

Audit and Governance Committee

Date: XXXX

Agenda Number: XXXX

Title of Report	Annual review of the Council's use of the Regulation of Investigatory Powers Act 2000 (RIPA)
Purpose of Report	To inform the Audit and Governance Committee regarding the Council's use of Directed Surveillance and Covert Human Intelligence Sources during 2021/22.
Recommendations	That the Audit and Governance Committee: <ol style="list-style-type: none">1. Notes the use of surveillance activities across the Council.2. Agrees the conclusions to this report and supports the proposal to proceed with the outstanding recommended actions
Reason for Recommendation	<ul style="list-style-type: none">• To comply with the recommendation contained in the statutory Code of Practice.• To satisfy the Committee that Officers using surveillance techniques are doing so in an appropriate manner
Report submitted by	Karen Smith Head of Regulatory Services and Consumer Protection karen.smith@gloucestershire.gov.uk

Executive Summary

The Regulation of Investigatory Powers Act (RIPA) came into force in 2000. The Act allowed:

- Councils to carry out covert surveillance of alleged offenders and to instruct individuals to form relationships with the intention of obtaining information for the prevention and detection of crime.
- Compliance with RIPA ensures that the surveillance actions taken by the Council are acceptable interference of qualified rights within the Human Rights Act 1998, in particular, the right to privacy and the right to a fair trial when gathering evidence in preparing cases for Court.
- In accordance with the guidance issued by the Home Office to support the statutory Codes of Practice, it is recommended that Councillors are involved in an annual review of RIPA policies.

This report provides the annual review for 2021/22

1.0 Introduction

1.1 When undertaking its functions, the Council must comply with the Human Rights Act 1998. Article 8 establishes a qualified right to respect for private and family life. In certain circumstances that right may be interfered with.

1.2 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a statutory framework under which the Council may interfere with this right.

2.0 Background

- 2.1 Authorisation can only be granted where interference is
- (a) In accordance with the law.
 - (b) Necessary; and
 - (c) Proportionate.
- 2.2 Under RIPA, the Council may seek authorisation to permit directed surveillance or the use of Covert Human Intelligence Sources (CHIS). Directed surveillance is defined as any ongoing monitoring or observation activity undertaken by an officer of the Council designed to obtain information about the subject's movements, conversations, communications, etc. where the subject remains unaware of the activity.
- 2.3 The Council's use of RIPA is tightly controlled. All authorisations are subject to approval at the Magistrates' Court and the use of directed surveillance and acquisition of communication data should only be permitted for:
- (a) The prevention or detection of criminal offences (at least one of which must be punishable by a maximum of at least 6 months imprisonment) or
 - (b) Prescribed offences relating to age related sale of alcohol or tobacco.
- 2.4 By law, elected members are not permitted to be involved in any individual application/authorisation, however paragraph 3.35 of the Covert Surveillance and Property Interference Code 2018 ('the Code') states that:
- " Elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on the use of the 2000 Act on a regular basis to ensure it is being used consistently with the local authority's policy and the policy remains fit for purpose."*

3.0 Oversight of RIPA activities

- 3.1 RIPA and associated statutory Codes of Practice prescribe the information to be included in an application to carry out directed surveillance activities and the thresholds to be met before applications can be approved.
- 3.2 All authorisations for directed surveillance activities carried out by Gloucestershire County Council under RIPA must be independently reviewed and approved at a Magistrates' Court.
- 3.3 The Investigatory Powers Commissioners Office (IPCO) carries out scheduled audits of the use of RIPA by Local Authorities to monitor quality of applications and compliance with the Codes. Gloucestershire County Council was subject to inspection on May 12, 2022, the inspector was satisfied that high levels of compliance have been maintained; the full report can be found in Appendix A. Although there were no formal recommendations for improvement, the inspector made several observations which are listed in section 6 below.

