

Portfolio Holder for Corporate Governance and Engagement



County Hall
Llandrindod Wells
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28 October 2019

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NOTICE OF INTENDED PORTFOLIO HOLDER DELEGATED DECISION

The Portfolio Holder has received the following report for a decision to be taken under delegated authority. The decision will be taken on **1 November 2019** (i.e. 3 clear days after the date of this note). The decision will be published on the Council's website but will not be implemented until 5 clear days after the date of publication of the decision) to comply with the call-in process set out in Rule 7.36 of the Constitution.

1.	THE COUNCIL'S USE OF SURVEILLANCE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000
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CYNGOR SIR POWYS COUNTY COUNCIL.**PORTFOLIO HOLDER DELEGATED DECISION**

by

**COUNTY COUNCILLOR GRAHAM BREEZE
PORTFOLIO HOLDER FOR CORPORATE GOVERNANCE AND
ENGAGEMENT
November 2019****REPORT AUTHOR: Professional Lead - Data Protection****SUBJECT: The Council's use of surveillance under the Regulation of Investigatory Powers Act 2000.**

REPORT FOR: Information

1. Summary

The report updates the Portfolio Holder and other Members on the council's use of covert surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA).

RIPA provides a statutory framework regulating the use of directed surveillance and the conduct of covert human intelligence sources (informants or undercover officers) by public authorities. The Act requires public authorities, including local authorities, to use covert investigation techniques in a way that is necessary, proportionate and compatible with human rights.

Directed surveillance is covert surveillance conducted for the purposes of a specific investigation or operation and it is likely to result in the obtaining of private information about a person. Private information includes any aspect of a person's private or personal relationship with others, including family and professional or business relationships. Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information.

The use of covert surveillance techniques by local authorities was previously the subject of some controversy. The Government introduced significant changes under the Protection of Freedoms Act 2012, which came into effect on 1 November 2012. The changes mean that a local authority can now only grant authorisations under RIPA for the use of directed surveillance where it is for the purposes of investigating criminal offences that attract a custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. A magistrate's approval is also required before the RIPA authorisation can take effect.

All RIPA authorisations must be signed by an authorising officer. Authorising officers must be trained before issuing any authorisations and they should attend regular refresher training. The council currently has 1 authorising officer:

Professional Lead - Trading Standards, Community Safety and Emergency Planning

In December 2014, the Home Office issued revised codes of practice - Covert Surveillance and Property Interference Code of Practice (“the Code of Practice”) and Covert Human Intelligence Sources Code of Practice – replacing the previous codes of practice issued in 2010. Public authorities may be required to justify, with regard to the codes of practice, the use or granting of authorisations in general, or the failure to use or grant authorisations where appropriate.

The Code of Practice sets out that elected members of a local authority should review the authority’s use of RIPA and set the policy at least once a year. The Code of Practice also provides that members should consider internal reports on use of RIPA on a regular basis to ensure that it is being used consistently with the council’s policy and that the policy remains fit for purpose.

The Code of Practice also sets out that it is good practice for public authorities to appoint a Senior Responsible Officer (SRO) to be responsible for the authority’s compliance with RIPA. The SRO will engage with inspectors during inspections and where necessary oversee the implementation of post-inspection action plans. Within local authorities, the SRO and the Head of Legal and Democratic Services has been nominated to this role for the council.

2. Office of Surveillance Commissioner’s inspection

The OSC has carried out inspections of the council’s management of covert activities every 2 to 3 years. The most recent inspection was on 10th May 2016.

The report identified that Powys County Council had “adopted a problem solving approach to investigations” now collaborating with the DWP, and that the council’s responsibilities under the legislation are taken seriously”. The report recommended that elected members should be informed of the way in which the statutory powers are being exercised, or not being used. This is the first such report since the Council has started to use its RIPA powers. In future there will be an annual report.

The council holds a central register of authorisations which, is maintained by the Professional Lead Data Protection which identifies the unique reference numbers (URNs) for investigations, and arranges RIPA training for relevant officers.

Activity to implement those recommendations made within the report continue to progress.

On 1 September 2017, the Investigatory Powers Commissioner's Office (ICPO) took over responsibility for oversight of investigatory powers from the Interception of Communications Commissioner's Office, the OSC and the Intelligence Services Commissioner.

3. Use of RIPA

For the financial year (1 April 2018 to 31 March 2019) the council authorised directed surveillance on 2 occasions for cases of illegal tobacco products, investigated Trading Standards.

Both authorisations were given judicial approval by a magistrate.

The council has not authorised the use of a covert human intelligence source

4. Recommendations

To note the level and nature of covert surveillance undertaken by the council

5. Impact Assessment

5.1 Is an impact assessment required? No

6. Corporate Improvement Plan

6.1 The function does relate specifically to the Council's objectives with respect to developing the economy, as officers correctly trained in surveillance procedures and conducting correct proportionate activities in investigations results in lawful investigations. Proportionate enforcement actions as a consequence will provide better trading environments for legitimate trade to prosper in Powys.

7. Local Member(s)

7.1 No impact on local members.

8. Other Front Line Services

Does the recommendation impact on other services run by the Council or on behalf of the Council? No

9. Communications

Have Communications seen a copy of this report? No

Have they made a comment? If Yes insert here.

10. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)

10.1 Legal: The recommendations can be supported from a legal point of view.

10.2 Finance – The Finance Business Partner notes the contents of the report and there are no budgetary implications arising.

10.3 Corporate Property (if appropriate)

10.4 HR (if appropriate)

10.5 ICT (if appropriate)

11. Scrutiny

11.1 Has this report been scrutinised? No

12. Data Protection

If the proposal involves the processing of personal data then the Data Protection Officer must be consulted and their comments set out below.

12.1 Compliance with RIPA and the relevant Codes of Practice will result in compliance with data protection legislation and the individual's right to privacy. The Data Protection Officer is included within the process of recording authorisations and acts as the Council's RIPA Co-ordinator.

13. Statutory Officers

13.1 The Head of Legal and Democratic Services (Monitoring Officer) commented as follows: "I note the legal comments and have nothing to add to the report."

13.2 The Head of Finance (Section 151 Officer) notes the comment of the Finance Business Partner.

14. Members' Interests

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If the Portfolio Holder has an interest, he/she should declare it, complete the relevant notification for and refer the matter to Cabinet for decision.

Recommendation:	Reason for Recommendation:
That the report be noted.	That elected members are aware of the council's use of surveillance

Relevant Policy (ies):	Surveillance Policy
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Within Policy:	Yes	Within Budget:	Yes
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Relevant Local Member(s):	NA
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Person(s) To Implement Decision:	NA
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Date By When Decision To Be Implemented:	NA
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Is a review of the impact of the decision required?	No

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Background Papers used to prepare Report:

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