



AUDIT AND RISK MANAGEMENT COMMITTEE
Tuesday, 17 January 2023

Report Title:	ANNUAL UPDATE OF USE OF SURVEILLANCE POWERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)
Report of:	Director of Law and Governance

REPORT SUMMARY

The Regulation of Investigatory Powers Act 2000 (“RIPA”) enables local authorities to carry out certain types of surveillance activity, if specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in court proceedings providing RIPA is complied with.

The Investigatory Powers Act 2016 (“IPA”) is the main legislation governing the acquisition of communications data. The information obtained as a result of these acquisitions can also be relied upon in court proceedings providing IPA is complied with.

This report updates members on issues relevant to this area of work and gives details of RIPA directed surveillance applications and IPA communications data applications that have been authorised in the last year, 1 January 2022 to 31 December 2022.

RECOMMENDATION

The Audit and Risk Management Committee is recommended to note the use made by the Council of covert surveillance since 1 January 2022.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 To ensure that the Council complies with the legal obligations under RIPA, IPA and national guidance.
- 1.2 To help in giving transparency about the use of RIPA and IPA in this Council.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 There is a statutory obligation to follow the requirements set out in the Regulation of Investigatory Powers Act 2000 in relation to the carrying out of directed surveillance by public regulatory bodies. The use of covert surveillance on the occasions listed in this report was the most appropriate and proportionate method available to gather evidence of any criminal offences that may have occurred, as such other options have to be discounted.

3.0 BACKGROUND INFORMATION

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public bodies use surveillance methods in their regulatory/enforcement roles. The Council may use directed covert surveillance for the purpose of preventing or detecting crime or preventing disorder, or establish and maintain a relationship with a person (a Covert Human Intelligence Source [CHIS]) to covertly obtain information relating to an investigation. The information obtained as a result of surveillance operations can be relied upon in prosecution proceedings brought by the Council providing the requirements of RIPA are complied with.
- 3.2 The Investigatory Powers Act 2016 (IPA) is the main legislation governing the acquisition of communications data. The information obtained as a result of these acquisitions can be used to aid and assist officers in their investigations and to identify offenders and can also be relied upon in prosecution proceedings.
- 3.3 The origins of RIPA and IPA lie in the Human Rights Act 1998 (HRA) which places restrictions on the extent to which public bodies may interfere with a person's right to respect for his or her home and private life and correspondence during the course of an investigation into suspected criminal activities. The provisions of RIPA ensure (in summary) that any such interferences are in accordance with the law and are necessary and proportionate (i.e., the seriousness of the suspected crime or disorder must outweigh any possible interferences with the personal privacy of the persons being investigated and of persons who associate with them).
- 3.4 The Council's Constitution (Part 3, Section C(a) – Proper Officer Functions) sets out the officers delegated to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA. Since 1 November 2012 such authorisations require the further approval of a magistrate where the legislation applies.
- 3.5 The Investigatory Powers Commissioner (IPCO) is responsible for overseeing the operation of RIPA and IPA and regularly inspect public bodies to ensure compliance with the legislation. IPCO last inspected the Council on 21 May 2021. The outcome of that inspection was reported to the Committee on 5 July 2021. The Committee approved amendments to the Council's policy and guidance document made in response to the Report. All the required amendments were duly made to the policy.

- 3.6 On 15 February 2022 training on the use of RIPA was delivered by PHF Training to thirty-three (33 no.) officers from various regulatory services across the Council who could seek to make use of covert surveillance techniques and the acquisition of communications data to assist investigations. The training dealt in detail with the requirements for authorisations of directed covert surveillance and the use of covert human intelligence sources under RIPA and the use of social media and other sources of communications data for the purpose of investigations by the Council.
- 3.7 In the last year, 1 January to 31 December 2022, there have been only two (2 no.) applications under RIPA made to the Magistrates' Court on 31 March 2022 and 21 July 2022 to enable test purchases to be made by juveniles (under the supervision of Trading Standards Officers) in conjunction with a national enforcement exercise, from retailers who were suspected of selling e-cigarettes to young persons under the age of 18. There have been no applications during the period for the use of a Covert Human Intelligence Source.
- 3.8 In addition, there has been one (1 no.) non-RIPA authorisation granted on 2 March 2022 for the use of overt CCTV surveillance equipment with prominent warning signage on a rural lane subject to fly tipping of waste materials in the immediate area around the existing 'no fly tipping' signage.
- 3.9 In the same time period, there have been no formal authorisations sought or granted for either the acquisition of communications data or the use of Covert Human Intelligence Sources.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from this report at present, however training of officers will need to receive continued funding in order to maintain current knowledge, continued compliance and high standards.

5.0 LEGAL IMPLICATIONS

- 5.1 The Protection of Freedoms Act 2012, which requires local authorities (where RIPA applies) to obtain the approval of a magistrate for the use of covert surveillance, came into force on 1 November 2012.
- 5.2 In situations where directed surveillance is carried out as part of an investigation by officers but a formal RIPA authorisation from the Magistrates' Court is not required, officers must still apply the principals set out within the Act and the Council's Policy and Guidance requires officers to complete a Non-RIPA Authorisation which must be approved internally by an Authorising Officer.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are no direct resource implications arising from the report.

7.0 RELEVANT RISKS

- 7.1 There is a risk of inadvertent breaches of human rights and data protection legislation by officers unless the requirements of RIPA and the detailed guidance given in the Code of Practice and Council's Policy Document are followed.

8.0 ENGAGEMENT/CONSULTATION

8.1 Not applicable.

9.0 EQUALITY IMPLICATIONS

9.1 There are no direct equality implications from the report. All investigations and subsequent enforcement action taken by Council regulatory services is carried out in accordance with Corporate and Service Enforcement Policies as previously approved by Council and other relevant policies and statutory guidance where applicable.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment and climate implications.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 There are no direct community wealth implications arising from the report.

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BACKGROUND PAPERS

Regulation of Investigatory Powers Act 2000

Investigatory Powers Act 2016

Protection of Freedoms Act 2012

Home Office Covert Surveillance and Property Interference: Revised Code of Practice (August 2018)

Home Office Covert Human Intelligence Sources, Draft Revised Code of Practice (January 2021)

Acquisition and Disclosure of Communications Data Code of Practice (March 2015)

Wirral Council Policy and Procedure on the use of Powers Under the Regulation of Investigatory Powers Act (2020)

TERMS OF REFERENCE

This report is being considered by the Audit and Risk Management Committee in accordance with Para 11.2(i) and (m) of its Terms of Reference.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Reports to the Audit & Risk Management Committee	11 March 2019 27 January 2020 16 November 2020 05 July 2021