

PLYMOUTH CITY COUNCIL

Subject:	Surveillance, Covert Activities, and the Regulation of Investigatory Powers Act 2000 (RIPA)
Committee:	Audit and Governance Committee
Date:	11 th March 2019
Cabinet Member:	Councillor Peter Smith
CMT Member:	Andrew Hardingham
Author:	Alex Fry – Trading Standards Manager
Contact details	01752 304456
Ref:	RIPA Annual Report 2019
Key Decision:	No
Part:	I

Purpose of the report:

Surveillance is a tool that may be required for the Council to fulfil its obligations to investigate crime, prevent disorder, recover debt, protect the public and establish the facts about situations for which the Council has responsibility.

Staff may consider that it is appropriate to undertake covert activities that result in the subject of enquires being unaware that their actions are being monitored, or enquires are being undertaken without their knowledge. However, covert activities compromise an individual's 'right to privacy', so the use of a covert activity must be lawful, necessary and proportionate in order to comply with the Human Rights Act. Examples of the Council's use of covert surveillance are listed in Appendix A.

This report informs Members about the steps being taken to ensure that the Council is compliant in respect of covert activities.

Audit Committee are requested to accept the Surveillance and Covert Activities Policy.

Corporate Plan

This report is relevant to the Corporate Plan Values of being democratic, responsible and fair. Undertaking covert activities contributes to the corporate vision by reducing crime, helping to ensure residents feel safe, are happy and healthy and helping to ensure economic growth is not jeopardised through unfair or illegal activity.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

There are no significant implications for the medium term financial plan as the undertaking of surveillance and covert activities is a departmental casework related process. There is not a specific budget cost code and all costs are subsumed within service team budgets. Thus any equipment that is required is obtained through current budgets.

However in order to ensure compliance with the requirements of the HRA and other relevant legislation; sufficient trained managers and staff are required to be available and the resourcing of specialist staff role profiles must be incorporated into Directorate action plans.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

- Child Poverty - none.
- Community Safety - the purpose of the surveillance tool is to promote community safety, prevent crime and disorder, undertake fraud investigation and provide environmental protection.
- Health and Safety - in particular the use of CCTV can promote safety, but officers undertaking surveillance are potentially at risk.
- Risk Management - there is the possibility of loss of reputation and monetary penalties for the Council, through surveillance breaching privacy and that evidence obtained for an investigation will not be accepted. However, complying with RIPA prevents the Council breaching its obligations under the Human Rights Act and associated legislation; as well as enabling the product of surveillance to be used in accordance with the requirements of legislation and good practice.

Equality and Diversity

Has an Equality Impact Assessment been undertaken? No

Recommendations and Reasons for recommended action:

Council are required to be informed about the use of covert surveillance by staff when conducting investigations and to agree a policy.

Members are requested to acknowledge that covert activities can be a necessary and proportionate response for achieving the Council's objectives through approval of the Surveillance and Covert Activities Policy; which allows covert activities to be deployed where necessary and proportionate, under the control of a good practice process based on the Regulation of Investigatory Powers Act requirements.

The report informs members about covert surveillance that has taken place, changes to legislation since the last report and the steps being taken to ensure that the Council is compliant in respect of covert activities.

Alternative options considered and rejected:

The alternative option is for Members to limit the option for Officers to use surveillance as an investigatory tool by:

- a) deciding that Officers will not undertake surveillance or covert activities on behalf of the Council, or
- b) Officers may only use covert activities when a serious crime is being investigated.

This option is rejected as the oversight Commissioners have not found Officers to be irresponsible, the Council has only initiated necessary investigations and has always been proportionate in its use of covert activities.

Thus Officers have been found to have the expertise to deploy the available powers appropriately and to now limit the use of surveillance would have a detrimental impact on Officers ability to undertake investigations in order to fulfil responsibilities of the Council.

