

Report of the City Solicitor to the meeting of Governance and Audit Committee to be held on 20th August 2020

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Subject:

Regulation of Investigatory Powers Act 2000 (RIPA 2000) – Level of use (quarterly records)

Summary statement:

Decision of the Governance and Audit Committee held on 23rd January 2020:

**REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) –
POLICY, USE AND ENFORCEMENT ACTIVITY – QUARTERLY REVIEWS**

Resolved-

- (1) That the contents of the report be noted.
- (2) That the Council's continued compliance with RIPA be noted.

Action: City Solicitor

City Solicitor
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1. SUMMARY

1.1 This report is to provide information relating to the above resolutions and in particular:-

- (a)** The number of authorised and approved covert surveillance operations undertaken by the Councils criminal investigation teams for the quarters 1st January to 31st March 2020 and 1st April to 30th June 2020.
- (b)** The arrangements for the remote inspection by the Information Commissioners Office in August 2020.
- (c)** The Councils use of covert surveillance techniques in order to prevent or detect serious crime.
- (d)** The use of the Councils CCTV equipment by the Police or Department of Work and Pensions (DWP) for covert surveillance.
- (e)** Confirmation of the necessity and proportionality of the use of such covert investigative techniques.

NB See Glossary of terms at the APPENDIX below.

2. BACKGROUND

2.1 The Council's use of authorised and approved covert surveillance operations and obtaining of data communication information for the periods mentioned above.

2.2 The Councils Departments which have specific statutory powers to investigate criminal offences are as follows:-

- (a)** Neighbourhood and Customer Services (NH&CS).
- (b)** Environmental Health Service (EHS)
- (c)** West Yorkshire Trading Standards Service (WYTSS).
- (d)** Corporate Resources - Counter Fraud Team (CFT).
- (e)** Planning Service and Building Control (PS&BC).
- (f)** Housing Standards Service (HSS)
- (g)** Antisocial Behaviour Team and Youth Offending Team (ASBT & YOT).
- (h)** Licensing Services (Liquor and taxi etc.) (LS)

2.3 The Councils Departments which investigate breaches of employee discipline which may result in the detection of serious criminal offences are as follows:-

- (a)** Adult Social Care. (ASC)
- (b)** Children's Social Care (CSC)
- (c)** Corporate Resources (CR).
- (d)** Department of Place(DP)
- (e)** Office of the Chief Executive. (CX)

2.4 The returns for Quarter 1 (1st January to 31st March 2020) and Quarter 2 (1st April to 30th June 2020) are set out in the table below. In February 2020 an application from the Councils Corporate Fraud Team was received by the Council RIPA coordinator and monitoring officer (RICMO) and was in the process of been considered by the City Solicitor. It was in the event put on hold due to the COVID 19 lockdown in March. A NIL RETURN is shown for all other relevant departments which indicate that the enforcement team’s criminal investigators are able to obtain evidence without the need for covert surveillance. Where not applicable appears (N/A) the criminal offences investigated by the service do not fall within the definition of serious criminal offence under RIPA 2000 namely carrying a penalty of more than six months imprisonment and thus covert surveillance of such none serious crimes cannot be authorised under RIPA.

| Department/ Quarterly period (QTR) | EHS | WYTSS | CFT | PS& BC | HSS | ASBT & YOT& NH&C S | LS | Refusals | Authorisations /Approvals |
|------------------------------------|-----|-------|-----|--------|-----|--------------------|-----|----------|---------------------------|
| QTR 1 | 0 | 0 | 1 | n/a | n/a | n/a | n/a | 0 | 0 |
| QTR 2 | 0 | 0 | 0 | n/a | n/a | n/a | n/a | 0 | 0 |

2.5 The Council’s CCTV system and use of it for covert surveillance by the Police and DWP.

a) The Council owns a substantial CCTV system which assists in the prevention and detection of crime within the Centres of Bradford, Bingley, Shipley, Keighley, Silsden, Ilkley, Baildon, Wrose, Oakworth, Wibsey and Idle. The CCTV equipment is occasionally used by the Police or DWP when they provide evidence to the Councils CCTV manager (Phil Holmes) the use is necessary and proportionate to detect or prevent crime.

b) The table below shows comparative figures for QTR 1 and QTR 2.

| Quarterly Period (QTR) | Police | DWP | Refusals | Accepted | Total Operations |
|------------------------|--------|-----|----------|----------|------------------|
| QTR 1 | 4 | 0 | 0 | 4 | 29 |
| QTR 2 | 4 | 0 | 0 | 4 | 4 |

3. OTHER CONSIDERATIONS

3.1 THE INVESTIGATORY POWERS COMMISSIONERS OFFICE (IPCO)

(a) IPCO was established under the Investigatory Powers Act 2016 which came into force in September 2017. IPCO replaces the Office of the Surveillance Commissioner whose inspector undertook the Councils last inspection in October 2016.

(b) The Commissioner of IPCO makes arrangement for all police and local authorities

to be inspected periodically. A first inspection by an IPCO inspector of the Council under the new statutory framework and it will take place remotely due to COVID 19 in August.

