



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

16TH OCTOBER 2018

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - USE OF RIPA IN 2017-18 BY RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL AND THE COUNCIL'S CORPORATE ENFORCEMENT POLICY

DISCUSSION PAPER OF THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES IN DISCUSSIONS WITH THE DEPUTY LEADER, CLLR WEBBER

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1. PURPOSE

- 1.1 To enable Members to review the Council's use of the Regulation of Investigatory Powers Act 2000 (as amended) ('RIPA') in 2017-18 and to review and set the Council's Corporate Enforcement Policy and its policy on the use of RIPA.

2. RECOMMENDATIONS

It is recommended that Cabinet:

- 2.1 Notes the contents of the report;
- 2.2 Acknowledges RIPA has been used in an appropriate manner that is consistent with the Council's RIPA policies during the period 1st April 2017 – 31st March 2018; and
- 2.3
- 2.3.1 Approves the proposed revisions to (i) the Corporate Enforcement Policy and (ii) the Corporate RIPA Policy as shown in Appendices 1 and 2 to the report respectively; and
- 2.3.2 Notes that in the Senior Responsible Officer's opinion the current Acquisition of Communications Data under RIPA Policy remains fit for purpose.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure Members are kept apprised of how RIPA has been used during the period 1st April 2017 - 31st March 2018 and that it has been used in an appropriate manner consistent with the Council's RIPA policies.
- 3.2 The Cabinet is responsible for approving revisions to the Council's Corporate Enforcement Policy and Corporate RIPA Policy in order to ensure that they remain fit for purpose.

4. USE OF RIPA BY THE COUNCIL: 1ST APRIL 2017 – 31ST MARCH 2018

4.1 Directed Surveillance and the use of Covert Human Intelligence Sources

4.2 New Authorisations

During the year 1st April 2017 - 31st March 2018, 8 new authorisations were granted by Authorising Officers as follows:

- 8 x directed surveillance; and
- 0 x use of a Covert Human Intelligence Source.

Directed surveillance authorisations can be issued where it is necessary and proportionate in order to prevent or detect crime, or prevent disorder, where at least one of the offences is punishable by a maximum term of imprisonment of at least 6 months or more or relates to the underage sale of alcohol or tobacco/nicotine.

The 8 x directed surveillance authorisations all related to fly tipping.

4.3 Authorisations extant as at 1st April 2017

There were 3 authorisations in respect of either directed surveillance that had been authorised in the previous year (2016-17) and were carried forward to the 2017-18 financial year.

The outcomes from these 3 authorisations are included in paragraph 4.4 below.

There were no authorisations in respect of a Covert Human Intelligence Source extant as at 1st April 2017.

4.4 Cancellation of Authorisations & Subsequent Outcomes

During the 2017-18 financial year 9 authorisations for directed surveillance were cancelled (3 extant from 2016-17, and 6 authorised during 2017-18) and 2 authorisations were carried forward to the current financial year.

The outcomes of the investigations that were concluded were as follows:

Evidence of fly tipping at location under investigation

- 1 x authorisation resulted in 3 prosecutions - fines of £580, £828.86 and an arrest warrant being issued for the third defendant;
- 1 x authorisation resulted in two fixed penalty notices for littering - fly tipping was observed but clear images were not available;
- 1 x authorisation resulted in a hearing date being set for October 2018;
- 1 x authorisation identified fly tipping however the vehicle concerned did not bear a registration plate

No evidence of fly tipping at location identified

- 1 x authorisation evidenced illegal drug activity; this intelligence was passed to South Wales Police;
- 1 x authorisation resulted in the camera being covered in earth due to nearby factory works; a decision was made to remove the camera;
- 1 x authorisation resulted in the camera being disturbed; a decision was made to remove the camera;
- 2 x authorisations resulted in no instances of fly tipping being observed during the authorisation period.

