



# Doncaster Council

**Date: 19<sup>th</sup> June 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 27<sup>th</sup> 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. A yearly report and a six monthly update report are brought each year; this is the yearly report.
- 1.3 This report also provides details on the outcome of the inspection undertaken by the Investigatory Powers Commissioner's Office on the 25<sup>th</sup> March 2019, and the action required as a result of that inspection.

### **RECOMMENDATIONS**

3. To note that the Council has had 3 directed surveillance applications authorised under RIPA since the last report to the Audit Committee on the 31<sup>st</sup> January 2019.
4. To note the positive outcome and recommendations of the Investigatory Powers Commissioner's Inspection of Doncaster Council on 25<sup>th</sup> March 2019. The report is attached at Appendix 1.

- To approve the minor amendments to the Council's RIPA Procedure, attached at Appendix 2, following the Inspection recommendations.

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

- 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**

- 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 six inspections namely in, 2003, 2004, 2009, 2012, 2016 and March 2019.
- 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.
- 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.
- Details of the three authorisations since the last report to the Audit Committee are:

Date:	Reference:	Details:	Authorising officer:
March 2019	URN 111	Illegal product sales	Chief Trading standards officer
May 2019	URN 112	Illegal product sales	Chief Trading standards officer
May 2019	URN 113	Illegal product sales	Chief Trading standards officer

The matters are ongoing so there is no further detail to provide at present.

- The Council was inspected by IPC on 25<sup>th</sup> March 2019. The inspection report was very positive and concluded: 'The Council deserves considerable credit for attaining high standards of compliance. The recommendations

from the 2016 inspection have been discharged and the extensive training programme has certainly reaped dividends in terms of the overall quality of the applications and authorisations. The Council enjoys a good relationship with the Magistrates' Court and no significant delays in securing the magistrates' approval were identified. There is one recommendation from this inspection relating to minor revisions of the RIPA policy document and another relating to considerations of collateral intrusion at reviews. Both can be easily addressed.' With regard to the procedure and policy the report at section 5.1.2 states: 'It is a comprehensive and well written document supplemented by a Policy Statement'.

12. The two recommendations were to:
  - i) amend the RIPA Procedures document; and
  - ii) ensure proper consideration should be given to collateral intrusion at reviews.
  
13. With regard to the first recommendation, the revised RIPA Procedure is attached at Appendix 2 with the following amendments:
  - i) The table on page 8 has been amended to so it is clear that test purchases are covert and require directed authorisation where a hidden camera is used and the reference to other test purposes has been removed to avoid confusion.
  - ii) Sections 8.8 and 14.8 currently state: *Authorisations can be renewed in writing when the maximum period has expired* and this has been amended to read: *'shortly before the maximum period has expired.'*
  - iii) Section 13.9 prescribes monthly reviews for CHIS authorisations and to comply with the Code, this has been amended to stipulate that reviews should be undertaken as frequently as is considered necessary and proportionate by the authorising officer.
  
14. With regard to the second recommendation, to ensure proper consideration of collateral intrusion at the review of authorisations, a guidance note has been included in the review form to prompt the authorising officer with regard to this.
  
15. The inspectors made some minor observations, which have also been implemented. These were:
  - i) on the review form, substitute the reference to the 'reviewing officer' with 'authorising officer'; and
  - ii) cancellations should include the authorising officer's directions in respect of the management of the surveillance product.
  
16. Before the inspection, trading standards and relevant enforcement officers did receive their comprehensive annual RIPA update training by Legal Services on the 14<sup>th</sup> March 2019.

## **OPTIONS CONSIDERED**

14. The IPC is the government appointed regulator in relation to the Council's use of RIPA powers. Therefore, the only option considered is the revision of the Council's RIPA Policy and Procedures in compliance with the inspector's recommendations.

## 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.

	<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 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: 8.5.2019]

18. RIPA provides Local Authorities with the mechanism by 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 and statutory codes of practice 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/statutory codes of practice, or recommendations made by the IPC 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 SEF 16.05.19]

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 22.5.19]

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.

#### **HEALTH IMPLICATIONS [Officer Initials HC Date: 21.05.2019]**

21. 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.

#### **EQUALITY IMPLICATIONS [Officer Initials NC Date 8.5.19.]**

22. 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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