

For publication

**Regulation of Investigatory Powers Act 2000 (RIPA) – Annual
Report 2018**

Meeting: (1) Standards and Audit Committee
 (2) Cabinet Member for Governance

Date: (1) 4 April 2018
 (2) TBD

Portfolio: Cabinet Member for Governance

Report by: Monitoring Officer

For publication

1.0 Purpose of Report

- 1.1 To give an annual report to members on activities relating to surveillance by the Council and policies under the Regulation of Investigatory Powers Act 2011.

2.0 Recommendations

- 2.1 To note the report.

3.0 Background

RIPA

- 3.1 Chesterfield Borough Council has powers under the Regulation of Investigatory Powers Act 2000 (RIPA) to conduct authorised directed surveillances (DI) and use of human

intelligence sources (CHIS) in certain circumstances in connection with the conduct of criminal investigations.

Reporting to Members

- 3.2 This report is submitted to members as a result of the requirement to report to members under paragraph 3.35 of the Home Office Code of Practice for Covert Surveillance and Property Interference. The previous report was submitted to members in 2017. Further reports will be submitted annually whether or not there has been any authorised surveillance.

Background

- 3.3 All directed surveillances (covert, but not intrusive) and use of covert human intelligence sources (CHIS) require authorisation by a senior Council officer and the exercise of the powers is subject to review. The controls are in place in accordance with the Human Rights Act, particularly the right to respect for family and private life.
- 3.4 The Office of the Surveillance Commissioner (OSC) oversees the exercise by Councils of their surveillance powers.
- 3.5 A confidential database of authorised surveillances is maintained, charting relevant details, reviews and cancellations. There have been no authorisations since 2010.
- 3.6 Substantial changes were made to the powers of Local Authorities to conduct directed surveillance and the use of human intelligence sources under the Protection of Freedoms Act 2012.
- 3.7 As from 1 November 2012 Local Authorities may only use their powers under the Regulation of Investigatory Powers Act 2000 to prevent or detect criminal offences punishable by a minimum term of 6 months in prison (or if related to underage sale of alcohol and tobacco – not relevant to this Council). The

amendment to the 2000 Act came into force on 1 November 2012.

- 3.8 Examples of where authorisations could be sought are serious criminal damage, dangerous waste dumping and serious or serial benefit fraud. The surveillance must also be necessary and proportionate. The 2012 changes mean that authorisations cannot be granted for directed surveillance for e.g. littering, dog control, fly posting.
- 3.9 As from 1 November 2012 any RIPA surveillance which the Council wishes to authorise must be approved by an authorising officer at the council and also be approved by a Magistrate; where a Local Authority wishes to seek to carry out a directed surveillance or make use of a human intelligence source the Council must apply to a single Justice of the Peace.
- 3.10 The Home Office have issued guidance to Local Authorities and to Magistrates on the approval process for RIPA authorisations.

4.0 Activity over past year

- 4.1 During 2017 no directed surveillances (DS) or use of human intelligence sources (CHIS) were authorised by the Council under the Act.
- 4.2 A detailed modular training course was developed, with the intention of it being adapted to be uploaded to Aspire Learning and rolled out as mandatory training for relevant officers. However, as the course was being finalised, it was discovered that Aspire Learning already had a module which would cover all key issues. It has been trialled by some enforcement officers and this has generated feedback on some issues, which are being followed up. The intention is that the training is then rolled out to all officers involved with enforcement, and also their managers, relevant legal officers and also the chief executive (who has ultimate responsibility). Further, more

detailed, modular training will be considered as necessary in due course.

- 4.3 Enquiries have been made of Arvato and Kier as to whether they use surveillance. Arvato does not use surveillance that requires authorisation under RIPA. Kier's function does not require the use of surveillance.
- 4.4 No inspection of the Council's procedures has taken place by the Office of the Surveillance Commissioner in the past year (the previous inspection took place in March 2016).
- 4.5 The Constitution was updated in 2017 to move responsibility for this function to the Cabinet Member for Finance and Governance following a decision by the then Leader.
- 4.6 As a consequence of the Investigatory Powers Act 2016, the Office of the Surveillance Commissioner was subsumed (with the Interception of Communications Commissioner's Office and the Intelligence Services Commissioner) into the Investigatory Powers Commissioner's Office from 1st September 2017, headed by Lord Justice Adrian Fulford (the Investigatory Powers Commissioner).

