



# Doncaster Council

**Date: 28<sup>th</sup> July 2022**

**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. For several years, this power has been utilised by trading standards in the use of covert recordings for test purchases of illicit and counterfeit products such as alcohol, tobacco and branded goods, or for underage sales. The recording negates the need for a witness to attend court or can provide evidence in the event there is a dispute over the sale. 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.

### **RECOMMENDATIONS**

2. To note that the Council has had one surveillance application authorised under RIPA since the last report to the Audit Committee on the 26<sup>th</sup> January 2022.
3. To note that the Investigatory Powers Commissioner's Office has carried out a remote inspection on 14<sup>th</sup> April 2022. The report dated 26<sup>th</sup> April 2022

states 'Your authority has been found to be in a good place' with no recommendations necessary.

4. To note that there are no changes proposed to the Council's RIPA policy and procedure. The last minor amendments were approved by the Committee in June 2019 following the Investigatory Powers Commissioner's Inspection recommendations and the recent inspection made no recommendations for changes.

## **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. 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 subsequently became 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.
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 the 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. Trading Standards regularly use directed surveillance for the purpose of their investigations, particularly to undertake test purchasing and subsequent monitoring of suspects and premises to determine methods of sale and supply, frequency of supply, identity of associates, and gathering evidence for enforcement action. One RIPA authorisation was authorised by Magistrates in March 2022 concerning illicit sales at 8 premises. The test purchase operation has confirmed that 5 out of the 8 premises are selling illicit tobacco products in contravention of legislation and appropriate enforcement action will be taken.
10. The Investigatory Powers Commissioner's Office has carried out a remote inspection of the Council in April 2022. Copies of our policies, Audit Committee reports, recent authorisations and training details had been provided to the Inspector for his consideration in advance. A video call on 14th April 2022 took place between the Inspector, Scott Fawcus, Assistant Director Legal & Democratic Services and Helen Potts, Principal Legal

Officer. The inspection report dated 26th April 2022 states 'Your authority has been found to be in a good place' with no recommendations necessary. The previous inspection had taken place on 25th March 2019 and this inspection confirmed the recommendations made then have been discharged. The Inspection report also made the following comments:

- 'Five authorisations for directed surveillance have been undertaken since the last inspection. Authorisations viewed were well constructed and cited relevant intelligence cases, with the authorising officers each giving specific attention to the statutory considerations and clearly identifying which covert tactics had been authorised.
- Training has been undertaken, even during the current pandemic, with online training modules utilised. More focused training, for those staff more likely to utilise the covert powers, has been delivered by the RIPA coordinator, utilising the Microsoft Teams video facility. Another awareness training session is planned for 4th May for new members joining your authority. RIPA oversight is provided by the SRO through weekly meetings with Ms. Potts.
- Your SRO and Ms. Potts are experienced and fully aware of their responsibilities.
- A specific focus for the inspection was the retention, review, and destruction (RRD) of data gathered utilising the covert powers available. I note that section 19 of your RIPA policy deals with the safeguarding requirement for this material, including reducing the need to copy it, handling, and storage of this material, and ultimately the review and destruction of it. I am pleased that your policy has been updated to contain this level of detail. To ensure compliance with the policy it is important that RRD responsibilities are highlighted to new staff and woven into your regular training inputs.'

11. The yearly report considers if changes are needed to our RIPA policy and procedure. There are no changes proposed. The last minor amendments were approved by the Committee in June 2019 following the Investigatory Powers Commissioner's previous Inspection recommendations and the recent inspection made no recommendations for changes. If any changes are required due to legislation or statutory guidance updates, these will be made and reported to this Committee.

## **OPTIONS CONSIDERED**

12. There are no alternatives considered.

## **REASONS FOR RECOMMENDED OPTION**

13. 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

14.

	<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

15. 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 NC Date: 30/6/22]

16. RIPA provides Local Authorities with the mechanism in which they can lawfully 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 in particular cases could lead to any evidence obtained by covert surveillance being the subject of a challenge in subsequent court proceedings, and also would lead to criticism at the next inspection by IPCO.

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 the powers are being used consistently with the local authority's policy, and that the policy remains fit for purpose.

## FINANCIAL IMPLICATIONS [Officer PH 28/06/22]

17. 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 SH : 23/06/22]

18. There are no specific HR implications associated with this report.

## TECHNOLOGY IMPLICATIONS Officer Initial NR 27/6/22]

19. There are no technology implications associated with this report.

## **HEALTH IMPLICATIONS [RS 23/06/2022]**

20. 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 NC 30/6/22]**

21. 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**

RIPA: Regulation of Investigatory Powers Act 2000

CHIS: Covert Human Intelligence Source

IPCO: Investigatory Powers Commissioner's Office

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