

For Publication

Regulation of Investigatory Powers Act 2000 (RIPA)

Annual Report to Standards Committee 2023

MEETING:	(1) Standards And Audit Committee (2) Cabinet Member for Governance
DATE:	(1) 6 <sup>th</sup> December 2023 (2) Tbc
REPORT BY:	RIPA Senior Responsible Officer
WARD:	All
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 2000.

**2.0 Recommendation**

2.2 That the report be noted.

2.3 That the proposed activity for 2023/24 be progressed.

**3.0 Reason for Recommendation**

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

**4.0 Report details**

**4.1 RIPA**

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. These powers arise from the need to protect the rights of individuals relating to private and family life (including business relationships) under Article 8 of the Human Rights Act 1998.

#### 4.2 **Reporting to Members**

This report is submitted to members as a result of the requirement to report to members at least annually under paragraph 4.47 of the Home Office Code of Practice for Covert Surveillance and Property Interference.

4.3 The previous annual report was submitted to members in July 2022. Further reports will continue to be submitted annually whether or not there has been any authorised surveillance.

4.4 The June 2022 Investigatory Powers Commissioner (IPC) inspection outcome was reported to members in July 2022. Inspections are carried out every three years. The 2022 inspection was very favourable, and the Council's RIPA policy has since been recommended by the IPC to other authorities as an example of good practice.

#### 4.5 **Background**

All directed surveillances (covert, but not intrusive) and use of covert human intelligence sources (CHIS) require due authorisation 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.

4.6 Originally the Office of the Surveillance Commissioner (OSC) oversaw the exercise by councils of their surveillance powers. However, since September 2017 and the coming into effect of the Investigatory Powers Act 2016 this role is undertaken by the Investigatory Powers Commissioner (IPC)<sup>1</sup>. The Right Honourable Sir Brian Leveson is the current IPC.

4.7 A confidential database of authorised surveillances (the central record) is maintained, charting relevant details, reviews and cancellations. There have been no authorisations since 2010. Because of data retention considerations there is no data contained within the database.

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<sup>1</sup> <https://www.ipco.org.uk/>

- 4.8 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.
- 4.9 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.
- 4.10 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 or fly posting.
- 4.11 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.
- 4.12 The Home Office have issued guidance, in the form of codes of practices, to Local Authorities and to Magistrates on the approval process for RIPA authorisations. The most recent relevant code of practice guidance was issued in September 2018 and was considered in the 2019 annual report to this Committee.<sup>2</sup>

## 5.0 Activity between 2019 and 2023

### *No directed surveillance*

- 5.1 During this period no directed surveillances (DS) or use of human intelligence sources (CHIS) were authorised by the Council under the Act.

### *Training*

- 5.2 In the 2018 annual report members were informed that an Aspire Learning module covering all key issues of RIPA had been trialled by some enforcement officers and was to be rolled out to all officers involved with enforcement, their managers, relevant legal officers and also the chief

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<sup>2</sup> <https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>

executive (who has ultimate responsibility). Further, more detailed, modular training would be considered as and when necessary in due course.

- 5.3 55 officers involved in enforcement activity are identified as required to complete the mandatory RIPA module in 2023. At the time of writing this report (24<sup>th</sup> November 2023) 46 users are certified and 6 are yet to successfully complete the module for the current year. Two have yet to undergo the training module.
- 5.4 The 2022 inspection confirmed that there was less focus by the IPCO on training currently, provided relevant officers maintained awareness of RIPA. However, it is not proposed to change the Council requirement for these officers to revisit the training module each year.
- 5.5 In addition to the RIPA module, the Monitoring Officer, who is the RIPA Senior Responsible Officer, also undertakes external training courses where appropriate.

#### *Internal guidance*

- 5.6 Intended unified guidance on the use of CCTV and e.g. deployable cameras and body cams by Council enforcement staff was not developed as intended. This will be carried forward as part of a general review of use of CCTV by the Council (see below).
- 5.7 Following the RIPA inspection in 2019 guidance was published on the Council's intranet<sup>3</sup> including reference to relevant issues and controls relating to:
- Social Media
  - Employee monitoring
  - Drones
  - Error reporting

#### *Governance*

- 5.8 The executive responsibility for the RIPA function is with the Cabinet Member for Governance.

## 6.0 IPCO Annual Reports

- 6.1 Each year the Investigatory Powers Commissioner issues comprehensive annual reports to the Prime Minister on all aspects of surveillance, with a section with findings on local authorities. Since the previous annual report to this committee there have been three IPCO annual reports.
- 6.2 **The 2021 Annual Report** <sup>4</sup>(published March 2023) noted high levels of compliance by public authorities and a positive response to inspection findings. Much of the report relates to the security services, the police and other government agencies. It notes new legislation in 2021 in relation to notify the IPCO about covert human intelligence sources used for particular types of activity. Posts on social media platforms are to be a focus for the following year, with a review of the Investigatory Powers Act to be considered. It refers to the sharing of good practice in RIPA policies and guidance on authorities' websites. and the desirability of publishing the policies.
- 6.3 It refers to the facility for employees to make disclosures to the IPCO where there are serious concerns. It also considers the interrelation between investigatory powers and legal professional privilege (the right to seek legal advice and conduct litigation in confidence) and responsibilities for notification to the IPCO if that privileged information is to be retained. It also considers confidential journalistic information and sources. It refers to the quarterly IPCO newsletter, impact of changing technology. Case studies reported about errors indicate an overlap with data protection breach considerations.
- 6.4 *Local authorities*  
On wider public authorities, including local authorities it notes that: the use of CHIS is relatively low, measures are in place to prevent 'drift' into territory where authorisation is necessary, overall use of directed surveillance has declined, on the whole there was good standard of application and authorisation.
- 6.5 Section 15 of the annual report focusses on local authorities, noting low use of investigatory powers and use only by a small proportion of authorities, the need for policies to be updated where outdated, and noting use of online learning modules, the benefit of local authorities and agencies working together.

