

## **Report of City Solicitor to a meeting of the Governance and Audit Committee – Friday 17<sup>th</sup> April 2015**

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#### **REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) – POLICY, USE AND ENFORCEMENT ACTIVITY – ANNUAL REVIEW**

#### **DECISION OF THE CGAC Friday 4<sup>th</sup> April 2014:**

#### **74. REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) – POLICY, USE AND ENFORCEMENT ACTIVITY – ANNUAL REVIEW**

Resolved -

- (1) That the duties placed on the Council under the Human Rights Act 1998 in the context of the report were considered.
- (2) That the Council's continued compliance with RIPA and the outcomes of the Office of Surveillance Commissioner inspection in July 2013 and the implementation of the recommendations of the report were considered.
- (3) That the 2014 programme of training for Chief Officers (in order to raise awareness) and Enforcement Officers on RIPA be approved.
- (4) That the nominated Strategic Director be authorised to deputise for the Chief Executive in his absence in respect of authorisations of covert surveillance relating to the investigation of serious criminal offences, which also may obtain private and confidential information as well as the evidence of crime.
- (5) That the Assistant City Solicitor be authorised to deputise for the City Solicitor in consultation with the Leader of the Council as the Council's authorised officer for RIPA relating to the investigation of serious criminal offences which, also obtain private information as well as the evidence of criminal offences.

**ACTION: City Solicitor**

**(Richard Winter - Solicitor – 01274 431073)**

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## 1. Summary

This report is prepared to provide information relating to:-

- The legal framework and how the Council's officers can deploy covert surveillance techniques authorised and approved under RIPA to investigate serious crime.
- The role of the Council's Senior Responsible Officer (SRO), the Council RIPA Coordinator and Monitoring Officer and the annual review and internal audit March 2015.
- The Council's use and outcomes of the use of authorised and approved covert surveillance operations for the last 3 years.
- The Council's continued compliance with RIPA, use of close circuit television (CCTV), body cameras and covert internet Investigations.
- The 2015/16 annual training programme for officers.
- Contribution to the Council's priorities and recommendations.

## 2. The Legal Framework and how the Council's officers use RIPA.

- 2.1 As members are aware RIPA provides a legal framework for the control and regulation of covert (calculated in a manner to make sure that the person subject to the surveillance is not aware it is being carried on) surveillance and information gathering techniques.
- 2.2 Covert surveillance techniques may be used by officers of public bodies (including officers of the Council when investigating serious crime (by definition offences which carry a term of imprisonment for six months or more) and where there are no overt means of obtaining the evidence.
- 2.3 The use of covert surveillance must always be necessary and proportionate to what it seeks to achieve. The Council's stated policy has for many years restricted covert surveillance to serious crime and this approach to limiting the use to serious crime was regulated by statute following amendments to RIPA which took effect from the 1<sup>st</sup> November 2012.
- 2.4 There are three types of covert techniques available for use by the Council's investigating officers namely by definition "directed surveillance" (DS), "a covert human intelligence source" (CHIS) and "data communications" (DC) investigation.
- 2.5 Surveillance includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with or without assistance of a surveillance device and includes the recording of any information.
- 2.6 A fourth covert surveillance technique defined as "intrusive surveillance" (IS) is surveillance that is carried out in relation to anything taking place on residential premises or in a private vehicle and involves the presence of a person or device in the premises or vehicle or the use of a surveillance device. This type of surveillance can only be undertaken by the Police and Intelligence Services.
- 2.7 Directed surveillance is covert, but not intrusive, surveillance that is conducted for the purposes of a specific investigation or operation that is likely to result in the obtaining of **private information** about a person and is conducted otherwise than

as an immediate response to events or circumstances of such a nature that it would not be reasonably practicable for an authorisation to be sought.

