



**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**CABINET**

**25<sup>TH</sup> FEBRUARY 2021**

**REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) -  
USE OF RIPA IN 2019-2020 BY  
RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL AND THE COUNCIL'S  
CORPORATE ENFORCEMENT POLICY**

**REPORT OF THE DIRECTOR OF LEGAL SERVICES IN DISCUSSIONS WITH THE  
DEPUTY LEADER, CLLR WEBBER**

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**1. PURPOSE**

To enable Members to review:

- 1.1 The Council's use of the Regulation of Investigatory Powers Act 2000 (as amended) (RIPA) for the period 1<sup>st</sup> April 2019 to 31<sup>st</sup> December 2020, including the Investigatory Powers Commissioner's Office (IPCO) audit response; and
- 1.2 The new Corporate Policy and Procedures Document on the Acquisition of Communications Data under the Investigatory Powers Act 2016 (IPA).

**2. RECOMMENDATIONS**

It is recommended that Cabinet:

- 2.1 Notes the contents of this report;
- 2.2 Acknowledges RIPA has been used in an appropriate manner that is consistent with the Council's RIPA policies during the period 1<sup>st</sup> April 2019 – 31<sup>st</sup> December 2020;
- 2.3 Approves the updated Corporate Policy and Procedures Document on the Acquisition of Communications Data under the Investigatory Powers Act 2016 (IPA) attached as Appendix B to the report; and
- 2.4 Approves a change of reporting period to a calendar year, to align with the changed IPCO returns period.



### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 To ensure Members are kept apprised of how RIPA has been used during the period 1<sup>st</sup> April 2019 - 31<sup>st</sup> December 2020 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 and IPA Policies in order to ensure that they remain fit for purpose.

### **4. USE OF RIPA BY THE COUNCIL: 1<sup>ST</sup> APRIL 2019 – 31<sup>ST</sup> DECEMBER 2020**

#### **Directed Surveillance and the use of Covert Human Intelligence Sources**

##### **New Authorisations**

- 4.1 During the period 1<sup>st</sup> April 2019 - 31<sup>st</sup> December 2020, there were four authorisations in respect of directed surveillance. During the same period, there were no authorisations for the use of covert human intelligence sources.
- 4.2 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 six months or more or relates to the underage sale of alcohol or tobacco/nicotine.
- 4.3 All four directed surveillance authorisations related to fly tipping.

##### **Authorisations extant as at 1<sup>st</sup> April 2019**

- 4.4 There were no authorisations in respect of directed surveillance that had been authorised in the previous financial year (2018-19) and were carried forward. Similarly, no authorisations in respect of a Covert Human Intelligence Source extant remain extant.

##### **Cancellation of Authorisations & Subsequent Outcomes**

- 4.5 All four authorisations were reviewed and extended at the statutory 12-week period, and then cancelled a month further into the second 12-week period.
- 4.6 The outcomes of the surveillance operations that were concluded were as follows:

Evidence of fly tipping at location under investigation



- 1 x authorisation identified fly tipping which included an oil drum containing unknown substances; this matter is currently being taken forward as a joint investigation with Natural Resources Wales
- 1 x authorisation identified various instances of fly tipping; these matters are currently being investigated
- 1 x authorisation identified fly tipping, but neither a registration number nor image of offender was able to be obtained from the recording

#### No evidence of fly tipping at location identified

- 1 x authorisation resulted in no instance of fly tipping, but disposal of litter observed; this matter is currently being investigated

### **Authorisations extant as at 1<sup>st</sup> January 2021**

- 4.7 No investigations have been carried over into 2021.
- 4.8 The outcomes 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.

