

# Audit & Standards Committee

## Agenda Item 54

**Subject:** Annual Surveillance Report 2021

**Date of meeting:** 19 April 2022

**Report of:** Executive Director Governance, People and Resources

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**Ward(s) affected:** All

### General release

#### 1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The purpose of this report is to appraise the Committee of the activities that have been undertaken utilising the powers under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last report to Committee in March 2021.
- 1.2 The report also introduces an updated Policy and Guidance document for Committee to review and approve.

#### 2. RECOMMENDATIONS:

- 2.1 That the continued use of covert surveillance be approved as an enforcement tool to prevent and detect crime and disorder investigated by officers, providing the activity is in line with the Council's Policy and Guidance and the necessity and proportionality rules are stringently applied.
- 2.2 That the surveillance activity undertaken by the authority since the report to Committee in March 2021 as set out in paragraph 3.3 is noted.
- 2.3 That the updated Policy and Guidance document set out in Appendix 1 be approved.

#### 3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is the law governing the use of covert surveillance techniques by public authorities, including local authorities. RIPA was enacted as part of a suite of legislation flowing from the Human Rights Act 1997. RIPA requires that when public authorities need to use covert techniques to obtain information about someone, they do it in a way that is necessary and compatible with human rights.
- 3.2 RIPA regulates the interception of communications, directed and intrusive surveillance and the use of covert human intelligence sources (informants). Local

authorities may only carry out directed surveillance, access certain communications data and use informants.

- 3.3 The Council has carried out one surveillance operation since the last report to Committee in March 2021.
- 3.4 The Protection of Freedoms Act was enacted in November 2012. Since then, approval must be sought from a Magistrate when local authorities wish to conduct surveillance activity, access communications data and use informants. This is in addition to the authorisation by an Authorising Officer who meets the criteria regarding their position within the authority.
- 3.5 In addition to seeking the approval of a Magistrate, all applications must meet the Serious Offence test. This stipulates that any directed surveillance is restricted to the investigation of offences that carry a custodial sentence of six months or more. The only offence where this will not apply is in regard to the investigation of underage sales of tobacco or alcohol.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The only alternative is to curtail the use of RIPA but this is not considered an appropriate step.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 There has been no consultation in the compilation of this report as it is a requirement of the Code of Practice pursuant to section 71 of RIPA that elected members review the authority's use of RIPA and set the policy once a year.

#### **6. CONCLUSION**

- 6.1 It is essential that officers are able to use the RIPA powers where necessary and within the threshold set out in the Protection of Freedoms Act 2012, but only after excluding all other methods of enforcement. An authorisation will only be given by the relevant 'Authorising Officer' following vetting by the 'Gatekeeper' therefore it is unlikely that the powers will be abused. There is now the additional safeguard of judicial sign off.
- 6.2 The implementation of the Annual review has made the whole process transparent and demonstrates to the public that the correct procedures are followed.

#### **7. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 7.1 There are no financial implications arising from this report. Any covert surveillance undertaken needs to be met from within current budget resources.

Finance Officer Consulted: Michael Bentley

Date: 15/03/22

##### Legal Implications:

- 7.2 The legal framework governing the use of covert surveillance and the accessing of communications data is addressed in the body of the report. Adherence to the Council's policy and procedures – which are subject to annual review by this Committee – is key in ensuring that the Council's powers are exercised lawfully and proportionately.

Lawyer Consulted:

Victoria Simpson

Date: 17/03/22

Equalities Implications:

- 7.3 The proper and consistent application of the RIPA powers should ensure that a person's basic human rights are not interfered with, without justification. Each application will be assessed by the gatekeeper for necessity and proportionality prior to the authorisation by a restricted number of authorising officers. The application will also be signed off by a Magistrate. This process should identify any inconsistencies or disproportionate targeting of minority groups and enable action to be taken to remedy any perceived inequality.

Sustainability Implications:

- 7.4 There are no sustainability implications

Any Other Significant Implications:

- 7.5 None

Crime & Disorder Implications:

- 7.6 If used appropriately, the activities described in this report should enhance our capacity to tackle crime and disorder

Risk and Opportunity Management Implications:

- 7.7 None

Public Health Implications:

- 7.8 None

Corporate / Citywide Implications:

- 7.9 Proper application of the powers will help to achieve fair enforcement of the law and help to protect the environment and public from rogue trading and illegal activity.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Policy and Guidance Document version January 2022