- 2.8 A covert human intelligence source is someone who establishes or maintains a personal or other relationship with a person for the covert purpose of obtaining, disclosing or providing access to **private information**. This includes public informants who work for the Police and Security services the Council's criminal investigators who make test purchases or act as secret passengers in taxi investigations in certain limited circumstances.
- 2.9 Data Communications (DC) can include the post, phone calls and text messages to and from a person. The obtaining of DC by an investigator can only include information regarding the 'who', 'when' and 'where' of a communication e.g. Letters from and to a named person, telephone numbers of calls made to and by a named person (subscriber) and text messages and emails made to and from a defined number of a subscriber. DC investigations can not include the 'what' (i.e. the content of what was said or written in a telephone call text message email or letter. RIPA groups DC into three types: 'traffic data' (which includes information about where the communications are made or received); 'service use information' (such as the type of communication, time sent and its duration); and 'subscriber information' (which includes billing information such as the name, address and bank details of the subscriber of telephone or internet services). This information can only be obtained via a service provider such as the Post Office, British Telecom, Orange, AOL and Yahoo etc.
- 2.10 The need for regulatory control and careful control by RIPA arose following the enactment of the Human Rights Act 1998 (HRA) which embodied in English Law (amongst other rights) Article 6 (Right to a fair trial) and Article 8 (Right to respect for a private and family life) of the 1950 European Convention of Human Rights (ECHR1950). It was not specifically enacted to address terrorism although undoubtedly this forms part of its remit in the context of the investigation and detection of exceptionally serious crime by the Police and Security Forces.
- 2.11 If a Council investigator uses a covert investigation technique without proper authorisation then the Council is liable in damages to the person subject to the investigation for breach of their Human Right to a private and family life and can seek damages against the Council from the civil courts. Such action is contrary to the Council's policy on the use of covert surveillance and is a breach of its disciplinary code see Para 6.9 at appendix 1.
- 2.12 The Council has a number of teams of enforcement officers based in the Council's Environmental Health Service, the Housing Standards Service, the Planning and Building Control Service, the Corporate Fraud Team, the Licensing (liquor licensing and taxi licensing) service, the Council's Joint West Yorkshire Trading Standards Service (WYTSS), the antisocial behaviour team and Youth offending Team.
- 2.13 Since November 2012 directed surveillance authorised by RIPA must relate to "serious offence" by definition i.e. carry a penalty of at least six months in prison. It is worthy of note "the serious offence test" is satisfied for example in respect of offences investigated under the Food Safety Act 1990, the Environmental Protection Act 1990, the Social Security Administration Act 1992, the Fraud Act 2006 and the Trade Marks Act 1994. Also the sale of alcohol (Licensing Act 2003) or cigarettes (Children's and Young Persons Act 1933) to a person under the age

of 18 is also regarded as a serious offence even though the penalty is £5000.00 and £2500.00 respectively.

- 2.14 The Council's enforcement teams are usually able to gather sufficient evidence of the criminal offences which connect with the Council's functions by overt means.
- 2.15 In exceptional circumstances they may need to use a covert investigative technique mentioned above authorised and approved under RIPA to prove the offence being investigated.
- 2.16 Authorisations under RIPA when required must be sought by the Council's investigating officers from the Council's Chief Executive, the City Solicitor or the Assistant City Solicitor and are limited to the ground of the prevention or detection of serious crime.
- 2.17 If and when an authorisation is granted for covert surveillance before the authorisation can be acted upon the Court must be invited to scrutinise the authorisation and approve it.
- 2.18 Only where covert surveillance is considered to be necessary and proportionate can an authorisation be granted and approved by the Councils authorised officers and the Court respectively.
- 2.19 During covert investigations some **private information** about the suspect and non suspects e.g. members of the public visiting the suspect's home or work place could be potentially included in the covert evidence gathering. This evidence must not be recorded or used in respect of none suspects. Evidence not relevant to offences is destroyed or not recorded at all. This reduces what is described in RIPA as 'collateral intrusion'.
- 2.20 The investigating officer's approved authorisation is also limited by its duration. The evidence recorded is limited to evidence which can support the criminal offence being investigated.
- 2.21 RIPA also contemplates and defines confidential information as medical or religious information. No such information has ever been sought by the Council's enforcement officers, as it is highly unlikely to be relevant to the commission of any criminal offence investigated by a local authority. Care should be taken in the investigation of the breaches of local government regulatory law not to seek or record confidential information. If **confidential information** is to be sought then the authorisation can only be granted by the Council's Chief Executive as Head of the Council's Paid Service.
- 2.22 RIPA and associated Regulatory Codes of practice and guidance define Covert Human Intelligence Source (CHIS).
- 2.23 Since 2000 RIPA has not been used by the Council's officers to investigate none serious crime i.e. breaches of schools' admission policies, dog fouling or littering. Investigation of this type of less serious criminal offending has been widely criticised in the press and advised against by the Local Government Association. Indeed the Council's admissions policy has been amended to make it clear only overt investigations relating to such breaches of the policy are used by the Council.

- 2.24 The Council other than through the West Yorkshire Trading standards Joint service(WYTSJS) has not needed to obtain evidence of criminal offences by the acquisition of ' Data communications ' under RIPA i.e. interception of mail, details of the use of telephone either mobile or land lines or use of the internet.
- 2.25 The Council is periodically externally audited by an appointed inspector of the Office of the surveillance Commissioner (OSC). The OSC audited the Council compliance with RIPA in 2002, 2004, 2006, 2010 and 2013 and commendations and recommendations following each inspection were issued.
- 2.26 The Council is also externally audited by the Office of the Interception of Communications Commissioner. (OICC) An inspection was undertaken by the inspector of the OICC in September 2012 and the report was entirely satisfactory.
- 2.27 The Council was recommended to use officers of the local government national anti fraud network (NAFN) if data communication authorisation is required. Those officers are based at Tameside and Brighton Councils. To date no such authorisation has been required.

