

# Audit and Governance Committee

Date: **21/07/2023**

Agenda Number: **XXXX**

<b>Title of Report</b>	Annual review of the Council's use of the Regulation of Investigatory Powers Act 2000 (RIPA)
<b>Purpose of Report</b>	To inform the Audit and Governance Committee regarding the Council's use of Directed Surveillance and Covert Human Intelligence Sources during 2022/23.
<b>Recommendations</b>	That the Audit and Governance Committee:  <ol style="list-style-type: none"><li>1. Notes the use of surveillance activities across the Council.</li><li>2. Agrees the conclusions to this report and supports the proposal to proceed with the outstanding recommended actions</li></ol>
<b>Reason for Recommendation</b>	<ul style="list-style-type: none"><li>• To comply with the recommendation contained in the statutory Code of Practice.</li><li>• To satisfy the Committee that Officers using surveillance techniques are doing so in an appropriate manner.</li></ul>
<b>Report submitted by</b>	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 2022/23

## 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 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, social media use, 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 (GCC) 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. GCC was last inspected on May 12, 2022. That inspection was reported to this Committee in 21/22, the observations of the Inspector and progress against them are laid out in section 6 below.

#### 4.0 Annual review of the use of RIPA – 1 April 2022 to 31 March 2023

During this period:

4.1 There have been 4 (four) applications, all authorised, for directed surveillance which have been reviewed by the Assistant Director of Legal Services acting as Senior Responsible Officer (SRO) under the Code of Practice. The SRO is satisfied that authorisations were properly considered and managed.

4.2 Summary of applications –

Reference	Activity under surveillance	outcome
TSS/2223/DS/194	Retail supply of illegal tobacco	Ongoing investigation
TSS/2022/DS/195	Storage and retail supply of illegal tobacco	Ongoing Investigation
TSS/2223/DS/196	Sale of age restricted products (disposable e-cigarettes) to young people under the age of 18	Approx 15% failure rate. Advice provided to businesses. Ongoing Investigation into repeated sale by one retail outlet.
TSS/2223/DS/197	Retail supply of illegal tobacco	Ongoing Investigation

4.3 There were no applications to use CHIS, including applications relating to juvenile CHIS.

#### 5.0 Progress against matters outstanding from the previous report

<b>R A G</b>		<b>Issue to be addressed</b>	<b>Officer recommendations to address observations</b>	<b>Progress to date</b>
	01 (a)	<b>Training</b>  General awareness of RIPA through wider County Council	Consider the use of meta data and other methods to reach widest possible audience	<b>Ongoing</b>  Online Training has been developed in association with NAFN (previously the National Anti-Fraud Network). It is intended this will be rolled out across GCC officers through 2023/24.
	01 (b)	<b>Resilience</b>  Consider recruitment of another Authorising Officer to establish some resilience in the process	Identify and train a second Authorising Officer	<b>Ongoing</b>  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). Training to be delivered 2023/24
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## 6. Progress against outstanding observations 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	<b>Review of Procedural Guidance</b> 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 activity through an urgent oral process)	Procedural guidance to be reviewed and updated	<b>COMPLETE</b>  Revised document approved by working group and published on Staffnet – reference to urgent oral authorisations removed  <a href="https://staffnet.gloucestershire.gov.uk/internal-services/legal-services/covert-surveillance-procedural-guidance/">https://staffnet.gloucestershire.gov.uk/internal-services/legal-services/covert-surveillance-procedural-guidance/</a>
	03	<b>Review of Procedural Guidance</b> 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	<b>COMPLETE</b>  Revised document approved by working group and published on Staffnet –  Additional definition of confidential information added.  3 additions made to emphasise the need for higher level authorisation.
	04	<b>Review of procedural Guidance</b> to ensure variations in authorisation duration are updated to reflect current position.	Procedural guidance to be reviewed and updated	<b>COMPLETE</b>  Revised document approved by working group and published on Staffnet - One amendment made to reflect the change in duration for juvenile CHIS.

## 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 2024 updating on the progress regarding the recommendations and informing them on the Council's use of RIPA for the Committee's further consideration.