



Doncaster Council

31st January 2019

**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 utilise covert methods in the investigation of matters for the purposes of detecting and preventing particular crimes. On such occasions, the Regulation of Investigatory Powers Act 2000 (RIPA) provides a mechanism to make it lawful for public authorities to use directed (i.e. covert) surveillance and covert human intelligence sources ("CHIS") e.g. undercover officers and informants. The Council has a RIPA Policy and Procedures that govern the use of those powers. In addition, the Home Office issues statutory codes of practice on the use of RIPA powers that must be complied with, including requiring elected members to have oversight of the use of RIPA powers and to agree the RIPA Policy/Procedures on an annual basis.
- 1.2 At its meeting held on 27th July 2010, the Audit Committee agreed it should receive reports reviewing the Council's use of RIPA. These reports are brought on a six monthly basis due to the Council's limited use of the RIPA powers. The Home Office issued revised codes of practice in August 2018 and it is appropriate that the Council now amends its RIPA policy and related procedures and the Non RIPA Policy at this point.

RECOMMENDATIONS

3. To note that the Council has had one RIPA directed application authorised since the last report to the Audit Committee on the 21st June 2018 and this and updates on recent authorisations are detailed at Appendix 3.
4. To approve the Council's revised RIPA Policy and Procedure, attached at Appendix 1, and the Council's Non RIPA Procedure, attached at appendix 2 which have been amended in compliance with the latest Home Office codes of practice.

5. To note that further training will be provided to relevant officers on the amendments to the Home Office codes of practice.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

6. A RIPA policy and procedures that are fit for purpose assist in ensuring that the Council has appropriate arrangements in place to comply with the law relating to RIPA authorisations, and ensure that it only makes use of those powers where it is necessary and proportionate to do so.

BACKGROUND

7. RIPA 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 ("IPC"). The Council has been subjected to five inspections namely in, 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. Details of the one authorisation since the last report to the Audit Committee on the 21st June 2018 are detailed at Appendix 3.
11. The Council's RIPA policy and procedures are reviewed and re-set as part of an annual report and this was last done by the Audit Committee on the 21st June 2018. However, in August 2018, the Home Office issued revised codes of practice in relation to the use of RIPA powers, which requires amendments to be made to the Council's RIPA policy and related procedures at this point. The Non RIPA policy was approved by Audit Committee in February 2018. RIPA ensures that certain types of covert surveillance undertaken by public authorities is undertaken in such a way as is human rights compliant. However, RIPA is permissive legislation and does not prevent covert surveillance being undertaken outside the limited scope of RIPA e.g. to investigate underage firework sales. 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, which is used only in exceptional circumstances where necessary and proportionate to do so, and a paper audit trail exists.

12. The proposed amended policy and procedures are attached at Appendix 1 and 2. Those documents are now compliant with the new codes of practice and an outline of the key amendments made are as follows:
- (i) Details of the new statutory requirements to self-report relevant errors to the IPC as soon as reasonably practicable and in any event within 10 working days, and to have thorough procedures in place to comply with these requirements. A relevant error would include carrying out directed surveillance without an appropriate authorisation, or failing to properly handle the product of such surveillance. A serious error is a relevant error that the IPC conclude has caused significant prejudice or harm to the person(s) concerned. If the IPC determines that there has been a serious error, they may decide it is in the public interest for the person(s) concerned to be informed of the error and any rights they may have to complain to the Investigatory Powers Tribunal (see paragraph 26 of the revised policy).
 - (ii) Clarification about safeguards relating to the dissemination, copying, storage, retention and the destruction of private information obtained through the use of RIPA powers (see paragraphs 19 and 20 of the revised policy).
 - (iii) Further explanation of collateral intrusion (see paragraph 8.1 of the revised policy).
 - (iv) A new section explaining the requirement to present the circumstances in an application in a fair and balanced way (see paragraph 8.5 of the revised policy).
 - (v) Further detail regarding the requirements to carry out regular reviews of authorisations and on renewals of authorisations (see paragraphs 9.1 and 9.3 of the revised policy).
 - (vi) Expanded guidance on confidential material (e.g. medical records, confidential journalistic material or confidential discussions between MPs and their constituents), or legally privileged material (see paragraph 20 of the revised policy).
 - (vii) Further clarification around the use of social media as an investigative tool (see paragraph 17 of the revised policy).
 - (viii) A new section on the use of drones for surveillance purposes (see paragraph 18 of the revised policy).
 - (ix) An amended section on the oversight role of the IPC and their access to documentation and systems to fulfil their role (see paragraph 27 of the revised policy).
 - (x) The Non RIPA Procedure has also been amended at section 4.5 to explicitly include as grounds of authorisation the safeguarding of children or vulnerable adults, alongside preventing or detecting crime or disorder.
13. Further training on RIPA and the changes introduced by the revised Home Office codes of practice is to be provided to relevant Council officers.

OPTIONS CONSIDERED

14. The Home Office has issued revised Codes of Practice on the use of RIPA powers which must be complied with. Therefore, the only option considered is the revision of the Council's RIPA Policy and Procedures in compliance with the codes of practice.

REASONS FOR RECOMMENDED OPTION

15. This will ensure that the Council has fit for purpose arrangements in place to comply with the law relating to RIPA authorisations, and ensure that it only makes use of those powers where it is necessary and proportionate to do so.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

16.

	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 for RIPA powers used by the Council are overseen ensuring good governance arrangements and compliance with the law and statutory codes of practice.

RISKS AND ASSUMPTIONS

17. Failing to have a fit for purpose RIPA Policy and Procedures compliant with statutory codes of practice will put the Council at risk of acting unlawfully, having evidence ruled inadmissible in prosecution proceedings, facing complaints to the Investigatory Powers Tribunal and receiving criticism at the next inspection by the IPC.

LEGAL IMPLICATIONS [Officer Initials NC Date 11.1.19]

18. RIPA 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 of practice and 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 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. However, this should be done more frequently where there has been any significant changes in the law or statutory codes of practice in the intervening period. 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.

FINANCIAL IMPLICATIONS [Officer Initials AT Date 11/1/19]

19. There are no specific implications associated with this report. Any costs to implement the amendments and training will be met from existing budgets.

HUMAN RESOURCES IMPLICATIONS [Officer Initials RH Date 11.01.19]

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 11.1.19]

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

HEALTH IMPLICATIONS [Officer Initials RS Date 10.1.19]

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...NC... Date...11.1.19.....]

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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