### **3. External inspection by the OSC July 2013.**

- 3.1 In July 2013 the Council was inspected by a deputy Surveillance Commissioner from the Office of the Surveillance Commissioner. The recommendations and actions can be seen below.

#### **3.2 Recommendations (and actions)**

- a) *Embrace the CEO and whoever may deputise for him in his absence, within the RIPA training programme and ensure they receive training to enable them to authorise in the event of being required to do so (completed).*
- b) *Officers should be trained to manage CHIS (to be completed 12<sup>th</sup> 13<sup>th</sup> 14<sup>th</sup> April 2015).*
- c) *Amend the Policy Guidance and Procedure (Completed).*
- d) *West Yorkshire Trading Standards Service - Ensure that officers are equipped to undertake and manage Social Networking Site investigations in accordance with RIPA requirements if and when authorisation for such is obtained ( to be completed 12<sup>th</sup> , 13<sup>th</sup> and 14<sup>th</sup> April 2015).*

**4. THE NUMBER OF AUTHORISATIONS FOR COVERT SURVEILLANCE UNDER RIPA.**

4.1 The figures for authorisations for the last 3 years are set out below including figures for 2014/15. The figures relate to each department that may have use covert surveillance authorised under RIPA i.e. Environmental Health Service (EHS), Corporate Fraud Team (CFT), Planning and Building control service, Hackney Carriages and Private Hire (Taxi Licensing) service, Liquor Licensing service, the Housing standards service, the Antisocial behaviour team (ASBT), the West Yorkshire Trading Standards service (WYTSS) and the Youth offending team (YOT). Since November 2012 there are no longer any offences which meet the definition of the serious offence test which are investigated by the Council's Housing Standards service, the ASBT, the YOT, the Planning and Building Control service and the Licensing services. This gives in an explanation as to why the numbers of authorisations appear as "not applicable" for each of the last 2 years in those enforcement services. In any event in the author's opinion the investigation of the types of offences in those service areas (see below) do not require the use of a covert investigative technique.

Year	EHS	WYTSS	CFT	Planning Service & Building Control	Housing Standard service	ASBT and YOT	Licensing Services	Refusals	Authorisations/Approvals
2012/13	0	0	7	0	0	0	0	3	4
2013/14	1	0	1	n/a	n/a	n/a	n/a	1	1
2014/15	0	0	0	n/a	n/a	n/a	n/a	0	0

4.2 It can be seen from the list in those service areas which can still seek authorisation of directed covert surveillance under RIPA i.e. investigate offences which carry a term of imprisonment of six months or more, by comparison of the last 3 years the number of authorisations have fallen as overt means of obtaining evidence have been found e.g. data sharing by public bodies e.g. between the CFT and the DWP and additional powers to obtain information for example from banks and interview techniques bring a greater focus on overt means. In the last year the authorisations have fallen to zero across all departments as overt means have been used to investigate all criminal offending investigated by the Council.

4.3 Set out below is the number of prosecutions for each of the last 3 years which gives an indication of the number of investigations which led to convictions and which relied on overt means of obtaining the evidence.

Year	EHS	WYJS	CFT	Planning Service & Building control	Housing standards service	Liquor Licence Service	Hackney Carriage & Private Hire Licensing Service	ASBO & YOT
2012/13	66	3	70	10	13	4	12	24
2013/14	53	6	73	14	18	4	13	29
2014/15	58	12	65	11	8	2	10	16

**4.4 The Environmental Health Service (EHS).**

Members may be interested to know the type of offences the Council's EHS investigate. The services investigate offences of food safety, food hygiene, and fly tipping of controlled waste, prohibition of smoking in public places, littering and dog fouling amongst others. The offences arise under the Environmental Protection Act 1990, the Food Safety Act 1990, the

Food Hygiene Regulations 2013, the Health Act 2006 and the Council's Dog control orders made under the Clean Neighbourhoods and Environment Act 2005.

4.5 **The Council's West Yorkshire Trading Standards Service (WYTSS)**

The WYJS investigates many consumer protection offences for example trade marks offences relating to counterfeit good, sale of cigarettes and alcohol to children, and weights and measures offences. These offences are all serious offences under the Consumer Protection Act 1998, the Trade Marks Act 1998, The Licensing Act 2003 and the Children's and Young Persons Act. The investigation of these offences could where necessary and proportionate be carried out covertly and be authorised under RIPA.

4.6 **The Council's Counter Fraud Team (Finance) (CFT)**

The CFT investigates benefit fraud along side the Department of Work and Pensions (DWP's) investigators under the Social Security Administration Act 1992 and these matters are now prosecuted by the DWP's solicitors. The CFT also investigates solely some serious offences of benefit fraud under the Fraud Act 2006; the Proceeds of Crime Act 2002 (money laundering) related mortgage fraud and fraud by abuse of position. All fraud offences are serious by definition and carry terms of imprisonment of six months or more and could use covert surveillance if necessary and proportionate and be authorised and approved under RIPA.

The team also investigates less serious summary offences of misuse of blue badges.

