



Date: 27th July 2023

**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. Only covert surveillance requires authorisation; where techniques are used which are hidden or disguised so that the subject does not know they are being monitored or watched. Overt surveillance does not require RIPA authorisation.
- 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 yearly report.

RECOMMENDATIONS

2. To note that the Council has had no surveillance applications authorised under RIPA since the last report to the Audit Committee on the 26th January 2023.

3. To agree to have yearly reports to Audit Committee rather than every six months due to the low number of authorisations under RIPA.
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 most recent inspection on 14th April 2022 made no recommendations for changes.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

4. 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

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 subsequently became part of the Investigatory Powers Commissioner's Office ("IPCO"). The Council has been subjected to seven inspections namely in, 2003, 2004, 2009, 2012, 2016, 2019 and 2022. Following the Investigatory Powers Commissioner's Office remote inspection on 14th April 2022, the report dated 26th April 2022 states 'Your authority has been found to be in a good place' with no recommendations necessary.
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 the 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. Trading Standards 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.
9. At the time that RIPA reports to Audit committee commenced in 2010, the RIPA Code of Practice recommended reports every 6 months. The updated 2018 Code of Practice amended this to yearly reports. It states at paragraph 4.47:
'4.47 Elected members of a local authority should review the authority's use of the 1997 Act and the 2000 Act and set the policy at least once a year.'

They should also consider internal reports on use of the 1997 Act and 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.’

The chart below shows the number of authorisations each year for the last 7 years.

Year RIPA authorised	Number
2017	5
2018	4
2019	3
2020	1
2021	1
2022	2
2023	0

Due to the low number of authorisations now made, it is considered appropriate to move to a yearly report. If authorisation activity does increase or change, or specific concerns arise, the reporting frequency can be reviewed by the Audit Committee.

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 NC Date: 30/5/23]

14. 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 review the use of the surveillance powers and set the policy at least once a year. 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

15. Financial implications were not requested in relation to this report.

HUMAN RESOURCES IMPLICATIONS

16. HR implications were not requested in relation to this report.

EQUALITY IMPLICATIONS [Officer NC 30/5/23]

17. 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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