was arranged and carried out in March 2021 by all Authorising Officers as recommended by IPCO. IPCO requires the Council to arrange for training to be carried out once in every three-year period so further training is not required until the last quarter of 2024.

2. Preferred Option and Reasons for Recommendations

- 2.1 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.

3. Consultation Results and Previous Committee Feedback

- 3.1 The report is for noting only.

4. Next Steps: Communication and Implementation of the Decision

- 4.1 If the report is approved, it will be published on the Council's website.

Recommendation from Cabinet Advisory Board

None.

5. Cross Cutting Issues

A. Legal (including the 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.

Gary Rowland, Senior Legal Adviser (Corporate Governance) 10 May 2022.

B. Finance 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 to ensure that the Council is acting according to best practice. Learning and Development are aware that training is required in 2024 and have set aside the necessary budget for this.

Jane Fineman, Head of Finance 10 May 2022.

C. Staffing

No implications.

Gary Rowland, Senior Legal Adviser (Corporate Governance) 10 May 2022.

D. Risk Management

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.

Gary Rowland, Senior Legal Adviser (Corporate Governance) 10 May 2022.

E. Environment and Sustainability

The appropriate and proportionate use of investigatory powers can assist with the effective investigation of envirocrimes, including incidents fly tipping.

Gary Stevenson, Head of Housing, Health and Environment 10 May 2022.

F. Community Safety

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, Community Safety Manager 10 May 2022.

G. Equalities

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.

Sarah Lavallie, Corporate Governance Officer 10 May 2022.

H. Data Protection

There are no specific privacy or data protection issues to address.

Gary Rowland, Senior Legal Adviser (Corporate Governance) 10 May 2022.

I. Health and Safety

No implications.

Mike Catling, Corporate Health and Safety Advisor 10 May 2022.

J. Health and Wellbeing

No implications.

Gary Stevenson, Head of Housing, Health and Environment 10 May 2022.