4.7 **The Council's Planning and Building Control Service.**

This service investigate breaches of planning development control under the Town and Country Planning Act 1990 breaches of building regulations under the Building Regulations 2010, and listing building offences under the Town and Country Planning (Listed Buildings and conservation Areas) Act 1990. None of the offences investigated can be authorised as covert under RIPA as they carry penalties of less than six months in prison

4.8 **The Council's licensing services (Liquor and Taxis)**

These services investigate criminal offences under the Licensing Act 2003 and the Local Government (Misc. Provisions) Act 1976. The taxi licensing service is currently closely involved with the Police in investigating and disrupting issues of Child sexual exploitation.

The hackney carriage and private hire licensing service has in the past used covert means to investigate plying for hire but the offences do not carry penalties of less than six months in prison and thus cannot since November 2012 be authorised under RIPA.

4.9 **The Council's Housing Standards service.**

This service investigates breach of standards of residential housing in the private sector and criminal offences arise under the Housing Act 2004. All the offences are summary offences which do not carry a sentence of six months or more in prison. This team has never found it necessary or proportionate to investigate the offences covertly.

4.10 **The Council's Anti-Social Behaviour Team (ASBT) and Youth offending team (YOT).**

The ASBT investigates matters of anti-social behaviour and seek injunctions to stop it under the Anti-Social Behaviour Crime and Policing Act 2014.

The YOT deal with the supervision of young persons who have committed criminal offences under the age of 18 and prosecute for some offences for example for breaches of

supervision orders or Youth rehabilitation orders. Neither team has ever used covert surveillance for such investigations.

**5. YEAR ON YEAR COMPLIANCE WITH RIPA**

- 5.1 Before officers consider deploying any of the 3 investigative techniques e.g. DS CHIS or DC officers must comply with RIPA or leave the Council open to criticism from the OSC and sanctions imposed by the Courts.
- 5.2 Compliance with RIPA and properly authorised and approved covert surveillance investigations give the Council an absolute defence under s 27 RIPA to a claim of damages for breach of the Human Rights Act through the use of covert surveillance i.e. breaching a person's right to privacy under the Human Rights Act 1998.
- 5.3 Compliance with RIPA by the granting of duly authorised and approved covert investigations avoid the exclusion of evidence before the Court/tribunal should a criminal prosecution or an employee disciplinary sanction follows the covert investigation.
- 5.4 The Council has the option to allow its authorised officers to be any director, head of service, service manager or equivalent.
- 5.5 However following a resolution of the Executive from the 1<sup>st</sup> September 2011 all authorisations are granted by either the Council's Chief Executive, or its City Solicitor (or in absence their deputies) in consultation with the Leader of the Council. Each application for authorisation is also subject to legal advice from the Council's RIPA coordinator and monitoring officer. Prior to that time all Strategic Directors and their Assistant Directors were authorised officers.
- 5.6 Until the 1<sup>st</sup> November 2012 local authorities had the option to authorise covert investigation of less serious crime e.g. littering dog fouling and schools admissions. This power has now been removed by the "serious offence test" which states directed surveillance can only be used for offences which are subject to imprisonment of six months or more.
- 5.7 Consideration has been given by the Council's SRO and RIPA coordinator and Monitoring officer as to whether or not covert surveillance outside the authorisation and approval mechanism of RIPA be approved by the Council's policy.
- 5.8 Such a mechanism is used at some other West Yorkshire local authorities to deal with circumstances where investigations connect with either employee disciplinary issues i.e. theft or other forms of dishonesty but the result of such investigation would not result in the reporting of the offences for criminal prosecution but disciplinary proceedings and termination of employment in the appropriate circumstances. The committee is asked to consider this approach.
- 5.9 The Council's SRO and RIPA coordinator and Monitoring Officer recommend against such an approach as this may lead to claims for exclusion of evidence and damages against the Council of breaches of the HRA 1998 as s27 RIPA would not give the absolute defence to such claims in circumstances where authorisation and approval is granted under RIPA for the covert surveillance.
- 5.10 **The Council's CCTV system and use for covert surveillance.**
- a) The Council owns a substantial CCTV system which assists in the prevention and detection of crime within the City Centre.



