



Doncaster Council

Date: 21st June 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 Council's 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 yearly report.

RECOMMENDATIONS

3. To note that 3 RIPA applications have been authorised since the last report in January 2018, details are attached at Appendix 1. No RIPA applications have been refused by the Magistrates.
4. To approve the Council's RIPA procedure, attached at Appendix 2. There have been no amendments since the last approval in June 2017.
5. To note the proposal for the Monitoring Officer to email Directors, Assistant Directors and Heads of Service concerning RIPA and particularly when using social media for intelligence may become covert surveillance.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

6. 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

7. 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. The Office of Surveillance Commissioners has now become part of 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.
8. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 came into force on 1st 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.
9. 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.
10. Appendix 1 details the covert surveillance authorisations since the last report in January 2018 and an update on an earlier authorisation outcome from a recently completed matter. Where an authorised surveillance involves a number of premises this is now detailed in the Appendix.
11. The Council's RIPA procedure is reviewed as part of the yearly report. The Procedure was last amended in response to the Surveillance Commissioner's Inspection on 5th January 2016 and approved at Audit Committee in April 2016. The current procedure is attached at Appendix 2.
The report of the Surveillance Commissioner for 2016-2017 highlighted the challenges of social media. The extracts from the report provide:

'4.3 The steady expansion in the use of the social media and Internet for the purposes of investigative work provides a striking example of a potential new problem which came to light through the inspection system. Local authority officials, vested with burdensome responsibilities for, among others, the care of children and vulnerable adults, are, like everyone else, permitted to look at whatever material an individual may have chosen to put into the public domain. This is entirely lawful, and requires no authorisation. However, repeated visits to individual sites may develop into activity which, if it is to continue lawfully, would require appropriate authorisation. Local authorities must therefore put in place arrangements for training officials into a high level of awareness of these risks. Without the inspection process this problem might never have been identified.'

15.2 When individuals choose to go public or advertise themselves, they cannot normally complain that those who look at their social media sites are disregarding their rights to privacy. However if the study of an individual site becomes persistent, issues under the legislation may arise'

Surveillance involving social media is specifically dealt with in section 22 of our RIPA Procedure and does remain part of the training programme. In 2015 all Directors, Assistant Directors and Heads of Service were emailed concerning RIPA and social media. Given it is three years since this email was sent it would seem to be appropriate to now repeat this and for the Monitoring Officer to again email

Leadership to highlight the need for consideration of the covert surveillance requirements where social media is repeatedly used for monitoring an individual.

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 Investigatory Powers Commissioner’s Office.
- 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.

	Outcomes	Implications
	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 [Officer Initials KDW ... Date 9.5.18.....]

- 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 Investigatory Powers Commissioner’s Office. 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).

FINANCIAL IMPLICATIONS [Officer Initials...LR... Date...25/05/2018.....]

19. There are no specific financial implications associated with this report.

HUMAN RESOURCES IMPLICATIONS [Officer Initials...MLV Date 25/05/18]

20. The annual PDR process should identify any officers who require training to ensure understanding of RIPA and the correct application within the context of their duties and responsibilities. This requirement will not apply to all officers but will be relevant dependent upon the nature of the role. It is important to ensure that timely communications with reminders or updates are provided to officers whose work must give consideration to RIPA.

TECHNOLOGY IMPLICATIONS [Officer Initials...PW Date...30/05/18]

21. There are no technology implications in relation to this decision

HEALTH IMPLICATIONS [Officer Initials JM Date: 29.05.18]

22. Public Health is in support of this recommendation in order to prevent and / or detect crime and prevent disorder. This recommendation is in the interests of public safety and protection of the health or the public. This in turn could reduce admissions to A&E.

EQUALITY IMPLICATIONS [Officer Initials...KDW... Date...9.5.18.....]

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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