

North Tyneside Council

Report to Cabinet

28 November 2022

Title: Annual Review of Council Policy on Covert Surveillance

Portfolio(s):	Elected Mayor	Cabinet Member(s):	Elected Mayor Mrs Norma Redfearn
Report from Service Area	Law and Governance		
Responsible Officer:	Jacqueline Laughton – Assistant Chief Executive		(Tel: 0191 643 5724)
Wards affected:	All		

PART 1

1.1 Executive Summary:

This report seeks Cabinet's approval of the Authority's draft Covert Surveillance Policy for 2022-23. In accordance with the Statutory Codes of Practice applying to the Regulation of Investigatory Powers Act 2000 (RIPA) the Authority is required to review its use of RIPA and set the general surveillance Policy at least annually.

A copy of the draft Policy is attached at Appendix 1. No amendments have been made to the draft Policy from last year's Policy as it remains fit for purpose.

1.2 Recommendation(s):

It is recommended that Cabinet approve the Authority's draft Policy on Covert Surveillance for 2022-23 attached at Appendix 1 to the report.

1.3 Forward plan:

Twenty-eight days' notice of this report has been given and it first appeared on the Forward Plan that was published on 21 October 2022.

1.4 Council plan and policy framework

This report relates to the following priorities in the Our North Tyneside Plan 2021-2025:

A secure North Tyneside:

Council wardens will work in partnership with Northumbria Police to prevent and tackle all forms of anti-social behaviour

1.5 Information:

1.5.1 Introduction

The Authority's current Surveillance Policy was approved by Cabinet in November 2021 and is subject to annual review. That Policy has been reviewed and a draft Surveillance Policy is attached at Appendix 1. The draft Policy was considered by Members of the Regulation and Review Committee who made no recommendations for amendments to be made to the Policy as it remains fit for purpose and has been referred to Cabinet for approval on that basis.

The aims of the Policy are to:

- Set out the Authority's arrangements for complying with RIPA; the relevant Codes of Practice and guidance issued by the Home Office; and guidance from the Investigatory Powers Commissioner's Office (IPCO);
- Give effect to the rights of citizens to respect for their private and family lives (pursuant to the Human Rights Act 1998); and
- Protect the Authority from legal challenge when undertaking surveillance.

1.5.2 The RIPA Shield

The Regulation of Investigatory Powers Act 2000 (RIPA) puts covert surveillance on a statutory basis. RIPA enables certain public authorities, including the Authority, to carry out surveillance operations with statutory protection from legal challenge. It is often referred to as the "RIPA shield".

Three covert investigatory techniques are available to local authorities under RIPA:

- i. the acquisition and disclosure of communications data such as telephone billing information or subscriber details e.g., to tackle rogue traders;
- ii. directed surveillance - covert surveillance of individuals in public places e.g. to tackle criminal activity arising from anti-social behaviour; and
- iii. covert human intelligence sources (CHIS) such as the deployment of undercover officers.

The RIPA provisions may only be used to authorise surveillance activities for the detection and prevention of "serious crime" and any authorisation is subject to a requirement to seek authorisation from an 'Authorising Officer' within the Authority as well as obtaining judicial approval for surveillance from a Justice of the Peace before any surveillance is undertaken. The Authorising Officers within the Authority are:

Paul Hanson – Chief Executive; and
Colin MacDonald – Head of Technical & Regulatory Services

A Legal Officer accompanied by the relevant Authorising Officer will present any authorisation to a Justice of the Peace for judicial approval. All authorisations will be subject to an internal scrutiny process prior to being submitted for such approval.

Local authorities may undertake surveillance for other purposes than detecting serious crime, but such surveillance will not benefit from the "RIPA shield" and will leave a local authority vulnerable to challenge. For this reason, all surveillance activity undertaken by the Authority, whether within the RIPA regime or not, must be appropriately authorised by one of the Authorising Officers and is subject to central monitoring and challenge.

1.5.3 Central Register

The Authority has a Central Register of all RIPA and non-RIPA surveillance activity. The Central Register is maintained and monitored by Law and Governance.