- b) From time to time the Council is asked to direct the use of its cameras specifically for the surveillance of criminal activities. This requires authorisation under RIPA and is provided by the Police to the Council's CCTV manager Mr P Holmes.
- c) The Council's CCTV system has been considered in past inspections by the OSC. The inspector stated on 2013 " The Council manages a public place overt CCTV system within Bradford. It remains, as at the time of the last inspection, managed by Mr. Philip Holmes a highly experienced and robust officer. He maintains a careful control on the usage of the system by the police for the purposes of covert surveillance requiring a sight of any authorisation or at least details of it sufficient to enable him and his officers to be satisfied that the system is being used in accordance with the authorisation. This authorisation is maintained on a file within the Control Centre.
- d) This arrangement continues to be managed by Mr. Holmes and over the last year the Council has permitted the use of the Council's CCTV system for covert surveillance on 27 occasions spread over 12 separate operations. Of those 26 came from the police and one from the DWP. None were requested by the Council's investigative services.
- e) The Council's officers have refused 2 applications one because there was incomplete paper work authorising the covert surveillance and the other due to lack of proportionality

**5.11 The Council's warden service and the use of body cameras.**

- a) Body worn cameras are deployed the Council as an overt tool for frontline uniformed Council Wardens. Any video recordings and images captured by the cameras are the property the Council and will be retained in accordance with this policy.
- b) In accordance with Section 29 of the Data Protection Act 1998 the Council share any recordings with the Police to support ongoing Police investigations into offences committed against Council Wardens. The Council has a "Retention Policy relating to body worn camera footage set out at Appendix 2 of this report.
- c) The Council's warden service have been advised that if the body cameras were to be used in a covert way then authorisation and court approval should be carefully considered.

**5.1.2 The monitoring of social media websites for evidence of criminal activities.**

- (a) It was noted at the last OSC inspection in 2013 that the WYTSS uses internet monitoring to obtain evidence of the sale of counterfeit goods. However the WYTSS only examines public page sites and uses information gained as a basis for investigation. The WYTSS does not have a ghost website or a covert Face book account. It does have an overt Face book account and information gleaned from it or from websites normally stimulates a warning letter being sent to the account holder. Any information requiring a deeper investigation would be reported to the Regional Trading Standards Service. WYTSS staff are aware of the pitfalls involved in the investigation of Social Network Sites (SNS) covertly and having entered pages through privacy controls.
- (b) However all Council staff need to be aware that covert investigation on public social media websites and the creation of covert relationships with members of the public in their investigations would require approval under RIPA.
- (c) The Council's RIPA coordinator and Monitoring officer and the Council's SRO have a concern as to whether there is a full appreciation by enforcement officers and their

managers of the use of internet investigations and the approval required under RIPA. Thus specific training on this issue is to be provided In April this year to deal with Internet investigation even though not obviously covert (entry through privacy controls) may in any event require a *directed surveillance* authorisation AND where covert relationships are formed a *CHIS* authorisation is granted then the *CHIS* will need to be managed in accordance with *RIPA* requirements, namely by a controller and a handler with a full record being maintained.

**6. THE ROLE OF THE COUNCIL'S SENIOR RESPONSIBLE OFFICER AND THE ANNUAL TRAINING PROGRAMME.**

- 6.1 The Council's Senior Responsible Officer (SRO) role is an internal auditing role with regard to the Council's departmental use and compliance with RIPA in accordance with the relevant regulations, codes of practice and guidance.
- 6.2 The SRO undertakes an audit of the Council's compliance with RIPA each year and a reference to that audit is referred to at APPENDIX 2 of this report.
- 6.3 The recommendations are to implement the OSC inspectors' recommendations and the Council's RIPA Coordinator and Monitoring Officer to continue to monitor comply with RIPA and continue annual training.
- 6.4 Specialist Training for CHIS has been arranged for April 2015 and a separate training course for routine use of covert surveillance for the five West Yorkshire Local Authority Legal services (WYLAW).

**7. CONTRIBUTION TO COUNCIL PRIORITIES**

The use of covert surveillance contributes to the investigation of regulatory crime committed by the public or corporate bodies and Corporate Fraud and thus supports the reduction of crime and fear of crime within the district.

**8. RECOMMENDATIONS**

- 8.1 The duties placed on the Council under the Human Rights Act 1998 are considered in the context of this report.
- 8.2 The Council's continued compliance with RIPA and the OSC inspection in July 2013 and the completed implementation of the RIPA training programme are noted.
- 8.3 The 2015 WYLAW (West Yorkshire Law) programme of training of Officers (in order to continue to raise awareness) and enforcement officers under RIPA is noted.
- 8.4 The authorisation of covert surveillance techniques under Human Rights Act 1998 open to a local authority in exceptional circumstances i.e. when the offending falls beneath the serious offence threshold or in a disciplinary context be disapproved.

**9. Background documents**

- 9.1 The Council's RIPA guidance document was last updated January 2015 (approx 120 pages) and is available on request from the author of the report and has been circulated to all enforcement managers.
- 9.2 Home Office Guidance to Local Authorities in England and Wales on the Judicial Approval Process for RIPA and the Crime Threshold for Directed Surveillance dated October 2012.

9.3 The December 2014 updated RIPA Codes of Practice and Guidance on RIPA from the OSC.

**10. Not for publication documents (held by the Council's RIPA coordinator and Monitoring Officer)**

The RIPA applications, authorisations and court approval documents and the central register of authorisations held by the City Solicitors office and the OSC inspection report dated the 17<sup>th</sup> July 2013.

