

Portfolio Holder for Corporate Governance and Engagement



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6 August 2020

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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 **12 August 2020** (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.

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| 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

Date 06/08/2020.

REPORT AUTHOR: Professional Lead - Data Protection

REPORT TITLE: The Council's use of surveillance under the Regulation of Investigatory Powers Act 2000.

REPORT FOR: Information

1. Purpose

- 1.1 The report updates the Portfolio Holder and other Members on the council's use of covert surveillance under the Regulation of Investigatory Powers Act 200 (RIPA)

2. Background

- 2.1 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.
- 2.2 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.
- 2.3 The Protection of Freedoms Act 2012, which came into effect on 1 November 2012 introduced significant changes where 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.

- 2.4 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. The Professional Lead - Trading Standards, Community Safety and Emergency Planning
- 2.5 A magistrate's approval is also required before the RIPA authorisation can take effect.
- 2.6 Relevant Codes of Practice Covert Surveillance and Property Interference Code of Practice and Covert Human Intelligence Sources Code of Practice were issued by the Home Office in 2014.
- 2.7 The Codes of Practice set out, that
- 2.7.1 elected members of a local authority should review the authority's use of RIPA and set the policy at least once a year, and that they 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.
- 2.7.2 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. For Powys County Council the Head of Legal and Democratic Services has been nominated to this role.

3 Office of Surveillance Commissioner's inspection

- 3.1 The most recent inspection by the OSC, occurred in August 2019, via a desk top exercise.
- 3.2 The report noted that all applications for directed surveillance were "extremely well formed and contained a detailed rationale as to why the use of covert surveillance was necessary to achieve the required objectives.."
- 3.3 The report noted the inspector's disappointment that some recommendations from the 2016 report were still to be actioned. These being
- Updating of policy documents
 - RIPA refresher training

4. Use of RIPA

- 4.1 For the financial year (1 April 2019 to 31 March 2020) the council authorised directed surveillance on 4 occasions for cases of illegal tobacco products, investigated Trading Standards.

- 4.2 All authorisations were given judicial approval by a magistrate.
- 4.3 The council has not authorised the use of a covert human intelligence source

5. Activities

- 5.1 RIPA training was organised for February 2020 but was cancelled due to weather conditions and flooding. Reorganised training was due to take in place in April 2020, but again had to be cancelled due to COVID 19. The reorganisation of training will be revisited in September 2020. The training provider are in the process of developing online training.
- 5.2 Policies were revisited and redrafted in light of the inspection and were to be finalised following training. These too will be revisited later this year.
- 5.3 A centralised record of authorisations and magistrate's approval continues to be maintained, which enables the reporting into the Council's use of directed surveillance, and the provision of relevant document for inspection.

6. Advice

- 6.1 To note the level and nature of covert surveillance undertaken by the council, and the proposed activities to ensure compliance with legislation and relevant Codes of Practice.

7. Resource Implications

- 7.1 There are no additional resource implications

8. Legal implications

- 8.1 Legal: The recommendation can be supported from a legal point of view
- 8.2 The Head of Legal and Democratic Services (Monitoring Officer) has commented as follows: "I note the legal comment and have nothing to add to the report".

9. Data Protection

- 9.1 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 acts as the Council's RIPA Co-ordinator and maintains the central register.

10. Comment from local member(s)

10.1 No impact on local members

11. Integrated Impact Assessment

11.1 An Integrated Impact Assessment is not required

12. Recommendation

12.1 That the Portfolio holder and elected members are aware of the council's use of surveillance methods in line with legislation and note the activities to ensure ongoing compliance.

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