1.5.4 Inspection

Organisations using RIPA are subject to regular inspection by the Investigatory Powers Commissioner's Office (IPCO).

The Authority received a virtual online inspection visit from the IPCO on 7 September 2020. The purpose of the IPCO inspection was to examine the policies, procedures, operations and administration the Authority has in place in relation to the use of directed surveillance and covert human intelligence sources.

The outcome of the inspection was very supportive of the Authority's actions to manage its responsibilities under RIPA. A small number of recommendations were made in relation to the information that is provided to Officers in the Covert Surveillance Employee Handbook to update it and provide further clarity. The Employee Handbook is available to Officers, for reference and guidance in relation to the use of RIPA and covert surveillance. The update of the Handbook to reflect the recommendations is complete and has been uploaded onto the Intranet. A further recommendation was in relation to training. The inspector recommended that the Authority undertakes, as it has in previous years, a training and familiarisation process for Officers who may use covert surveillance as a part of their role. Training completed for 2022 was delivered by external trainer 'Act Now'.

The Inspector made no recommendations in relation to the Authority's Covert Surveillance Policy and commented that it "is a succinct summary of the approach the Council will take towards the use and management of covert powers".

1.5.5 Summary of Use of Surveillance, Acquisition of Communications Data and Covert Human Intelligence Source (CHIS) by the Authority

It should be noted that following the changes to the RIPA regime introduced on 1 November 2012, there have been no authorisations for covert surveillance requested by officers. The reason why no such authorisations have been sought since that date relates to the fact that the "RIPA shield" is only available for covert surveillance related to the prevention and detection of "serious crime". "Serious crime" is defined as crime punishable, whether on summary conviction or on indictment, to a maximum term of imprisonment of at least 6 months. In addition, however, covert surveillance can be requested in relation to detecting offences under sections 146, 147 or 147A of the Licensing Act 2003 (relating to the sale of alcohol to children), section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc. to children) and sections 91 and 92 of the Children and Families Act 2014 (sale or purchase of nicotine products to children).

1.5.6 Corporate Responsibilities

The Codes of Practice advise that a Senior Responsible Officer (SRO) should be identified to ensure the Authority has appropriate policies and processes that accord with RIPA and the related Codes of Practice. The current SRO is the Director of Resources.

Each Director or Head of Service is responsible for ensuring effective and legally compliant systems and procedures are in place for surveillance work within their Service Areas.

All employees connected with surveillance and handling of evidence are responsible for ensuring that they act only in accordance with their level of responsibility and training and in accordance with this Policy and associated documents. To assist in this an 'Employee Handbook: Use of Covert Surveillance, Covert Human Intelligence Sources and Communications Data', has been prepared. The Handbook provides key information for Officers and directs them towards key sources of detailed guidance. It will be kept under review and revised as necessary to ensure it reflects current procedures and best practice.

If Officers wish to undertake surveillance that falls outside of the RIPA regime, they must take legal advice and seek appropriate authorisation. Information regarding surveillance (whether under RIPA or not) must be held centrally by the Senior Responsible Officer to enable the Authority to have an overview of all surveillance activities being undertaken by the Authority.

1.5.7 Compliance and Oversight

The Codes of Practice indicate that elected members of a local authority should review its use of RIPA and set the general surveillance policy at least annually. A local authority should also consider internal reports on the use of RIPA to ensure that it is being used consistently in compliance with the Authority's Policy and that the Policy remains fit for purpose.

To meet this policy requirement:

- Cabinet receives an annual report covering the Authority's use of RIPA powers, and review of the Policy for the following year;
- Reports will be presented to the Regulation and Review Committee on the Authority's use of RIPA powers. The Committee's role is to look at compliance, oversight and use of RIPA. The Committee will also consider whether the Policy remains fit for purpose and recommend changes to the Policy as appropriate for Cabinet's consideration; and
- The Elected Mayor who has responsibility for RIPA related activities receives updates from the Senior Responsible Officer regarding the use of the Authority's powers.