**11. Appendices**

Appendix 1 the Council's policy on RIPA (implemented 2002)

Appendix 2 Retention Policy relating to body worn camera footage

Appendix 3 March 2015 Internal audit undertaken by the Council's Senior Responsible Officer

Appendix 4 Glossary of terms and abbreviations (in the order they appear in the report)

## APPENDIX 1 the Council's policy on RIPA (implemented 2002).

### Policy statement

1. **Purpose** – The Council's officers in the course of investigating frauds, breaches of legislation or regulation and in the interest of the safety and well being of the district may be required to undertake covert monitoring operations to gather evidence to present to a court. In doing so those Officers must comply with the relevant legislation i.e. RIPA and the associated regulations and codes of practice. Evidence collected without complying with the statutory procedures may become inadmissible before the Courts and prejudice the outcome of an investigation.
2. **Scope** – The policy covers the use of covert CCTV, monitoring equipment such as audio recording, cameras, video cameras, binoculars and covert human intelligence sources (CHIS). RIPA also covers the monitoring of Internet use, telephone use, or postal use where the individual whose actions are being monitored is unaware of the operation. The Council's policy does not contemplate the monitoring of Internet use, telephone use or postal use other than in exceptional circumstances as this is unlikely to be unnecessary and disproportionate in most if not all local authority criminal investigations.
3. **Exclusions** – City centre CCTV operating within defined boundaries and brought to the attention of the public by the use of signs is not covered by this policy.
4. **The procedure** – when a Council officer considers that covert operations are the only method of collecting the evidence required s/he should obtain authorisation and court approval for such activity in advance and follow the guidance in the Council's RIPA guidance document as issued by the Council's RIPA coordinator and monitoring officer. The Council's RIPA coordinator is available to advise on procedure and maintains a central register of all authorisations.
5. **Review of the policy** - the policy and guidance document is reviewed annually by the Corporate Governance and Audits Committee through changes where required by the Council's RIPA Coordinator.
6. **Guiding Principles**
  - 6.1 Surveillance is an intrusion into the privacy of the citizen. The Council's officers will not undertake surveillance unless it is necessary and proportionate to the alleged offence and properly authorised and approved. Where there is an alternative legal means of obtaining the information that is less intrusive on the rights of the citizen, the Council will always take that alternative course rather than undertake surveillance.
  - 6.2 Surveillance by covert human intelligence source (CHIS) will not be authorised by the Council other than in exceptional cases due to the adverse risk to the health and safety of the officers and such will usually only be authorised when working alongside the police and after a risk assessment has been approved by the City solicitor.
  - 6.3 Covert surveillance will be conducted within the constraints of the authorisation. It will cease when the evidence sought has been obtained or when it becomes clear that the evidence is not going to be obtained by further surveillance. At that point the authorisation should be cancelled.
  - 6.4 In every instance where surveillance is authorised the officer who conducts surveillance will consider and make plans to reduce the level of collateral intrusion into the privacy of third parties.
  - 6.5 All outstanding surveillance authorisations should be reviewed at least monthly and cancelled where there is no further need for surveillance.

- 6.6 All officers involved in applying for, authorising or undertaking surveillance will understand the legal requirements set out in RIPA and the codes of practice. They will personally take responsibility for ensuring the propriety of their involvement.
- 6.7 All authorisations, notebooks, surveillance logs and other ancillary documentation that relates to surveillance will be maintained to the required standards and retained for **three years**. All documentation will be volunteered for any management or regulatory inspection on demand.
- 6.8 Any failure of any part of the process will be brought to the attention of the investigation manager. S/he will consult the Council's RIPA coordinator to determine what action should be taken.
- 6.9 Wilful disregard of any part of RIPA, codes of practice or of internal procedures shall be a breach of discipline and subject to the Council's disciplinary code.
- 6.10 **Surveillance equipment.**
- (i) The Council have a considerable amount of technical equipment which can carry out covert surveillance of operations e.g. Cameras, video cameras , binoculars, zoom lenses CCTV and noise tape recording equipment.
  - (ii) Bearing in mind that such equipment can be used by officers without supervision once authorisation has been granted continued monitoring and thus a record of the use of such equipment requires to be maintained i.e. its return to storage immediately once the covert surveillance has been undertaken.
  - (iii) Schedules of equipment are kept and updated by authorized officers for each Council department which undertakes surveillance either covert or otherwise. This is reviewed annually by the Council's RIPA coordinator and Monitoring Officer.
  - (iv) In order to effectively monitor the use of the equipment each separate piece of equipment is listed with its reference/serial number and its whereabouts.
  - (v) The responsibility to monitor the day to day use of such equipment by Council Enforcement officers is primarily that of each and every authorised officer (AO's) of the relevant Council Department. See schedule of AO's below
  - (vi) Included in this guidance are those departments that use surveillance equipment but such surveillance is deemed to be an exception to RIPA2000 e.g. Environmental services (noise monitoring where the person investigated is on written notice the noise is to be monitored and parks and landscapes who use of publicised motor bike mounted video camera for surveillance over general hot spots for crime rather than individual known suspects.
- 6.11 Wilful disregard of any part of RIPA, codes of practice or of internal procedures shall be a breach of discipline and subject to the Council's disciplinary codes.
7. Serious crime restrictions and magistrates court approval ( 1st November 2012)
- a) It is noted from the 1<sup>st</sup> November 2012 due to statutory regulation all authorisations under RIPA 2000 for Directed Surveillance and Communications Data may only be granted in respect of "serious crime" as defined i.e. carrying a penalty of 6 months or more imprisonment.
  - b) Also from the 1<sup>st</sup> November 2012 all authorisations granted by the Council's authorised and designated officers of which are the Council's Chief Executive and the Council's City Solicitor (in consultation with the Leader of the Council) do not