4.0 Annual review of the use of RIPA – 1 April 2021 to 31 March 2022

During this period:

- 4.1 There have been no applications for directed surveillance to be reviewed by the Assistant Director of Legal Services acting as Senior Responsible Officer under the Code of Practice. This is a direct consequence of suspension of enforcement activities during the Coronavirus pandemic period.
- 4.2 There were no applications to use covert human intelligence sources (CHIS), including applications relating to juvenile CHIS.
- 4.3 Contact has been established with the manager of the Counter Fraud and Enforcement Unit who manage RIPA activity for Cheltenham, Tewkesbury, Cotswold and Forest of Dean district councils within Gloucestershire. GCC and the Counter Fraud Unit will continue to meet from time to time to share best practice.

5.0 Progress against matters outstanding from the previous report

R A G		Issue to be addressed	Officer recommendations to address observations	Progress to date
	01	<p>Training</p> <ol style="list-style-type: none"> 1. General awareness of RIPA through wider County Council 2. Consider recruitment of another Authorising Officer to establish some resilience in the process 	<p>Consider the use of meta data and other methods to reach widest possible audience.</p> <p>Identify and train a second Authorising Officer</p>	<p>Ongoing</p> <p>Funding has been secured for 22/23. Work underway to identify most effective means of delivering awareness training.</p> <p>Gloucestershire Fire and Rescue Service have confirmed a senior officer can be available to act as an additional authorising officer (to fill vacancy created when Previous Chief Fire Officer left GCC) Once IPCO have confirmed whether there is a minimum seniority requirement, training will begin</p>

6. Progress against matters raised during IPCO inspection on May 12, 2022

R A G		Observation how error can be avoided in the future	Officer recommendations to address observations	Progress to date
	02	<p>Review of Procedural Guidance to remove reference to an urgent oral authorisation process (the Protection of Freedoms Act 2012 introduced the requirement for judicial approval, in effect removing any capability for local authorities to authorise</p>	<p>Procedural guidance to be reviewed and updated</p>	<p>Ongoing</p> <p>First draft of review completed and circulated to working group for approval</p>

		activity through an urgent oral process)		
03	Review of Procedural Guidance to ensure any reference to acquisition of confidential information (as defined) is accompanied by reminder that these applications must be authorised by higher level authorising officer	Procedural guidance to be reviewed and updated	Ongoing Ongoing First draft of review completed and circulated to working group for approval	
04	Review of procedural Guidance to ensure variations in authorisation duration are updated to reflect current position.	Procedural guidance to be reviewed and updated	Ongoing First draft of review completed and circulated to working group for approval	
05	Authorising officer to ensure applications contain sufficient information to satisfy paragraph 4.7 in the Covert Surveillance and Property Interference Code of Practice and the final requirement to evidence what other methods have been considered.	Authorising Officer has raised with applicants and will consider when reviewing future applications	Complete	
06	Authorising Officer to ensure they clearly articulate what activity is being authorised, and if other agencies are involved, to clarify what role they are authorised to carry out	Authorising Officer has taken comments on board and will apply to future applications	Complete	
07	Authorising Officer to consider extending review periods to remove time pressure on investigating officers	Authorising Officer has taken comments on board and will apply to future applications	Complete	

7. Conclusions

- 7.1 Officers to proceed with the outstanding recommended actions with priority given to continued raising of awareness of the procedural guidance across the whole council. Members are asked to confirm their support
- 7.2 Officers will provide a further annual report to the Audit and Governance Committee in July 2023 updating on the progress regarding the recommendations and informing them on the Council's use of RIPA for the Committee's further consideration.

