

## Audit and Governance Committee

Date: **30 July 2021**

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 2020/21.
<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. Confirms the current procedural guidance and the arrangements for authorising applications remain fit for purpose; and</li><li>3. 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>
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### 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 2020/2021

## 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. These inspections are carried out approximately every 3 years, the last inspection of this Council was carried out on May 30, 2019.

### **4.0 Annual review of the use of RIPA – 1 April 2020 to 31 March 2021**

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 The Council's procedural guidance was reviewed and updated by a working group consisting of the Assistant Director of Legal Services, a Principal Lawyer and Legal Services Business Partner, the Head of Audit Risk Assurance and the Head of Regulatory Services and Consumer Protection (an authorising officer) in January/February 2021 (see Section 5, point 01 below).
- 4.4 one error occurred whereby a properly authorised surveillance operation was not cancelled at the end of the prescribed period giving rise to unauthorised continued collection of information.

This related to a period of 39 days where surveillance footage was captured beyond the date of cancellation using a covert camera.

Once identified, this matter was raised internally with the Senior Responsible Officer and subsequently reported to the relevant body in line with the Code of Practice. The relevant body in this instance is the Office of the Investigatory Powers Commissioner.

The Investigatory Powers Commissioner accepted that circumstances giving rise to the error had been appropriately managed and that the action taken by officers had been sufficient to ensure no information obtained during the unauthorised period of surveillance was accessed. The Commissioner was further satisfied that the information gathered during the authorised period of surveillance was not tainted; it was proportionate for this information to inform the ongoing investigation.

The Commissioner was satisfied the error did not arise from a systemic failure in the Council's process and that the subsequent process review and remedial action were sufficient. (See section 6 below)

The Commissioner confirmed there would be no further action, beyond the review of process, as a result of this error.

## 5.0 Progress against matters outstanding from the previous report

R A G		Observation by the Chief Inspector during the inspection	Officer recommendations to address observations	Progress to date
	01	<p>The Internet Policy should be further revised to include reference to the 2018 Code of Practice.</p> <p><i>An observation is therefore offered that the internet policy be further revised to include clear reference to paragraphs 3.10 to 3.17 (surveillance) and paragraphs 4.11 to 4.17 (CHIS) of the codes of practice (2018 editions)</i></p> <p><i>...the section covering the use of the Internet (Section 3, Page 9) would benefit by way of reference to the relevant paragraphs of the revised codes of practice. [4.2 and 5.3.1]</i></p>	<p>It is proposed that the 'internet investigations' section of the RIPA Procedural Guide be amended to include specific reference to these sections of the codes of practice.</p> <p>Discussion with the owner of the social media policy should be considered to determine whether that policy should also be amended in response to the observation.</p>	<p><b>Complete</b></p> <p>The procedural guidance has been updated and made available to all staff (see 4.3 above)</p> <p><b>Complete</b></p> <p>A discussion was had with the owner of the Social Media policy. It was felt that the specific reference to the RIPA codes were not appropriate for this document as they are clearly referenced in the RIPA procedural guide and readers of the social media policy are clearly signposted to that document.</p>
	02	<p><u>Training</u></p> <p>The excellent strategic RIPA training plan in place for 2019/20</p>	<p>A plan to raise awareness of covert surveillance was proposed in the previous report but this was not delivered as a direct consequence of the Council's response to the Coronavirus pandemic. A plan had been agreed with the GCC communications team. However, this was</p>	<p><b>Ongoing</b></p> <p>The working group plans to create material in conjunction with the communications team designed to raise awareness with GCC officers and supervisors who may carry out surveillance activities beyond the limited applications regulated</p>

		<p>delayed due to the need to focus resources on responding to the Coronavirus pandemic</p> <p>The plan will also include training in other aspects of investigation which will complement Officer's understanding RIPA and help contextualise the need for accountability for surveillance style work across the whole County Council.</p>	<p>under RIPA</p> <p>Delivery of specialised training to staff, including the ambition for wider investigation training applauded at the last inspection, is dependent on the ability to secure funding.</p> <p>However, there are opportunities to raise awareness of these areas, through a rolling programme of counter fraud training delivered by the internal audit team.</p> <p>Feedback from this work can be used to develop a more comprehensive programme in 2022/23 if funding permits.</p>
03	<p><u>RIPA Collaboration</u></p> <p>Significant opportunity exists to collaborate across Gloucestershire local authorities.</p> <p><i>It was abundantly clear during the operation that significant opportunity exists within Gloucestershire for wider collaboration on RIPA structures between the County Council and the six District Councils.... Whilst there is some synergy between those that share legal services, each authority operates independently in their approach to covert investigation... There are a number of regional collaborations in place across the UK where local authorities have implemented a single operating model that brings efficiencies alongside increased knowledge and</i></p>	<p>It is proposed that steps are taken to consider opportunities for extending the planned training to include Officers from the 6 District Councils.</p>	<p><b>Ongoing</b></p> <p>Contact will be made with Chief Execs and the Senior Appropriate Officers in each of the District Councils to explore opportunities for collaborative working.</p> <p>The timing of this contact will be dependant on capacity of both County and District Councils as strategic and operational resources from both remain committed to Coronavirus response.</p>