take effect until they have been approved by a magistrates upon application by the Council.

- c) The procedure to be followed is similar to applying for a warrant to enter premises under relevant statutory powers.
- d) The application to the Magistrates Court will be made in person usually by a Council solicitor advocate together with the applicant for the authorisation.
- e) The existing authorisation for which approval is required will be submitted to the court in writing and with the approval application form completed under cover of a letter before the application for approval is heard formally before the court.
- f) This statutory restriction was effectively part of the Council's existing policy in the context of making use of RIPA.
- g) The policy already acknowledges RIPA is not to be used for none serious crime e.g. dog fouling , schools admissions and littering offences as has been so severely criticised in the press and by the court

## APPENDIX 2

### **Retention Policy relating to body worn camera footage**

Body worn cameras are deployed by Bradford Council as an overt tool for frontline uniformed Council Wardens. Any video recordings and images captured by the cameras are the property of Bradford Council and will be retained in accordance with this policy.

In accordance with Section 29 of the Data Protection Act 1998 Bradford Council will share any recordings with the Police to support ongoing Police investigations into offences committed against Council Wardens.

All footage shall be reviewed and deleted within 24 hours of recording. The only exception to this is where the footage is being used as evidence in an ongoing Police investigation. Accordingly, any footage forming part of an ongoing Police investigation would only be disclosed by the Police as part of their investigation. Bradford Council would not be able to provide a copy on these occasions.

Any person who has been recorded on a body camera can make a request for a copy of the footage provided the request has been made within 24 hours of the recording. Proof of identity must be verified for such requests.

Requests for footage that is not in the public arena and contains recording of other individuals will be sent to a specialist contractor so that the identities of those individuals captured on the footage can be disguised prior to despatch.

### **Subject Access Rights**

In accordance with the Data Protection Act 1998 if a recording of a member of the public has been made on a body camera that person is entitled to a copy of the recording provided the request has been made within 24 hours of the recording. The exception to this is where the recording is part of an on-going Police investigation.

In accordance with the Retention Policy

*Delete as appropriate:*

\* As the footage requested occurred on (input date) this footage has been deleted and no longer exists.

\* The footage forms part of an ongoing Police investigation and the Council will not be providing copies.

\* The footage exists and a copy will be provided once it has proof of the person's identity so that the Council can satisfactorily establish the subject access rights. The person will need to provide a copy of any one of the following documents preferably by email to ([name.name@bradford.gov.uk](mailto:name.name@bradford.gov.uk)) or by post to: (input full office address)

- Your Council Tax reference number
- Copy of current passport
- Copy of a current benefits payment book
- Copy of current driving licence

Any copy of footage provided can be collected personally upon production of proof of identity, or, delivered securely to an address nominated by the subject.

## APPENDIX 3

**March 2015****Internal audit undertaken by the Council's Senior Responsible Officer**

<b>Audit check</b>	<b>Yes/No/Not applicable</b>
<b>Necessity and proportionality</b>	
(i) Where the Council has authorised the use of covert surveillance are those authorisations necessary and proportionate?	Not applicable- all investigations have been undertaken overtly without the use of covert surveillance
<b>Approval by a Justice of the Peace</b>	
(ii) Were all authorisations approved by a justice of the Peace? If not why not and what can be learnt from this?	Not applicable- all investigations have been undertaken overtly without the use of covert surveillance
<b>Central Register of authorisations</b>	
(iii) Is the management and upkeep of the Council's central record and register of authorisations satisfactory and in accordance with current legislation and Home Office and OSC guidance and recommendations arising from past inspections?	<p>Yes I believe so.</p> <p>I have had sight of the 4 parts of the register which all show a NIL return. The register is made up of separate parts for the Council's Departments of Environmental Health Service, Corporate Fraud Team, The Planning Service, The Licensing services (taxi and liquor licensing) and the Housing standards service</p> <p>The WY Trading standards service keeps its own central register.</p>
<b>The quality of the completed applications and authorisations</b>	
(iv) Is the quality of the completed authorisations, reviews, renewals and cancellations documentation satisfactory?	Not applicable- all investigations have been undertaken overtly without the use of covert surveillance
Consideration to be given by the Council's SRO and RIPA coordinator and Monitoring officer as to whether or not covert surveillance outside the authorisation and approval mechanism of RIPA be approved by the Council's policy.	Approval not recommended.
<b>The Annual review of the Council's Policy and guidance document</b>	
(v) Is the Council's stated policy and guidance document for officers up to date bearing in mind current OSC guidance (last updated December 2014) Home office Codes of Practice (Last revised December 2014 ) and current legislation?	<p>Yes last updated January 2015</p> <p>Next update Jan 2016 unless legislative changes are made before then.</p> <p>I have had sight of the updated document.</p>