4.5 Authorisations extant as at 1st April 2018

Investigations carried over into 2018-19:

- 2 x directed surveillance

4.6 The outcomes of some of the cases above demonstrate how the use of directed surveillance is able to produce results that are of benefit from an enforcement point of view. Without the use of directed surveillance, officers would not have been able to progress the investigation to determine whether the alleged incidents were ongoing: directed surveillance has therefore enabled officers to ascertain the true situation at the relevant locations, in a manner that was the most cost-effective in relation to officer time.

4.7 Human Rights Act Authorisations

As part of initial investigations, officers may need to carry out non-overt work which does not fall within the statutory requirements for RIPA, mainly because the work is carried out in such a manner that there is little likelihood of obtaining private information (collateral intrusion). The use of non-overt enforcement techniques are assessed to ensure that they are carried out in compliance with the requirements of the Human Rights Act 1998 (HRA). Such assessments are recorded on a Human Rights Act consideration form, whereby the necessity, proportionality and purpose of the activity are addressed, precautions are introduced to minimise collateral intrusion and the use of the technique is approved by a senior manager.

Importantly, if the initial work carried out using the HRA-compliant technique shows that an investigation needs to be carried out using RIPA-based techniques, officers will apply for RIPA authorisation.

Five Human Rights Act authorisations currently exist in relation to:

- Anti-social behaviour monitoring;
- Underage sales test purchasing;
- Proxy sales monitoring;
- Internet site monitoring;
- Vehicle test purchasing;

During 2017 - 18 these authorisations were used to carry out monitoring of potential locations for anti-social behaviour on 0 days; underage sales test purchasing operations on 3 days; proxy sales of alcohol monitoring operations on 0 days; vehicle test purchasing operations on 0 occasions; and monitoring of internet sites for 29 investigations. A review of these operations and investigations showed that on no occasion did they result in an improper infringement of a person's human rights.

4.8 Communications Data

During the year from 1st April 2017 - 31st March 2018, 0 applications for communications data were submitted for approval by the Designated Person in relation to telephone numbers used as part of fraudulent activity.

5. CHANGES TO USE OF RIPA

5.1 During the reporting period there were no statutory changes that affected the use of RIPA within the Council; some changes were introduced but their effect was limited to Police powers and requirements.

5.2 Looking ahead, new Codes of Practice are expected to be published during this Municipal Year which is likely to have an effect on work carried out under RIPA within the Council.

5.3 As reported in last year's annual report to Cabinet the Council had its triennial inspection in late 2016 in respect of its use of RIPA. The inspector's report made several recommendations in respect of current best practice which have now been reflected in proposed revisions to the Council's Corporate RIPA Policy as shown in Appendix 2 to the report. Officers have also taken the opportunity when making these particular revisions to review and update this policy more generally and also review the Council's Corporate Enforcement Policy (attached at Appendix 1 to the report). The proposed changes to the previous versions of both these policies are shown in the Appendices as 'tracked changes' for Members' ease of reference.

6. CONSULTATION

6.1 This report has been prepared in consultation with the Council's Trading Standards Manager who is responsible for operational oversight of RIPA matters.

7. EQUALITY AND DIVERSITY

7.1 There are no equality or diversity implications linked to this report.

8. FINANCIAL IMPLICATIONS

8.1 There are no financial implications linked to the contents of this report.

9. LINKS TO THE COUNCILS CORPORATE PLAN/ OTHER COUNCIL PRIORTIES

9.1 The report will ensure that effective governance arrangements with regards to RIPA remain in place by the Council.

10. CONCLUSION

10.1 The Senior Responsible Officer (Director of Legal & Democratic Services) considers that RIPA has been used appropriately in relation to all of the above uses of directed surveillance and acquiring of communications data and that RIPA has been used in a manner that is consistent with the two corporate policies.

10.2 The Senior Responsible Officer also considers that the proposed revisions to be made to the Council policies attached at Appendices 1 and 2 to this report will ensure they remain fit for purpose and therefore Cabinet's approval is now sought in respect of their adoption. The Senior Responsible Officer considers the current Acquisition of Communications Data under RIPA Policy remains fit for purpose.