1.6 **Decision options:**

Option 1

Cabinet may:

Approve the Authority's Policy on Covert Surveillance for 2022-23 (attached as Appendix 1); and

Option 2

Not approve the Authority's Policy on Covert Surveillance for 2022-23

Option 3

Request Officers to revise the draft Policy and/or provide additional information regarding any matters contained in the report.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Approving the Authority's Policy on Covert Surveillance 2022-23 will secure adherence to the recommended best practice contained within the Codes of Practice. In particular, the Code of Practice – Covert Surveillance and Property Interference indicates that elected members should review the Authority's use of Part II of the Regulation of Investigatory Powers Act 2000 and set the policy at least once a year.

1.8 Appendices:

Appendix 1: Authority's Draft Policy on Covert Surveillance for 2022-23

1.9 Contact officers:

Emma Phillips, Interim Information Governance Manager/Data Protection Officer (0191 643 2333)

David Dunford, Senior Business Partner – Strategic Finance (0191 643 7027)

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

[Employee Handbook: Use of Covert Surveillance, Covert Human Intelligence Sources and Communications Data](#)

Home Office Codes of Practice <https://www.gov.uk/government/collections/ripa-codes>

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The provisions of the Policy can be implemented within the Law and Governance Service's existing resources.

2.2 Legal

The Policy has been prepared with reference to the relevant law and Codes of Practice. A number of Statutory Instruments and Codes of Practice published by the Home Office govern the operation of RIPA.

The Authority may only authorise directed surveillance where it is both necessary and proportionate to the investigation or operation being undertaken and to what is being sought to achieve in terms of evidence gathering. Senior Officers are appointed as Authorising Officers and have a key role in carefully scrutinising all applications for the use of RIPA powers under a specific authorisation.

Authorising Officers must ensure that authorisations are granted only in appropriate cases and that the extent of all authorisations are clearly set out.

The Authority cannot authorise intrusive surveillance under RIPA. Intrusive surveillance would involve placing an investigator on residential premises or in a private vehicle or allowing the use of an external surveillance device outside of the premises or vehicle that gives the same quality of information as if it was on the premises or in the vehicle.

The Policy, together with the Employee Handbook covers the procedures to be followed in seeking authorisations, maintaining appropriate oversight of the Policy and the central record of decisions.

2.3 Consultation/community engagement

The Policy is aimed at ensuring adherence to the best practice contained within the Codes of Practice and feedback from the Investigatory Powers Commissioner's Office as well as the law.

There is no duty on the Authority for public engagement of this statutory obligation, it is not in the public interest to consult and may have an adverse effect on the Authority's ability to offer an effective public service or to meet its wider objectives or purpose.

Internal consultation has taken place with officers with responsibility for the management and supervision of surveillance activity as well as the Regulation and Review Committee.

2.4 Human rights

Human rights implications are addressed within the report and the Policy. RIPA provides a framework under which surveillance activity can be authorised and conducted in a way that is compatible with the rights of individuals.

The Authority must also ensure that activity that falls outside of the RIPA regime is subject to careful scrutiny and authorisation to ensure that human rights are respected, and the activity is lawfully undertaken.

2.5 Equalities and diversity

There are no equalities and diversity implications directly arising from the report.

2.6 Risk management

The Authority's Policy and the procedures contained in the Employee Handbook are designed to ensure the Authority complies with the law and Codes of Practice and thereby reduce the risks associated with surveillance activity.

2.7 Crime and disorder

There are no crime and disorder issues arising directly from this report. As the main body of the report outlines, the policy provides a framework for the Authority to carry out surveillance operations into criminal matters with statutory protection from legal challenge.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

PART 3 - SIGN OFF

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| • Chief Executive | <input checked="checked" type="checkbox"/> |
| • Director(s) of Service | <input checked="checked" type="checkbox"/> |
| • Mayor/Cabinet Member(s) | <input checked="checked" type="checkbox"/> |
| • Chief Finance Officer | <input checked="checked" type="checkbox"/> |
| • Monitoring Officer | <input checked="checked" type="checkbox"/> |
| • Assistant Chief Executive | <input checked="checked" type="checkbox"/> |