Published work / information:

Statutory codes of practice which staff must implement are available

The OSC and IOCCO inspection reports are available on the Council's RIPA webpage.

Background papers:

Title	Part I	Part II	Exemption Paragraph Number							
			1	2	3	4	5	6	7	
Surveillance & Covert Activities Policy										

Sign off:

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Originating SMT Member Andrew Hardingham													
Has the Cabinet Member(s) agreed the contents of the report? No													

I Introduction

- 1.1 The last report was submitted in 2017.
- 1.2 There have been no Interception of Communication Commissioner (ICC) Inspection.
- 1.3 In December 2018 the Authority received a desk-top documentary inspection from the Investigatory Powers Commissioner's Office (IPCO).
- 1.4 The IPCO concluded that due to our level of compliance they do not need to conduct a physical inspection. The Directed Surveillance authorisation they examined was compliant. No amendments to the Procedures were required
- 1.5 The Surveillance & Covert Activities policy is submitted for approval.
- 1.4 Neither the ICC or IPCO have notified the Council of any future inspection.

2.0 Use of Surveillance and covert activity since last report

- 2.1 The Policy provides for staff to undertake authorised investigations to enforce legislation. These authorised covert activities are intended to confirm or identify who has been involved in a crime, what has taken place and when events have taken place.
- 2.2 Legislative changes in 2012 introduced a judicial approval process for all Local Authority RIPA applications. Since then after internal authorisation, the Local Authority must seek judicial approval for their RIPA Authorisation. Approval will only be given if the statutory tests have been met and the application is necessary and proportionate. Further, Local Authorities can now only apply for authorisation for directed surveillance under RIPA in connection with investigating offences that are punishable by a maximum term of 6 months imprisonment or are related to the underage sale of alcohol or tobacco.
- 2.3 There has been one Directed Surveillance authorisation under RIPA since the last report. This was in October 2017 and was made by the Trading Standards Service in connection with the supply of illegal tobacco. This was deemed to be compliant when examined by the IPCO.

3.0 Legislative changes

- 3.1 There have been no changes in the relevant RIPA legislation since the last report but there has been a new Covert Surveillance & Property Interference Code of Practice. Procedures have been checked against the new Code and found to be compliant.

4.0 Training

- 4.1 The RIPA Lead Operational Officer and the Legal Service RIPA Co-ordinator have attended update training since the last report.

5.0 Amendments to the policy since the last Report

- 5.1 Paragraph 6.2 of the policy relating to Underage Sales has been amended to reflect the Codes of Practice. Full RIPA authorisation must now be considered

5.2 The requirement to have a working group on RIPA has been removed due to very low levels of RIPA authorisations.

Appendix A: Examples of Surveillance in operation:

RIPA was enacted to provide an accredited process to follow by any crime investigating agency (including the Council) when there was likely to be an interference with a person's 'right to privacy' under Human Rights Act Article 8 (HRA).

An authorisation made in accordance with RIPA is a statutory defence against an allegation that the Council has contravened the HRA.

Fraud Investigation:

Sometimes facts about a claim for benefit payments etc. are called into question and to assist the gathering of evidence about a person's relationships or activities, the Investigating Officer may need to covertly observe a person's contacts and work activities.

Public Protection:

Investigating whether goods or services are being obtained or sold within the relevant legislation, may involve obtaining details about traders and their activities, which they have not made public. Trading Standards investigations include those into doorstep crime, illegal tobacco or counterfeiting. Other investigations which may require surveillance include fly-tipping and food fraud.

Anti-Social Behaviour:

In order to obtain evidence of any person engaging in activities that disrupt other individuals, when witnesses are reluctant to come forward, there may be a need to undertake covert filming of the anti-social behaviour, to provide evidence for a Court.

- However all evidence gathering is currently covert, due to cooperation from local communities and the use of BWV is verbally announced.
- Any video or CCTV held by the Council can be requested by the person who has been filmed in line with the Data Protection Act.