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<sup>4</sup> <https://ipco-wpmedia-prod-s3.s3.eu-west-2.amazonaws.com/Annual-Report-2021.pdf>

## 6.6 *Social Media*

On use of social media by local authorities, the IPCO seeks to ensure inadvertent covert surveillance does not arise through repeated / sustained observation of social media profiles or online information, or contact with a CHIS online. An auditable record should be kept if surveillance of online content is to be carried out.

[note: the 2020 Annual report had mentioned that overt use of social media monitoring involves data protection issues, overseen by the ICO and that guidance is published by the Home Office. Guidance should be available to staff, online activity should be recorded and periodically scrutinised. Without an audit trail it is difficult for the SRO to have necessary reassurance that the internet is being used in a controlled and well understood manner.]

## 7.0 **IPCO Inspection 2022**

- 7.1 As stated in the 2022 report, the most recent three year IPC inspection was through a Teams interview on 9<sup>th</sup> June 2022. This was a desktop inspection between the inspector and the RIPA Senior Responsible Officer, also attended by the Data Protection Officer. Information is repeated for the benefit of new committee members.
- 7.2 During the inspection the inspector confirmed that the absence of annual reviews during the pandemic was not exceptional or problematic, and mirrored other authorities, not least as investigation activity would have been restricted during this period, which included lockdowns.
- 7.3 The inspector was complimentary about the Council's RIPA Policy and considered it one of the best they had seen.
- 7.4 They advised that IPCO emphasis had changed from RIPA training to a more general awareness of likely circumstances where RIPA related considerations might arise.
- 7.5 They referred to the IPCOs April 2020 data handling letter and that the authority's central record should refer to the need to hold data no longer than necessary and in accordance with retention and disposal policies. Some minor updates to the RIPA policy were discussed, including emphasis on officers not using personal accounts for social media.
- 7.6 Sir Brian Leveson's written inspection report, dated 13<sup>th</sup> June, found:

- That the Council had made the necessary arrangements in response to the 2019 inspection report, and discharged the recommendations made.
- That the Council's RIPA policy was impressive, covered most relevant points and was easy to follow
- Some minor amendments/inclusions were recommended to the policy (these are incorporated in the amended RIPA Policy attached)
- While noting that no activity had been conducted, it was important to ensure there was an awareness of RIPA across the organisation, and noted the online training module available to staff
- Clear guidance was contained in the policy regarding management of the product of surveillance, also included in the Information Asset Register
- That the Council was well placed to comply with safeguarding provisions in the Codes of Practice, and might consider adapting the Central RIPA record to include management and review of such product if acquired.

## **8.0 Surveillance Policy and other updates**

8.1 The Council's RIPA Policy is available on the Council's website [here](#). It was last updated to reflect the recommendations of the 2022 inspection. No updates are recommended in this annual report.

8.2 The RIPA Central Record was amended to refer to data retention and disposal requirements.

## **9.0 Activity in the current year**

9.1 While the authorisation process is very rarely appropriate or necessary and has not been used since 2010 the 2022 inspection indicates that the council is well placed should any be required.

9.2 Updated information will be placed on the RIPA and other pages of the Council's intranet, as necessary.

9.3 Relevant corporate CCTV policy and guidance is still to be developed. This will include the use of body cams by Council enforcement staff and deployable cameras and an audit of the CCTV estate. The growth in use of CCTV by different services, whilst overt surveillance, requires greater consistency across the authority and a corporate CCTV policy and

guidelines should be developed to ensure all relevant precautions are taken.

- 9.4 The focus will also aim to monitor for inadvertent surveillance. This will depend largely on self-reporting by services and knowledge gained about their activities.

## **10.0 Alternative options**

- 10.1 Given the outcome of the 2022 inspection and the current position on directed surveillance, no alternatives are appropriate.

## **11.0 Implications for consideration – Financial and value for money**

- 11.1 The 2022 inspection outcome endorses the Council's approach to RIPA. There may be some minor financial considerations arising from the CCTRV review, but these are not yet known.

## **12.0 Implications for consideration – Legal**

- 12.1 The RIPA system sets up a framework for surveillance which needs to be properly followed. The Council has not needed to carry out authorized covert surveillance in recent years.

## **13.0 Implications for consideration – Human resources**

- 13.1 Relevant officers should undertake the training, to maintain awareness of the processes. Managers should ensure training is completed.

## **14.0 Implications for consideration – Council plan**

- 14.1 The Council's RIPA policy and practices contribute to improving the quality of life for local people

## **15.0 Implications for consideration – Climate change**

- 15.1 There are not considered to be any direct climate change impacts in relation to this report.

## **16.0 Implications for consideration – Equality and diversity**



16.1 Any RIPA authorisation sought would have to demonstrate that it was for lawful purposes, appropriate and proportionate.

## 17.0 Implications for consideration – Risk management

17.1 Proper application of the surveillance policy will help to minimize risks arising on this matter.

### Decision information

<b>Key decision number</b>	
<b>Wards affected</b>	

### Document information

<b>Report author</b>	
Gerard Rogers Head of Regulatory Law and Monitoring Officer – RIPA Senior Responsible Officer <b>Corporate</b>	
<b>Background documents</b> These are unpublished works which have been relied on to a material extent when the report was prepared.	
none	
<b>Appendices to the report</b>	
None	