

## **Report of the City Solicitor to the meeting of Governance and Audit Committee to be held on 27th January 2022 at 10.30 at City Hall Bradford**

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

#### **Summary Statement:**

**This report provides information relating to:**

- **The number of authorised and approved covert surveillance operations (Nil return) undertaken by the Councils criminal investigation teams for the first two quarters of 2021.**
- **The arrangements for training to be presented to officers of the Council in 2022.**
- **Investigatory Powers Commissioners Office guidance June 2021 which required a review of the Councils RIPA policy.**
- **The use of the Councils CCTV equipment by the Police or Department of Work and Pensions (DWP) for covert surveillance.**
- **A summary of the responses from Departments to the RIPA questionnaire issued by the Councils RIPA Coordinator and Monitoring Officer in December 2021.**

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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 (Nil return) undertaken by the Councils criminal investigation teams for the first two quarters of 2021.
- (b) The arrangements for training to be presented to officers of the Council in 2022.
- (c) IPCO guidance June 2021 which required a review of the Councils RIPA policy.
- (d) The use of the Councils CCTV equipment by the Police or Department of Work and Pensions (DWP) for covert surveillance.
- (e) A summary of the responses from Departments to the RIPA questionnaire issued by the Councils RIPA coordinator and Monitoring officer (RiCMO) in December 2021

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 and child protection and adult 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 (1<sup>st</sup> January to 31<sup>st</sup> March 2021) and Quarter 2 (1<sup>st</sup> April to 30<sup>th</sup> June 2021) Quarter 3 (1<sup>st</sup> July to 30<sup>th</sup> September 2021) and Quarter 4 (1<sup>st</sup> October to 31<sup>st</sup> December 2021) 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&C S	LS	Refusals	Authorisations /Approvals
QTR 1	0	0	0	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	0	n/a	n/a	n/a	n/a	0	0
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 the West Yorkshire Police and the Council 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. In order for the police or DWP to use the Council CCTV for directed surveillance evidence must be provided to the Councils CCTV manager (Phil Holmes) that the use of the CCTV is necessary and proportionate to detect or prevent crime in a police operation.

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

Quarterly Period (QTR)	Police	DWP	Refusals	Accepted	Total Operations
QTR 1	0	0	0	0	0
QTR 2	2	0	0	2	27
QTR 3	3	0	0	3	24
QTR 4	4	0	0	4	21

## 3. OTHER CONSIDERATIONS

### 3.1 THE INVESTIGATORY POWERS COMMISSIONNERS 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

2020.

(c) The IPCO Inspector report dated 20<sup>th</sup> August 2020 raised the following matters which have been actioned by the Councils RIPA Coordinator and Monitoring Officer (RiCMO); -

- 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. - **Completed by RiCMO**
- 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 IPCO. A questionnaire was issued in December 2020 and 2021 by the Councils RiCMO to all Strategic and Assistant Directors (SD & AD's) to establish the position. - **Completed by RiCMO and None were found or reported**
- Guidance- Minor Revisions and updates to the Guidance and Policy Documents 2020. This was undertaken following the inspection and the policy is reviewed and updated in January each year. – **completed by RiCMO.**
- In addition, recent advice from IPCO requires a review and update of the Councils policy documents on covert surveillance use to acknowledge that where covert surveillance cannot be authorised under RIPA then a record of the covert surveillance undertaken should be recorded in writing in a process regulated by the Human Rights Act 1998. The Councils RiCMO will report back to the next meeting of GAC in January 2022.- **arrangements made by RiCMO but no such HRA applications requested.**

### **3.2 ANNUAL TRAINING, RAISING AWARENESS, RIPA BRIEFINGS, THE COUNCILS GUIDANCE AND POLICY DOCUMENT AND THE ANNUAL INTERNAL AUDIT.**

- (a) Following the completion of an internal audit the Councils RiCMO (Richard Winter in consultation with) the Councils Senior Responsible officer (SRO) (Joanne Hyde) will brief 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) The Councils RiCMO reviews the Councils Policy and Guidance document in January each year and the review is currently being undertaken. The review will include a change to Council policy (as advised by IPCO last year) to allow enforcement officer/managers to seek authorisation from the City Solicitor to undertake covert surveillance it being authorised under the Human Rights Act 1998 rather than RIPA. The Policy and Guidance document will be shared with officers

following the review and any mid-year changes to legislation also shared with officers at the time.

(d) Arrangements have also been made by the Councils RICMO for training in 2022 as follows: -

1. Senior officer feedback to RIPA Q of December 2021 by way of a written/verbal briefing
2. Officer (open to Councillors) on line training to be arranged for Summer 2022.

(e) The responses to the December 2021 questionnaire to officers indicate that they are sufficiently aware of the regulatory regime to avoid unauthorised covert surveillance.

#### **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 Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000, the 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 newsletter June 2021.

**8.2** The updated RIPA Policy and Procedure January 2022.

## **9. OPTIONS**

**9.1** See recommendation below.

## 10. RECOMMENDATIONS

10.1 That the contents of the report be noted.

10.2 That the Councils continued compliance with RIPA (Regulation of Investigatory Powers Act) as coordinated and monitored by the Councils RIPA Coordinator and Monitoring Officer and the Senior Responsible Officer be noted.

10.3 That the RIPA training arranged be noted.

10.4 That the Investigatory Powers Commissioners Office advice regarding the Human Rights Act 1998 process as implemented by the RIPA Coordinator and Monitoring Officer be noted.

## 11. APPENDICES

APPENDIX I Glossary of terms and abbreviations

Abbreviation	Title/Term	Background/Definition
HRA 1998	Human Rights Act	Enacts ECHR into English Law i.e. absolute and conditional human rights
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 under IPA 2016 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 as appointed by the National Anti Fraud Network (NAFN) operated nationally through at Tameside Council of which the Council is a member .
NAFN	National Anti-Fraud Network	To be consulted when Data Communications information is required.
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: a) for the purpose of a specific investigation or operation;

		<p>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</p> <p>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.</p>
CHIS	Covert human intelligence source	<p>A person is a CHIS if:</p> <p>(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);</p> <p>(b) s/he covertly uses such a relationship to obtain information or to provide access to any information to another person; or</p> <p>(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.</p>
DComms	Data Communications information	<p>Authorisation can be applied for via the nominated Single Point of Contact at NAFN and then authorised by a designated officer at IPCO. E.g. internet , telephone and mail use but not the content of internet pages or telephone calls made ir received or letters sent or received.</p>
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><b>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.</b></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><i>Includes:</i></p> <ul style="list-style-type: none"> <li>▪ matters subject to legal privilege;</li> <li>▪ confidential personal information;</li> <li>▪ Confidential journalistic material.</li> </ul>
ECHR 1950	European Convention of Human Rights	<p>Sets out absolute and conditional Human Rights across Europe</p>
OSC	Office of the surveillance	<p>Replaced by IPCO in September 2017</p>



	commissioner	
SNS	Social network sites	E.g. Facebook and Twitter