

**REVISED SURVEILLANCE AND COMMUNICATIONS DATA POLICY AND  
PROCEDURE OCTOBER 2019**

**AUDIT COMMITTEE  
MEETING DATE 10<sup>th</sup> OCTOBER 2019**

**CLASSIFICATION:**

**Open**

**If exempt, the reason will be listed in the  
main body of this report.**

**WARD(S) AFFECTED**

**All Wards**

**CORPORATE DIRECTOR**

**Ian Williams Group Director of Finance and Corporate Resources**

## **1. INTRODUCTION AND PURPOSE**

- 1.1 This report presents the revised corporate policy on the use of surveillance and communications data powers as authorised under the Regulation of Investigatory Powers Act (RIPA) 2000 and the newly enacted Investigatory Powers Act (IPA) 2016.
- 1.2 The use of RIPA has in the past been an area of interest in the national press and it is essential that when undertaking surveillance activities the Council ensures it is acting in line with legislative and regulatory requirements.
- 1.3 The Investigatory Powers Commissioners Office (IPCO) conducts an inspection approximately every two years of each public sector body entitled to undertake RIPA activities to ensure compliance. The last inspection of Hackney's compliance took place in 2017, at which point the Council was commended on the processes in place to manage surveillance activities.

## **2. RECOMMENDATION**

### **2.1 The Audit Committee is recommended to:**

**Approve the revised Corporate Surveillance and Communications Data Policy and Procedures attached as Appendix 1.**

## **3. REASONS FOR DECISION**

- 3.1 The Protection of Freedoms Act 2012 places a requirement on local authorities that elected members review their corporate RIPA policy to ensure the policy remains fit for purpose and that the use of the powers by the local authority complies with the legislation.

## **4. BACKGROUND**

The Regulation of Investigatory Powers Act 2000 (RIPA) was introduced to ensure that public bodies were accountable for surveillance activity undertaken in the course of their business. The use of surveillance by public bodies was permitted prior to the Act but was not regulated. IPCO (formerly the Office of the Surveillance Commissioners, OSC) carries out inspections to ensure public bodies are acting in accordance with the Act and the Code of Practice issued by the Home Office.

The Corporate Head of Audit, Anti-Fraud and Risk Management is the designated senior responsible officer in relation to the use of RIPA. This policy was last reviewed in April 2016, the following is a summary of the key changes within the revised policy at Appendix 1:

- Part 1, Section 1.10 – Guidance is provide on when access to social media records may constitute activity that is governable by RIPA. This follows a recommendation from the most recent IPCO inspection which was itself informed by greater use of this material on a national level;
- Part 3 - Communications Data – This part of the policy reflects the introduction of the Investigatory Powers Act (which was enacted in June 2019 and supplanted RIPA as the legislation to direct how and when communications data can be accessed). Requests for information are now via an online application process, with each application being subject to increased oversight by, and requiring approval from, the dedicated Office for Communications Data Authorisations (OCDA);
- Changes to the list of key RIPA officers to reflect updated structures and personnel who may have cause to use surveillance and communications data powers. The Council has adopted the guidance issued by the Home Office when considering the level of officers to be delegated to undertake this important role.

#### **4.1 Policy Context**

All investigation work is undertaken in compliance with relevant legislation and Council policy, including this Surveillance and Communications Data Policy and Procedure. Hackney has for many years considered RIPA surveillance to be a tool of last resort and there have not been any applications to use the powers for several years. Nevertheless, it is important to retain access to surveillance powers as a means to investigate serious crime when appropriate, and when other less intrusive forms of enquiry will not assist an investigation. Guidance regarding the IPA sets out that it should not be seen as a tool of last resort, and our application process follows that set out for all Local Authorities to ensure that the powers are used appropriately and with full official oversight. The Policy and Procedures are compatible with the Regulation of Investigatory Powers Act 2000 and The Investigatory Powers Act 2016.

#### **4.2 Equality Impact Assessment**

For the purposes of this report an Equality Impact Assessment is not applicable, although all investigation work is carried out in compliance with the Council's Equality policies.

#### **4.3 Sustainability**

Not applicable – This report contains no new impacts on the physical and social environment.

#### **4.4 Consultations**

The revised document has been reviewed by colleagues from Legal, Human Resources and Enforcement teams.

#### **4.5 Risk Assessment**

The risk of fraud exists in many of the activities undertaken by any local authority. The Surveillance and Communications Data Policy and Procedures help to ensure that all Hackney investigators are familiar with the tools that are available to them and how these must be used to comply with the law.

Surveillance activity of any sort can pose a risk to the reputation of the Council. This corporate approach adopts best practice, and has been recognised as such during previous inspections, whilst still enabling this important investigative tool to be used when necessary.

## **5. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

- 5.1 There are no financial implications arising from the recommendation to this report.
- 5.2 An effective investigation service is important to help ensure that public funds are used appropriately, to enable sanctions where suitable, and to deter fraudsters from targeting the Council.

## **6. COMMENTS OF THE DIRECTOR OF LEGAL**

- 6.1 The Accounts and Audit Regulations 2015 place obligations on the Council to ensure that its' financial management is adequate and effective and that it has a sound system of internal control which includes arrangements for management of risk. An adequate system of internal audit is inherent.
- 6.2 The Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 enable the Council to adopt techniques such as directed surveillance, covert human intelligence sources and acquisition of communications data to enable it to detect or prevent crime. The Codes of Practice relating to the Act require relevant authorities to put in place a policy, guidance and procedures relating to the application of the powers contained in the Act. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 brought into force on 1 November 2012 the Council's obligation to meet the requirements of the Protection of Freedoms Act (POFA). This Act introduces a requirement for local authorities to obtain judicial approval for the use of any one of their covert investigatory techniques currently available under RIPA (namely covert directed surveillance and CHIS).
- 6.3 The recommendation at paragraph 2.1 falls within the Audit Committee terms of reference relating to risk management.

## **APPENDICES**

Appendix 1 – Revised Surveillance and Communications Data Policy and Procedures

## **BACKGROUND PAPERS**

None

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