

Report of the City Solicitor to the meeting of Governance and Audit Committee to be held on 21st January 2021

V

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 20th August 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 first 3 quarters of the municipal year.
- (b)** The outcome and actions from 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 and Quarter 3 (1st July to 30th September 2020) and Quarter 4 (1st October 2020 to 31st December 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. This application was resurrected in September 2020 and again put on hold due to COVID 19. 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 a serious criminal offence defined under RIPA 2000 namely carrying a penalty of more than six months imprisonment. 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&CS	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
QTR 3	0	0	1	n/a	n/a	n/a	n/a	0	1
QTR 4	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
QTR 3	2	0	0	2	6
QTR 4	2	0	0	2	6

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 last inspection was 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 took place remotely due to COVID 19 in August.
- (c) The IPCO Inspector report dated 20th August 2020 raised the following matters;-
 - Recommendation 1 implementation of the outstanding recommendation of the 2016 inspection namely to amend the policy, guidance and procedures document to remove all references to the use of the urgency procedures which are no longer available to local authorities.
 - Recommendation 2 (August 2020 report): To investigate whether any unauthorised surveillance activity has taken place and if so, a report of those findings and any remedial action taken should be sent to the IPC. A questionnaire was issued on 24th December 2020 by the Councils RICMO to all Strategic and Assistant Directors (SD & AD's) to establish the position and will be revisited in December each year going forward.
 - Guidance- Minor Revisions and updates to the Guidance and Policy Documents 2020. This was undertaken following the inspection and the policy will be reviewed in January by RICMO i.e. the annual check and updates.

3.2 ANNUAL TRAINING, RAISING AWARENESS, RIPA BRIEFINGS AND THE ANNUAL 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. Further training will be held all being well in May 2012 subject to COVID 19 restrictions.

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 and will be shared with all SD's and AD's and enforcement team managers following the consideration by committee and its resolutions.

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. BACKGROUND DOCUMENTS

8.1 The IPCO Inspectors report dated 20th August 2020.

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 note the outcome and actions arising from the IPCO inspection report.

10.4 That the questionnaire relating to the use of covert surveillance issued to all Strategic and Assistant Directors be issued annually and the returns to the questionnaire be submitted to the Councils RICMO before the end of December each year so that the information could be presented to the January Governance and Audit Committee meetings in a timely manner.

11. APPENDICES

APPENDIX I 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 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: a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and b) Involves the presence of any individual on the premises or in the vehicle or is carried out by means of a surveillance device. 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.
	Private information	Includes any information relating to a person's private or family life. Private life also includes activities of a professional or business nature (Amann v Switzerland (2000) 30 ECHR 843). "Person" also includes any organisation and any association or combination of persons.
	Confidential material	<i>Includes:</i> <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