

**Manchester City Council
Report for Resolution**

Report to: Executive – 17 January 2024

Subject: Revision to the Council’s Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 Corporate Policy And Procedures

Report of: City Solicitor

Summary

To seek the approval of the Executive to revisions to the Council’s Regulation of Investigatory Powers Act 2000 (‘RIPA’) and the Investigatory Powers Act 2016 (‘IPA’) Corporate Policy and Procedures.

To advise the Executive on the Council’s use of RIPA between 1 July 2018 and 30 June 2023.

Recommendations

The Executive is recommended to:

- (1) Approve the revisions to the Council’s Regulation of Investigatory Powers Act 2000 (‘RIPA’) and the Investigatory Powers Act 2016 (‘IPA’) Corporate Policy and Procedures.
 - (2) Note the information in paragraph 3.7 of this report regarding the Council’s use of RIPA for the period 1 July 2018 to 30 June 2023.
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Wards Affected: All

Environmental Impact Assessment -the impact of the issues addressed in this report on achieving the zero-carbon target for the city	None
Equality, Diversity and Inclusion - the impact of the issues addressed in this report in meeting our Public Sector Equality Duty and broader equality commitments	Any Equality, Diversity and Inclusion issues have been addressed in the Report.

Manchester Strategy outcomes	Summary of how this report aligns to the Our Manchester Strategy/Contribution to the Strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	Non directly applicable
A highly skilled city: world class and home grown talent sustaining the city's economic success	Non directly applicable
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	Non directly applicable
A liveable and low carbon city: a destination of choice to live, visit, work	Non directly applicable
A connected city: world class infrastructure and connectivity to drive growth	Non directly applicable

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

Non directly.

Financial Consequences – Capital

Non directly.

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy, please contact one of the contact officers above.

Regulation of Investigatory Powers Act 2000 (RIPA) Corporate Policy and Procedures dated March 2019.

1.0 Introduction

- 1.1 This report asks the Executive to consider and approve the revised Policy and Procedures regarding the use of the powers available to the Council under the RIPA and the IPA. It also informs the Executive about the Council's use of the RIPA powers available to it.
- 1.2 The proposed revisions are to update the Council's existing Corporate Policy and Procedures only. There is no change to the Council's approach to use of the powers available to it under the RIPA and the IPA. However, the existing Policy and Procedures are not fully compliant with current legislative requirements which the revisions are intended to rectify.
- 1.3 The Council only very rarely uses the powers available to it, but it still needs to have a robust and up to date Policy in place which officers can follow should the need arise. If the Council's Policy is not fully compliant with current legislative requirements this may lead to the Council not meeting its statutory obligations, exceeding its powers and placing it at risk of legal challenge with its attendant reputational and financial consequences.

2.0 Background

- 2.1 The Executive last received a report about the RIPA Corporate Policy and Procedures on 13 March 2019. The current Policy and Procedures state that every year Members through the Executive should be asked to review their content for the period in question and to recommend any changes to that content. Members should also be provided with an annual update on the Council's use of the RIPA powers available to it. The delay in bringing a report to the Executive on this matter initially resulted from the covid pandemic but was then unfortunately due to an oversight. The Executive is advised that steps have been taken to ensure that going forward reports will be received in accordance with the requirement in the Policy and Procedures. The City Solicitor has recently reviewed the current Corporate Policy and Procedures in light of their operation and the date they were last revised.

3.0 Main issues

- 3.1 RIPA and the IPA put a regulatory framework around a range of investigatory powers used by local authorities. This is done to ensure the powers are used lawfully and in a way that is compatible with Article 8 of the European Convention on Human Rights which governs an individual's right to respect for their private and family life, home and correspondence. Any interference with that right must be necessary, proportionate and in accordance with the law. If these requirements are not met any investigation undertaken that interfered with this right would be unlawful.
- 3.2 RIPA and the IPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist in the prevention and detection of crime in relation to an authority's core functions. RIPA surveillance can therefore be used for example in relation to fly tipping, food

related offences, benefit fraud, trading standards offences including the sale of counterfeit goods and some test purchases as well as health and safety.

3.3 There are three separate investigatory powers available to the Council two under RIPA:

- Covert directed surveillance – which includes covert surveillance in public areas (not including residential premises or private vehicles which is never permissible) which is likely to result in the obtaining of private information.
- Use of covert human intelligence sources ('CHIS') – this includes undercover officers, public informants and people making test purchases (for example, relevant in trading standards cases).

And the third under the IPA:

- Obtaining communications data from telecommunications providers – this includes service use or subscriber information (but not the content).

3.4 Before the Council may undertake covert surveillance under RIPA, there are various criteria which must be met including only carrying out covert surveillance where the criminal offence under investigation ordinarily carries a term of imprisonment of 6 months or more, its use is authorised internally by a senior officer and the external approval of the application by a Magistrate. For surveillance required under the IPA authorisations involve scrutiny by the National Anti-Fraud Network and are granted by the Office for Communications Data Authorisations a national body who act on behalf of the Council. The information obtained as a result of surveillance operations or acquired from telecommunications providers can be relied on in court proceedings providing RIPA or the IPA is complied with.

3.5 The Investigatory Powers Commissioner's Office ('the IPCO') is responsible for the inspection of public authorities with regard to compliance with RIPA. Inspections take place periodically and focus on RIPA policies, procedures, and practice. Since the Executive last received a report about the Corporate Policies and Procedures the Council has been subject to two inspections by the IPCO in April 2019 and April 2022 respectively. In both cases no formal recommendations were made by the Inspector who reviewed the Council's use of RIPA.

3.6 The Council's Corporate Policy and Procedures were last reviewed in March 2019. The Corporate Policy and Procedures are being further revised to ensure it is up to date with current legislation and compliant with relevant Home Office Codes of Practice. The revised Corporate Policy and Procedures are attached as an Appendix to this Report and the proposed changes are highlighted in bold. The views of the Executive are sought regarding the revisions.

3.7 The Home Office Covert Surveillance and Property Interference Code of Practice requires local authorities to involve elected members in strategic oversight of RIPA including setting the relevant Policy and considering reports

on its use by the Council. The Executive is advised that between 1 July 2018 and 30 June 2023 the Council has used covert directed surveillance once in 2021. It is confirmed that although the Council's Corporate Policy and Procedures had last been updated in 2019 the powers used in 2021 were in line with the relevant legislation in force at that time. This surveillance related to a Trading Standards investigation into the sale of counterfeit goods at a number of addresses in the Council's area. The operation resulted in valuable evidence being obtained which was subsequently used to obtain closure orders in respect of two of the addresses in question. Closure orders are obtained to close a premises in order to prevent nuisance or disorder occurring.

- 3.8 In January 2022 external refresher training on the use of RIPA and the IPA was arranged for the Council's Authorising Officers/ Approved Rank Officers. The training was also arranged for relevant officers from service areas most likely to use or advise on RIPA or the IPA, in line with the Council's Corporate Policy and Procedures. Further training will be arranged in due course.

4.0 Recommendations

- 4.1 The recommendations are set out at the front of this report.