### **Human Rights Act Authorisations**

- 4.9 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.
- 4.10 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.
- 4.11 During the period of this report, the HRA authorisations were:



	1 <sup>st</sup> April 2019 – 31 <sup>st</sup> March 2020 (12 month period)	1 <sup>st</sup> April 2020 – 31 <sup>st</sup> December 2020 (9 month period)
<i>Anti-social behaviour monitoring</i>	0	0
<i>Underage sales test purchasing</i>	0	0
<i>Proxy sales monitoring</i>	0	0
<i>Internet site monitoring</i>	25	81
<i>Vehicle test purchasing</i>	0	0

4.12 Of note this period is the increase in internet site monitoring. Such sites are predominantly monitored for investigations into sale of illegal product via social media; it can be seen from the table that during the 2019-20 financial year, this amounted to 25 complaints and investigations. Since April 2020, the number stands at 89 for a 9-month period. Internet site monitoring has been carried out for diverse means during the coronavirus pandemic, including:

- Investigation into potential PPE suppliers to ensure that the product supplied are legally compliant and safe;
- Investigation of 'events' advertised during periods when these were prohibited by the Health Protection (Coronavirus Restrictions) (Wales) Regulations
- Determination of whether premises required to be closed during coronavirus restrictions were still trading in breach of the Regulations
- Review and assessment of legal compliance in relation to businesses which are new (e.g. manufacture and sale of 'bath bombs'), or who have deviated from usual trading practice (e.g. restaurants who were unable to open, moving to home delivery services)
- A means of contacting traders to provide proactive advice during pandemic legislative changes; close contact services, such as hairdressers and beauty therapists commonly have social media profiles, and this is a trade sector which has been subject to many changes throughout the pandemic

4.13 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.

### **Communications Data**

4.14 During the reporting period, eight applications for communications data were submitted via the National Anti-Fraud Network (NAFN) in relation to telephone numbers used as part of fraudulent activity.



## **5 AUDIT BY THE INVESTIGATORY POWERS COMMISSIONER'S OFFICE (IPCO)**

- 5.1 On 7<sup>th</sup> September 2020, the IPCO conducted a 3-yearly audit on the appropriate use of RIPA within Rhondda Cynon Taf. In previous years this has been a physical visit, but due to coronavirus restrictions, this audit was carried out remotely.
- 5.2 Prior to the audit date, information and authorisations were sent to the auditor, Mr Paul Gration; during the audit itself, Mr Gration asked about processes and policies, and also provided some recommendations in respect of refresher training in the use of RIPA. Training is scheduled to take place every 3 years, but this year was suspended due to the pandemic and the Council response to it.
- 5.3 The audit report was received on 14<sup>th</sup> September 2020 from the Rt. Hon. Sir Brian Leveson, Investigatory Powers Commissioner, who was complementary of both the RIPA use and procedures in place within the local authority. A copy of the full response is appended at Appendix A to the report.
- 5.4 It is likely that future audits will be carried out remotely, based both on the amount of RIPA activity within Rhondda Cynon Taf and its overall compliance.

## **6 THE CORPORATE POLICY AND PROCEDURES DOCUMENT ON THE ACQUISITION OF COMMUNICATIONS DATA UNDER THE INVESTIGATORY POWERS ACT 2016 (IPA)**

- 6.1 The commencement of the Investigatory Powers Act on 11<sup>th</sup> June 2019 meant that information requested in relation to communications data, is now provided electronically and submitted to the Office for Communications Data Authorisations (OCDA) via the National Anti-Fraud Network (NAFN).
- 6.2 Previously, requests for authorisation were required to be submitted to the Magistrate Court. The new process provides standardisation in format. NAFN ensure the request is proportionate, justified and meets the requirements of the IPA; the OCDA authorise approvals, and NAFN approach the Communications Services Provider(s) to obtain the requested data on behalf of the Local Authority.
- 6.3 The introduction of the new Act and process has resulted in the drafting of a new Corporate Policy for the Acquisition of Communications Data which is attached as Appendix B to the report.

## **7. REPORTING PERIOD GOING FORWARD**

The IPCO has amended their annual return period to be a calendar year; it is suggested that the report on the Council use of RIPA is similarly amended to align to the calendar year.



**8. CONSULTATION**

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

**9. EQUALITY AND DIVERSITY**

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

**10. FINANCIAL IMPLICATIONS**

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

**11. LINKS TO THE COUNCIL'S CORPORATE PLAN/ OTHER COUNCIL PRIORTIES**

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

**12. CONCLUSION**

The Senior Responsible Officer (Director of Legal 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 Corporate policies.