

**1<sup>st</sup> February 2018**

**To the Chair and Members of the  
AUDIT COMMITTEE**

**COVERT SURVEILLANCE - REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)  
UPDATE**

**EXECUTIVE SUMMARY**

- 1.1 The Council occasionally has a need to conduct covert surveillance in the investigation of matters for which it has responsibility to prosecute or for other authorised intelligence gathering. On such occasions, the Regulation of Investigatory Powers Act 2000 (RIPA) regulates how covert surveillance is undertaken. The Home Office statutory Codes of Practice recommend that best practice is for Councillors to be involved in oversight of covert surveillance policy and usage.
- 1.2 At its meeting held on 27th July 2010, Audit Committee agreed that it should receive reports reviewing the Councils use of RIPA. As agreed in 2014, these reports are brought on a six monthly reports basis due to the limited number of covert surveillances taking place. A yearly report and a six monthly update report are brought each year, this is the update report.

**RECOMMENDATIONS**

2. To note that 1 RIPA application has been authorised since the last report in June 2017, details are attached at Appendix 1. No RIPA applications have been refused by the Magistrates.
3. To note that all those who were required to do the online RIPA training have done so, following the recommendation of the Audit Committee in November 2016. A refresher internal half day course took place on 20<sup>th</sup> July 2017 for those officers regularly involved in covert surveillance.
4. To note that the Council has carried out its first Non-RIPA covert surveillance and a process for this is attached at Appendix 2.

## WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

5. RIPA policies and procedures ensure that the Council has appropriate arrangements in place to comply with the law relating to RIPA authorisations and Covert Surveillance and that it is properly and lawfully carrying out covert surveillance where it is required.

## BACKGROUND

6. The Regulation of Investigatory Powers Act 2000 was introduced in response to The Human Rights Act 1998 to ensure that Local Authorities could continue lawfully to carry out Covert Surveillance. The Government also set up the Office of Surveillance Commissioners who regularly inspects Local Authorities. From 1<sup>st</sup> September 2017 the Office of Surveillance Commissioners has been transferred to the Investigatory Powers Commissioner's Office. The Council has been subjected to five inspections namely, 2003, 2004, 2009, 2012 and most recently in January 2016.
7. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 came into force on 1<sup>st</sup> November 2012. This provides that directed surveillance can only be authorised under RIPA where the criminal offence sought to be prevented or detected is punishable by a maximum of at least 6 months imprisonment or would constitute an offence involving sale of tobacco or alcohol to underage children.
8. The Protection of Freedoms Act 2012 also requires Local Authorities to have all their RIPA surveillance authorisations (both directed and Covert Human Intelligence Sources (CHIS) ) approved by a Magistrate before they take effect.
9. Appendix 1 details the covert surveillance authorisation since the last report in April 2016 and an update on earlier authorisation outcomes from recently completed matters. Where an authorised surveillance involves a number of premises this is now detailed in the Appendix.
10. A recommendation from the Surveillance Commissioners Inspection on 5<sup>th</sup> January 2016 was to arrange a training programme to improve RIPA knowledge. An external trainer with expertise in the field provided training on the 7<sup>th</sup> April 2016 for those within the Council whose work regularly involves RIPA. A refresher internal course for those officers regularly involved in RIPA was provided on 20<sup>th</sup> July 2017. An online RIPA course is now live on the training portal. Following a recommendation from the Audit Committee on 17<sup>th</sup> November 2016 that all managers should complete the RIPA training course, a group of managers and teams were identified and the process was completed to make this training compulsory. These officers have now all completed the course. Audit Committee members have also completed the course. It should be noted that only a very limited number of departments within the Council are involved in covert surveillance activities.
11. In November 2016, the Council undertook test purchases for fireworks using a non-RIPA authorisation process as the maximum penalty for selling fireworks to under aged children is outside the scope of a directed surveillance authorisation. The under age selling offence is now within the Pyrotechnic Articles (Safety) Regs. 2015 (SI 2015/1553), the penalty for which is a fine (there is no standard scale level specified)