	<p><i>confidence in the application of RIPA. Some of these collaborations have gone as far as creating a single joint investigating team, whilst others have found financial and operational efficiencies by just collaborating on areas such as a single procedures and guidance document and joint training... If this is a concept that the respective Council; Chief Executives would like to scope and explore further, the Investigatory Powers Commissioners will provide guidance and support... [5.3.7 to 5.3.10]</i></p>		
05	<p><u>Non RIPA</u></p> <p>Use of RIPA terminology should be avoided for activity that falls outside the requirements of legislation.</p> <p>This observation relates to authorisations for surveillance activities which the County Council as part of its overarching functions which sit outside the protections afforded by RIPA authorisations.</p> <p>It was agreed by the Chief Inspector that there are some instances where the County Council may wish to employ surveillance activities to gather evidence in relation to matters which do not meet the serious crime threshold applied by RIPA. Application of this parallel system affords the County Council a robust mechanism for challenging the use of surveillance, ensuring such activities are proportionate, legal, necessary and accountable and recording the rationale behind each authorised</p>	<p>It is proposed that the Procedural Guide is reviewed to ensure Officers understand when activities fall under the remit of RIPA and when they are authorised under the Council's process.</p> <p>And copies of the official forms used to apply for authorisation to carry out surveillance, to review authorised surveillance and to renew surveillance activities are amended to remove reference to RIPA and are made available to via StaffNet alongside the Procedural Guide.</p> <p>In addition, further training to be rolled out to ensure a consistent application of the process for seeking authorisations for non-RIPA surveillance activities.</p>	<p><b>Complete</b></p> <p>See point 01 above</p> <p><b>Complete</b></p> <p>Template forms are not retained by GCC but downloaded direct from the Home Office website as required. The Authorising Officer will ensure forms are amended as suggested</p> <p><b>Ongoing</b></p> <p>This is addressed in point 02 above</p>

	<p>application.</p> <p><i>To avoid confusion and maintain the distinction between RIPA and the Non-RIPA process it would be advisable to avoid the use of the term directed surveillance and delete any reference to RIPA on the application template.</i></p> <p>[5.4.4]</p>		
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## 6. Progress against process review following surveillance error

R A G	Observation how error can be avoided in the future	Officer recommendations to address observations	Progress to date
06	All applications for directed surveillance or CHIS activity which request use of remote access surveillance equipment from a third party must be accompanied by contact details for the person responsible for installing or operating that equipment	An Authorising Officer must not authorise any application for judicial approval until they are satisfied they have sufficient contact details for the person responsible for installing or operating that equipment	<p><b>Complete</b></p> <p>The central record of authorisations which must be maintained by the Authorising Officer and reviewed by the Senior Responsible Officer has been amended to include specific record third party contact details where external support is required.</p>
07	The Authorising Officer must be satisfied that any covert recording equipment has been deactivated or removed before directed surveillance is cancelled	<p>For all cases the Authorising Officer must plan a date not closer than 5 working days to statutory 3-month cancellation date of directed surveillance operations.</p> <p>If the operation is cancelled by the Investigating Officer before the expiry of the 3-month period, the Authorising Officer must get assurance from the Investigating Officer that any covert surveillance equipment is decommissioned before the cancellation is accepted.</p>	<p><b>Complete</b></p> <p>Cancellation dates are recorded and notified as per the recommendations.</p>

		<p>If the operation continues for the entire 3-month period, the Authorising Officer must get an assurance from the Investigating Officer that arrangements are made to ensure any covert surveillance equipment will be decommissioned no later than the final authorised date of surveillance. If the Investigating Officer is not available or unable to provide assurance, the Authorising Officer must contact the person responsible for installing any covert surveillance equipment using details held in the central record of authorisations to ensure such an arrangement is in place.</p> <p>It will be best practice for the investigating Officer to advise any external suppliers of covert surveillance equipment of the last authorised date of surveillance in writing when arrangements are made for installation.</p>	
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## 7. Conclusions

- 7.1 Officers propose to proceed with the outstanding recommended actions with priority given to raising 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 2022 updating on the progress regarding the recommendations and informing them on the Council's use of RIPA for the Committee's further consideration.