(c) The IPCO Inspector reviews the following matters;-

- implementation of the recommendations of the 2016 inspection;
- all applications for the use of covert surveillance and whether they have been granted or refused;
- the central record and Register of authorisations held by RICMO;
- the reporting to this committee of use by officers of covert surveillance techniques and their general compliance with RIPA and the associated regulations and codes of practice;
- the arrangements for briefings to the Councils senior officers to raise awareness for the need to comply with RIPA and the training of Enforcement officers across the Council in RIPA 2000 compliance;

(d) In addition the Commissioner of IPCO takes steps to over time provide advice and guidance to the police and local authorities to support their continued compliance with RIPA 2000 and IPA 2016 which create a highly complex and regulated area of law governing the various covert investigative techniques.

3.2 ANNUAL TRAINING, RIPA BRIEFINGS AND THE INTERNAL AUDIT

(a) Following the completion of an internal audit on 22nd July 2020 the Councils RICMO (Richard Winter) (in consultation with) the Councils Senior Responsible officer (SRO) (Joanne Hyde) briefed all Strategic Directors and Assistant Directors in order to continue to raise awareness of the need to be vigilant within their services in respect of the unauthorised use of covert surveillance.

(b) All officers were reminded that any covert surveillance which was planned to be carried out it must be authorised and approved by the City Solicitor and the Magistrates court respectively and advice should be obtained from the Councils RICMO when any such action was contemplated.

(c) Arrangements were made by the Councils RICMO for 2019/20 annual training update to be presented to Council enforcement officers and managers (and officers employed by the Councils of Calderdale, Kirklees Leeds and Wakefield). This training event took place on Thursday 20th February 2020 in the City Hall and lasted 3 hours and was very well received by the delegates.

4. FINANCIAL & RESOURCE APPRAISAL

4.1 There are no financial implications arising from a resolution adopting the recommendations of this report.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1** The report is intended to audit potential risks of unauthorised covert surveillance by officers of the Council without authorisation and approval.

6. LEGAL APPRAISAL

- 6.1** The undertaking of Covert Surveillance or obtaining of data communication information is regulated by the Regulation of Investigatory Powers Act 2000, Investigatory Powers Act 2016 and associated guidance and Codes of Practice (see body of the Report).

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

- 7.1.1** There are no equality impact or diversity implications as a result of a resolution adopting the recommendations of this report.

7.2 SUSTAINABILITY IMPLICATIONS

- 7.2.1** There are no sustainability implications as a result of a resolution adopting the recommendations of this report.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

- 7.3.1** There are no greenhouse gas emission impacts as a result of a resolution adopting the recommendations of this report.

7.4 COMMUNITY SAFETY IMPLICATIONS

- 7.4.1** There is no community safety implications as a result of a resolution adopting the recommendations of this report as investigation into crime in the Councils district will continue by the police. The Councils Enforcement teams will continue where possible to undertake investigations of criminal offences overtly.

7.5 HUMAN RIGHTS ACT

- 7.5.1** There are no Human Rights issue as a result of a resolution adopting the recommendations of this report.

- 7.5.2** However, if covert surveillance was undertaken without authorisation and approval under RIPA, then it would violate Articles 6 and 8 (Right to a fair trial and right to Respect of Private and Family Life)

7.6 TRADE UNION

7.6.1 There are no trade union implications as a result of a resolution adopting the recommendations of this report.

7.7 WARD IMPLICATIONS

7.7.1 There are no ward implications as a result of a resolution adopting the recommendations of this report.

7.8 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

7.8.1 No Privacy Impact Assessment is required.

8. NOT FOR PUBLICATION DOCUMENTS

8.1 None

9. OPTIONS

9.1 See recommendation below.

10. RECOMMENDATIONS

10.1 To note the contents of the report.

10.2 To note the Councils continued compliance with RIPA.

10.3 To received a further report relating to the outcome of the IPCO inspection.

11. APPENDICES

APPENDIX Glossary of terms and abbreviations

| 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. |
| IPA 2016 | Investigatory Powers Act 2016 | Creates the Investigatory Powers Commissioners office (IPCO) |
| IPCO | Investigatory Powers Commissioners office | Created by the government to oversee the police and other public bodies' use of covert surveillance techniques. |
| SRO | Senior Responsible officer | Required to take an overview of the Councils |

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| | | use of covert surveillance and compliance with RIPA and the Councils RICMO |
| RICMO | RIPA Coordinator and Monitoring Officer | Coordinates and monitors the use of covert surveillance techniques on the Councils behalf. |
| SPOC | Single Point of contact for obtaining data communications information | Monitors the lawful obtaining of data communications information. |
| CCTV | Close circuit television | Used for safety and security purposes within Council buildings and the Bradford city centre and other town centres across the district. |
| CS | 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"> a) for the purpose of a specific investigation or operation; 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 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. |
| CHIS | Covert human intelligence source | A person is a CHIS if: <ul style="list-style-type: none"> (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); (b) s/he covertly uses such a relationship to obtain information or to provide access to any information to another person; or (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. |
| IS | Intrusive surveillance | Intrusive surveillance is defined as covert surveillance that: <ul style="list-style-type: none"> a) is carried out in relation to anything taking |

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| | | <p>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. Private life also includes activities of a professional or business nature (<i>Amann v Switzerland</i> (2000) 30 ECHR 843). "Person" also includes any organisation and any association or combination of persons.</p> |
| | Confidential material | <p><i>Includes:</i></p> <ul style="list-style-type: none"> ▪ matters subject to legal privilege; ▪ confidential personal information; ▪ Confidential journalistic material. |
| 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 | Replaced by IPCO in September 2017 |
| 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 anti fraud 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 |