and/or 3 months imprisonment. As such it does not meet the threshold for RIPA authorisation process of 6 months imprisonment or offences involving sale of tobacco and alcohol to underage children. Since 2015, the trading standards service has not carried out test purchasing of fireworks and has instead with its partners carried out proactive inspection and patrols. This has not had the desired effect and the police and Neighbourhood teams were still seeing instances of anti-social behaviour by children involving fireworks. It was felt by all partners that a proactive intelligence led test purchase programme alongside patrols and inspections over the period will act as deterrent to sales and reduce the incidences of underage sales. The surveillance was in place for a month from 26.10.17 and the outcome of this covert surveillance was that the Trading Standards carried out 12 targeted firework underage sales and all attempted purchases were refused. Such cases are likely to happen infrequently nevertheless it is best practice that such cases are subject to a written process, which is set out for members' information at Appendix 2

## OPTIONS CONSIDERED

12. Failing to follow the revised recommendations of the RIPA Code of Practice with regard to members seeing the reports would lead to criticism at the next inspection by the Office of Surveillance Commissioners.
13. Failing to follow the recommendations of the Inspection Report would leave the Authority open to criticism.

## REASONS FOR RECOMMENDED OPTION

14. This will ensure that we are properly and lawfully carrying out covert surveillance where it is necessary

## IMPACT ON THE COUNCIL'S KEY OUTCOMES

15.

	<b>Outcomes</b>	<b>Implications</b>
	Working with our partners we will provide strong leadership and governance.	The work undertaken by the Audit Committee helps to ensure that the systems of covert surveillance used by the Council are overseen ensuring good governance arrangements and compliance with the law and statutory codes.

## **RISKS AND ASSUMPTIONS**

16. Failing to follow the Law, Regulations and Inspection report will put us at risk of criticism at the next inspection by the Surveillance Commissioners.

## **LEGAL IMPLICATIONS**

17. The Regulation of Investigatory Powers Act 2000 provides Local Authorities with the mechanism in which they can carry out covert surveillance without breaching individuals' human rights under Article 8 of the Human Rights Act 2000. Failure to follow the law, statutory codes and the inspection report could be the subject of a challenge in court proceedings where RIPA powers were relied upon and also would lead to criticism at the next inspection by the Surveillance Commissioner. The Covert Surveillance and Covert Human Intelligence Source codes of practice provide that 'elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on use of the 2000 Act on a regular basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose.'
18. In 2012 the Regulation of Investigatory Powers Act 2000 (RIPA) was amended so as to provide that a local authority Authorising Officers may not authorise directed Surveillance unless it is for the purpose of preventing or detecting a criminal offence and it meets the conditions that it is a criminal offence which is sought to be prevented or detected is punishable by a maximum term of at least 6 months of imprisonment, or would constitute an offence under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933 (offences involving sale of tobacco and alcohol to underage children).
19. RIPA is there to ensure that certain types of covert surveillance undertaken by public authorities is done in such a way as is human rights compliant. RIPA is permissive legislation. Authorisation under RIPA affords a public authority a defence that the activity is lawful for all purposes. However, failure to obtain an authorisation does not make covert surveillance unlawful. Section 80 of RIPA states local authorities will still be able use covert surveillance for such purposes as long as it is necessary and proportionate in accordance with Article 8 of the European Convention on Human Rights (right to privacy). To ensure a Non RIPA process is lawful it is important that it is only carried out in accordance with a proper process, as set out in Appendix 2,. Such a process will only be used in exceptional circumstances and where necessary and proportionate. There will be a requirement in all such cases for a paper audit trail

## **FINANCIAL IMPLICATIONS**

20. There are no specific implications due to the recommendations of this report. Where Covert Surveillance is used the costs are met from within individual service budgets.

## **HUMAN RESOURCES IMPLICATIONS**

21. There are no human resources implications arising directly from the report.

## **TECHNOLOGY IMPLICATIONS**

22. There are no technology implications arising directly from the report.

## **EQUALITY IMPLICATIONS**

23. Decision makers must consider the Council's duties under the Public Sector Equality Duty at s149 of the Equality Act 2010. The duty requires the Council, when exercising its functions, to have 'Due Regard' to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. There are no specific equality implications arising directly from this report.

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