



Doncaster Council

Date: 30th January 2020

**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. A yearly report and a six monthly update report are brought each year; this is the six monthly update report.

RECOMMENDATIONS

2. To note that the Council has had no directed surveillance applications authorised under RIPA since the last report to the Audit Committee on the 19th June 2019. However work under three previous authorisations has been completed since the last Committee and an update on the outcomes are attached below.
3. To note that in accordance with the Council's revised RIPA procedures an error report was made to the Investigatory Powers Commissioner's Office ("IPCO") relating to a potential unauthorised use of CHIS. IPCO confirmed they were content with the action taken by the Council to deal with the potential breach.
4. To note that we have completed 4 training sessions to the Enforcement officers covering 64 staff in 2019.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

BACKGROUND

5. 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 ("IPCO"). The Council has been subjected to six inspections namely in, 2003, 2004, 2009, 2012, 2016 and March 2019.
6. 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.
7. 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.
8. Details of the outcomes from work completed under authorisations are attached. Since the last report to the Audit Committee are:

Date:	Reference:	Details:	Outcome
March 2019	URN 111	Illegal product sales (7 premises)	<ol style="list-style-type: none"> 1. Investigative stage: 2 prosecutions 2. Premise closed 3. Prosecution x 2 4. Prosecution x 4; Caution x 1; Warning x 1 5. No action required 6. No action required 7. Prosecution x 1 Prosecution x 4; Caution x 1; Warning x 1.
May 2019	URN 112	Illegal product sales (9 premises)	Nine premises were put under surveillance: <ol style="list-style-type: none"> 1) Test purchase made –

			<p>warning letter</p> <p>2) Seizure made – on going investigation</p> <p>3) Test purchases and seizures made - on going investigation</p> <p>4) Test purchases made – prosecutions</p> <p>5) Test purchases and seizures made - on going investigation</p> <p>6) Test purchases and seizures made - on going investigation</p> <p>7) Seizure made – warning letter</p> <p>8) Test purchase made – warning letter</p> <p>Test purchase made – prosecution process underway</p>
May 2019	URN 113	Illegal product sales (2 premises)	<p>Two premises were put under surveillance.</p> <p>1) No illegal activity was seen – no further action</p> <p>Search of the premises made and tobacco seized – warning letter sent</p>

9. Since the last report to this Committee, a report of activity was brought to the Council's RIPA Co-ordinator. In the view of the RIPA Coordinator the activity constituted potential use of CHIS without authorisation. Therefore In line with the statutory duty on the Council, this matter was reported to IPCO. This matter was also the subject of an investigation by the Council's Internal Audit Service. The Audit report concluded that there had been one occasion of a CHIS situation without any appropriate authority. This was attributed to a number of factors including a lack of RIPA training for the officer in question and the inappropriate use of multiple text messages to communicate with members of the public. In addition, the investigation highlighted that the spans of control in 1 area were too wide leading to missed opportunities for managers to notice and prevent a breach of RIPA.

In order to prevent a recurrence of this issue, the following steps were agreed:

- (i) 64 members of staff have been provided with mandatory RIPA training by Legal Services. In particular, the training reflects on the issues that have arisen in relation to CHIS in this matter and equips officers with the knowledge to avoid a breach of RIPA. A small number of remaining officers who were unable to attend the training course will be trained on the 6th December 2019. In addition, all the officers are required to complete the Council's online RIPA training.
- (ii) The use of multiple text messages to communicate with members of the public has ceased.
- (iii) A procedure has been agreed for the use of unsolicited/anonymous information.
- (iv) The structure of the team in question is to be reviewed to ensure appropriate supervision of officers.

The Internal Audit investigation concluded that any information received in this matter has been destroyed. IPCO have confirmed that they are content with the action taken by the Council to deal with the matter.

OPTIONS CONSIDERED

10. There are no alternatives considered.

REASONS FOR RECOMMENDED OPTION

11. The update assists in ensuring 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

12.

	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

13. 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 IPCO. This will cause reputational damage to the organisation

LEGAL IMPLICATIONS [Officer Initials NC Date: 5.12.2019]

14. 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. RIPA requires the Council to report any relevant errors in the use of any surveillance powers to IPCO and to set out steps taken to avoid a recurrence of the error.

The Covert Surveillance and Covert Human Intelligence Source Codes of Practice provide that elected members should consider internal reports on use of RIPA 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 ST 19.12.19]

15. 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 03.1.20]

16. 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]

17. 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.]

18. 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.

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

19.

RIPA: Regulation of Investigatory Powers Act 2000

CHIS: Covert Human Intelligence Source

IPCO: Investigatory Powers Commissioner's Office

PDR: Personal Development Review

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