Audit check	Yes/No/Not applicable
<b>Annual training programme</b>	
(vii) Has the required annual training of all relevant officers been completed and a next years programme arranged?	<p>Yes I am satisfied as to the level of training provided for 2014/15 and to be provided for 2015/16.</p> <p>I am aware of the training recommendations made by the OSC in July 2013. The CEO of the Council has been trained by the City Solicitor at a one to one briefing. The CHIS training is to be arranged through the WYP for April 2015. A Raising awareness seminar was provided to include senior officers/managers on the 17<sup>th</sup> February 2014 and in April 2014 for Strategic Directors and Assistant Directors. I recommend they should all attend the next ½ day RIPA seminar in Summer 2015. The RIPA (CHIS) seminar and the ½ day general RIPA seminar are to be presented by the police and the Council's RIPA coordinator respectively.</p>
(viii) CTTV use and authorised under RIPA for covert surveillance by the police and DWP.	(viii) Evidence of RIPA authorisations granted by the police and DWP seen. Yes
<b>Recommendations</b>	
	<ol style="list-style-type: none"> <li>1. Complete the implementation of the OSC inspectors' recommendation relating to training in CHIS handling and covert internet investigations.</li> <li>2. Continue to make sure the Council's officers comply with RIPA.</li> <li>3. Disapprove the use of covert surveillance when not authorised and approved under RIPA</li> </ol>

Prepared by Richard Winter RIPA Coordinator and Monitoring officer

Dated March 2015

Approved by Stuart McKinnon Evans Senior Responsible Officer

Dated March 2015

Appendix 4 Glossary of terms and abbreviations (in the order they appear in the report)

Abbreviation	title/term	Background/definition
RIPA 2000	Regulation of Investigatory Powers Act	Regulates the use of covert surveillance and data communication in respect of private persons.
SRO	Senior Responsible officer	Required to take an overview of the Councils use of covert surveillance and compliance with RIPA
CCTV	Close circuit television	Used for safety and security purposes within Council buildings and the city centre
	Covert surveillance	Surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.
DS	Directed surveillance	Surveillance which is covert, but not intrusive, and undertaken: <ul style="list-style-type: none"> <li>a) for the purpose of a specific investigation or operation;</li> <li>b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not that person is the target of the investigation or operation); and</li> <li>c) In a planned manner and not by way of an immediate response whereby it would not be reasonably practicable to obtain an authorisation prior to the surveillance being carried out.</li> </ul>
CHIS	Covert human intelligence source	A person is a CHIS if: <ul style="list-style-type: none"> <li>(a) s/he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);</li> <li>(b) s/he covertly uses such a relationship to obtain information or to provide access to any information to another person; or</li> <li>(c) S/he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.</li> </ul>

IS	Intrusive surveillance	<p>Intrusive surveillance is defined as covert surveillance that:</p> <p>a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and</p> <p>b) Involves the presence of any individual on the premises or in the vehicle or is carried out by means of a surveillance device.</p> <p>If the device is not located on the premises or in the vehicle, it is not intrusive surveillance unless the device consistently provides information of the same quality and detail as could be expected to be obtained from a device actually present on the premises or in the vehicle.</p>
	Private information	<p>Includes any information relating to a person's private or family life.</p> <p>Private life also includes activities of a professional or business nature (Amann v Switzerland (2000) 30 ECHR 843).</p> <p>"Person" also includes any organisation and any association or combination of persons.</p>
	Confidential material	<p>Includes:</p> <ul style="list-style-type: none"> <li>▪ matters subject to legal privilege;</li> <li>▪ confidential personal information; or</li> </ul> <p>Confidential journalistic material.</p>
HRA 1998	Human Rights Act	Enacts ECHR into English Law i.e. absolute and conditional human rights
ECHR 1950	European Convention of Human Rights	Sets out absolute and conditional Human Rights across Europe
OSC	Office of the surveillance commissioner	Appointed by the government to oversee the police and other public bodies use of covert surveillance techniques.
OICC	Office of the Interception of Communications commissioner	Appointed by the government to oversee the police and other public bodies interception of data communications
NAFN	National antifraud Network	Joint local authority network for dealing with fraud of which the Council is a member
SNS	Social network sites	E.g. Facebook and Twitter