Appendix A Redacted Investigatory Powers Commissioner's Office Report



PO Box 29105, London
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Mr Peter Bungard
Chief Executive
Gloucestershire County Council
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Gloucester GL1 2TG

Peter.BUNGARD@gloucestershire.gov.uk

17 May 2022

Dear Mr Bungard,

Inspection of Gloucestershire County Council

Please be aware that IPCO is not a “public authority” for the purpose of the Freedom of Information Act (FOIA) and therefore falls outside the reach of the FOIA. It is appreciated that local authorities are subject to the FOIA and that they may receive requests for disclosure of our reports. In the first instance the SRO should bring the matter to the attention of the IPCO Data Protection Officer (at: info@ipco.org.uk), before making any disclosure. This is also the case if you wish to make the content of this letter publicly available.

Your Council was recently the subject of an inspection by one of my Inspectors [REDACTED]. I am grateful to you, your Assistant Director of Legal Services and nominated RIPA Senior Responsible Officer, Gillian Parkinson and her team, for providing the appropriate documentation to facilitate an element of remote inspection. Ms Parkinson and your Head of Regulatory Services and RIPA authorising officer, Karen Smith, are also thanked for their attendance and participation at the subsequent inspection discussion. As part of this inspection, [REDACTED] has examined arrangements to manage activity authorised under Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) by Gloucestershire County Council.

[REDACTED] has reviewed your current RIPA Policy which was amended in line with the recommendations made in the 2019 inspection, but requires further amendment as follows:

- The policy makes several references to an urgent authorisation process. As you know, the Protection of Freedoms Act 2012 introduced the requirement for judicial approval, in effect removing any capability for local authorities to authorise activity through an urgent oral process.
- The final table, which details the organisation's authorising officers, highlights the need to raise the level when considering the acquisition of confidential information. This is the first mention of the requirement and consideration should be given to highlighting the need within the text of the policy.
- There are also some minor amendments required to highlight the variations in authorisation durations, in particular, that which relates to Juvenile CHIS which is now four months.

Thanks to the early provision of documentation, [REDACTED] was able to review the four authorisations granted since your last inspection. As a result, he raises the following points:

- While applications for directed surveillance are of a good standard, there is some variation in the consideration of proportionality. Applicants are directed to paragraph 4.7 in the Covert Surveillance and Property Interference Code of Practice and the final requirement to evidence what other methods have been considered.
- It is important that authorising officers articulate clearly what activity is being authorised, and if other agencies are involved, to clarify what role they are authorised to carry out.
- The Act does not stipulate a timeframe for reviews, but authorising officers could consider extending current review timelines, as this would provide investigators a little more time to progress all the necessary enquiries and remove some unnecessary time pressure.

It is good to see that you have been able to deliver some RIPA training to relevant staff despite the pandemic. I know that your SRO is considering what methods can be adopted to increase a general awareness across the organisation, including the use of Meta data, which is a useful method of ensuring continued compliance. I note that you currently only have one trained authorising officer in Karen Smith, and building some resilience around the role is rightly being considered by your SRO.

I am pleased to see that you have provided clear guidance within your policy regarding the management of the product of surveillance, which is usefully cross referenced in your organisation's Data Protection Policy. Following receipt of my letter highlighting the importance of the issue, your SRO and authorising officer formally wrote to relevant staff, issuing clear guidance in line with the safeguarding measures detailed in the relevant chapters in the Codes of Practice. This again demonstrates the importance your organisation places on compliance.

In conclusion, while your organisation is a limited user of its surveillance powers, the requirement for an up to date and relevant policy, and an awareness of RIPA across the organisation, remains. I take the opportunity here to reiterate to you the importance of regular, ongoing internal oversight of the actual or potential use of these powers, whilst as an organisation you are currently well placed in this regard thanks to an active and well informed Senior Responsible Officer. Compliance with the legislation and Codes of Practice remains high.

I hope that you find this letter to be helpful and constructive. My Office is available to you should you have any queries following the recent inspection, or at any point in the future. Contact details are provided at the foot of this letter. I shall be grateful if you would acknowledge receipt of the report within two months.

Yours sincerely,

[REDACTED]
The Investigatory Powers
Commissioner