5.0 OSC Inspection and Surveillance Commissioner Annual Report

- 5.1 Members will recall that in March 2016 a surveillance inspector conducted a routine inspection of the Council's procedures. At that stage surveillance authorities were inspected every few years. The previous inspection was in 2012 and before that in 2010.
- 5.2 The inspector in 2016, while noting that no authorised surveillance had taken place since 2010, recommended various changes to practices so the Council could maintain a state of readiness in case it ever needed to seek authorisation. The

recommendations were set out in the report to this Committee in 2017 and put into effect.

- 5.3 For the inspection year 2016-2017 the Chief Surveillance Commissioner, Lord Judge, in his Annual Report decided that for non-unitary councils, where statutory powers have not been used at all, or very rarely during the previous 3 years, any inspection process should begin with a “desktop” examination of papers following a request by an Inspector or Assistant Surveillance Commissioner for material.
- 5.4 Lord Judge’s 2016-17 annual report, published in December 2017¹ says:

The Inspectorate has explored the reasons for the reduced use by local authorities of the statutory powers. Generally speaking the same explanations are given throughout the United Kingdom. Resources are reduced, and trained individuals, time, and money, are not available to carry out what can sometimes become protracted investigations. Moreover the Protection of Freedoms Act 2012 imposed additional burdens on authorities, with new statutory requirements for approval of planned activity by magistrates. We are often told that where an investigation appears to be necessary, local authorities now prefer to handle the investigation process overtly and covert investigations are usually treated as a last resort. Where there are grounds for concern that serious criminality may be involved the facts are reported to the police.

From time to time my Inspectorate is asked why, given that no authorisation has been granted by an individual authority since the previous inspection some three years earlier, the process of inspection and oversight is necessary. The short answer is unequivocal. While local authorities remain vested with the power to deploy covert surveillance, regardless of actual use, the

¹ <https://www.ipco.org.uk/docs/OSC%20Annual%20Report%202016%20-%202017%20with%20new%20page%20furniture.pdf>

appropriate structures and training must remain in place so that if and when the powers do come to be exercised, as they may have to be in an unexpected and possibly emergency situation, the exercise will be lawful. So for that reason alone the process of inspection must continue. There is a further consideration. The inspection process may reveal inadvertent use and misuse of the legislative powers. The steady expansion in the use of the social media and Internet for the purposes of investigative work provides a striking example of a potential new problem which came to light through the inspection system.

Local authority officials, vested with burdensome responsibilities for, among others, the care of children and vulnerable adults, are, like everyone else, permitted to look at whatever material an individual may have chosen to put into the public domain. This is entirely lawful, and requires no authorisation. However, repeated visits to individual sites may develop into activity which, if it is to continue lawfully, would require appropriate authorisation. Local authorities must therefore put in place arrangements for training officials into a high level of awareness of these risks. Without the inspection process this problem might never have been identified.

At this stage it is not known whether the IPCO will continue with this approach.

6.0 Surveillance Policy

- 6.1 The Council's RIPA Policy is available on the Council's website and [here](#). No amendments are currently proposed.

7.0 Activity in the current year

- 7.1 Looking forward, the Council's procedures continue to be strengthened in the light of best practice and the OSC's recommendations, while noting that corporately authorisation process is very rarely appropriate or necessary and has not

been used since 2010. We await any further guidance from the IPCO.

7.2 The mandatory online training will be rolled out and monitored.

7.3 A RIPA update has been sent to relevant officers.

7.4 It is intended that more detailed information will be placed on the RIPA pages of the Council's intranet.

7.5 New guidance will be developed, for example, on the use of body cams by Council enforcement staff.

8.0 Recommendations

8.1 To note the report.

9.0 Reasons for Recommendations

9.1 To enable the Council to operate the RIPA system effectively and as required by law and guidance.

Decision information

Key decision number	N/A
Wards affected	All
Links to Council Plan priorities	This report links to the Council's priority to provide value for money services.

Document information

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Background documents	
These are unpublished works which have been relied on to a material extent when the report was prepared.	
Appendices to the report	