

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

21ST FEBRUARY 2024

**REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) and
INVESTIGATORY POWERS ACT 2016 (IPA) - USE OF INVESTIGATORY
POWERS DURING 2023 BY RHONDDA CYNON TAF COUNTY BOROUGH
COUNCIL**

**REPORT OF THE DIRECTOR OF LEGAL & DEMOCRATIC SERVICES AND
DIRECTOR OF PUBLIC HEALTH, PROTECTION & COMMUNITY SERVICES IN
DISCUSSION WITH THE DEPUTY LEADER, CLLR WEBBER**

Author(s): Judith Parry, Trading Standards & Registrar Service Manager

1. PURPOSE OF THE REPORT

The purpose of the report is 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 1st January to 31st December 2023; and
- 1.2 The Council's use of the Acquisition of Communications Data under the Investigatory Powers Act 2016 (IPA) for the same period.

2. RECOMMENDATIONS

It is recommended that the Cabinet:

- 2.1 Note the content of the report; and
- 2.2 Acknowledge that investigatory powers in respect of covert surveillance and acquisition of communications data have been used in an appropriate manner that is consistent with the Council's RIPA and IPA policies during the period 1st January – 31st December 2023.

3 REASONS FOR RECOMMENDATIONS

- 3.1 To ensure Members are kept apprised as to how RIPA has been used during the period 1st January – 31st December 2023 and that it has been used in an appropriate manner consistent with the Council's RIPA policies.

- 3.2 The Cabinet is responsible for providing oversight for effective and appropriate use of specific investigatory powers under the Council's Corporate RIPA and IPA Policies.
- 3.3 The Cabinet is responsible for approving revisions to the Council's Corporate RIPA Policy in order to ensure that it remains both accurate and fit for purpose.
4. **USE OF RIPA BY THE COUNCIL: 1ST JANUARY TO 31ST DECEMBER 2023**

Directed Surveillance and the use of Covert Human Intelligence Sources

New Authorisations

- 4.1 During the period 1st January – 31st December 2023 there were no 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 Such matters are still being investigated by council service areas. It is now more common that overt investigative methods are considered as a first step, and only if the use of overt methods will not result in evidence collation, is covert investigation considered.

Authorisations extant as at 1st January 2023

- 4.4 There were no directed surveillance authorisations that were carried forward from the previous calendar year (2022). Similarly, no authorisations in respect of a Covert Human Intelligence Source extant remain extant.

Authorisations extant as at 1st January 2024

- 4.5 No authorisations have been carried forward into 2024.

Human Rights Act Authorisations

- 4.6 At the commencement of an investigation, officers may need to carry out non-overt work which does not fall within the statutory requirements for RIPA, predominantly because the work is carried out in 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.

4.7 If this preparatory investigative work carried indicates that an investigation needs to be carried out using RIPA-based techniques, officers will apply for RIPA authorisation.

4.8 During the period of this report, the HRA authorisations were:

<i>Anti-social behaviour monitoring</i>	0
<i>Underage sales test purchasing</i>	3
<i>Proxy sales monitoring</i>	0
<i>Social media site monitoring</i>	19
<i>Vehicle test purchasing</i>	0

4.9 In respect of underage sales test purchasing, the figure of 3 in the table relates to the number of days that operations were conducted. This represents 45 attempted purchases, predominantly for vapes but included fireworks during quarter 3. Premises are targeted based on intelligence received.

4.10 During this period, one age-restricted product was supplied from the 45 attempts; this was a nicotine content vape. A simple caution was signed by the seller; no action was taken against the business as they demonstrated that they had met the statutory defence. All premises visited are reminded of their legal responsibilities in respect of underage sales.

4.11 This period shows a reduction in respect of social media site monitoring. Such sites are predominantly monitored for investigations into sale of illegal product via social media; it has been noted that a greater number of traders (both genuine and fraudulent) are trading over media that the council does not have access to. This may have contributed to the reduced number.

4.12 Increasingly, legitimate businesses trade solely via social media, and may use their personal social media presence to advertise and sell their products. In these instances, it is important to ensure that collateral intrusion is minimised when that site is 'inspected' in the same way that a high street shop may be inspected for legal compliance of goods or services supplied.

- 4.13 Whilst monitoring through social media may initially be considered intrusive, in many instances it can lead to a level of remote interaction between service areas and businesses that results in more timely resolution to enquiries.
- 4.14 A review of HRA authorisations show that on no occasion did they result in an improper infringement of a person's human rights.

Communications Data

- 4.15 During the reporting period, no 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 The IPCO conduct audits on the use of covert investigatory powers on a 3-year cycle. The previous audit was on 7th September 2020.
- 5.2 On 7th July 2023, the IPCO contacted the Chief Executive to advise that they would no longer routinely undertake an inspection as part of the audit process, but request a written update from the local authority, which will then inform a need for a remote or in-person inspection. Ten questions were posed, and a request to provide copies of applications and authorisations since the last audit. The relevant information and copies of three authorisations were duly supplied.
- 5.3 On 27th November 2023, a letter was received from the Rt. Hon. Sir Brian Leveson, Investigatory Powers Commissioner. The letter stated that the information received provides assurance of ongoing compliance with legal requirements, and no further inspection is due as part of that audit cycle. A copy of this letter is provided at Appendix A.

6 EQUALITY AND DIVERSITY IMPLICATIONS / SOCIO-ECONOMIC DUTY

An equality impact assessment is not needed as the content of this report is for information purposes only.

7 WELSH LANGUAGE IMPLICATIONS

Both RIPA and IPA policies are available on the Council website in Welsh.

8 CONSULTATION / INVOLVEMENT

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

9 FINANCIAL IMPLICATION(S)

There are no financial implications aligned to this report.

10 LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED

The Regulations of Investigatory Powers Act (RIPA) and the Investigatory Powers Act (IPA) place a duty on local authorities to ensure that identified activity is compliant with legal controls and subject to annual scrutiny. Associated Home Office Codes of Practice require a local authority to have up to date and accurate procedures in place to ensure that the legal requirements are complied with. These procedures must be made public.

11 LINKS TO THE CORPORATE AND NATIONAL PRIORITIES AND THE WELL-BEING OF FUTURE GENERATIONS ACT

The use of RIPA and IPA as tools to effectively target illegal activity within the local authority, such as rogue trading and fly-tipping, links to two of the three Corporate Priorities, namely ensuing PLACES where people are proud to live, work and play, and enabling PROSPERITY for people and business to fulfil their potential and prosper.

Additionally, four of the seven Well-being Goals under the Well-being of Future Generations Act are met, namely a Prosperous Wales, a Healthier Wales, a More Equal Wales and a Globally Responsible Wales.

12 STRATEGIC OR RELEVANT TO ELECTORAL WARDS

The contents of this report are not specific to any one electoral ward.

13 CONCLUSION

The Senior Responsible Officer (Director of Legal & Democratic Services) considers that RIPA has been used appropriately in relation to the use of directed surveillance and acquiring of communications data as identified in this report; and that RIPA has been used in a manner that is consistent with the Council's Corporate Policies.

Other Information:-

Relevant Scrutiny Committee: Overview Scrutiny

Contact Officer: Andy Wilkins, Head of Legal – Corporate and Democratic Service

APPENDIX TO REPORT



PO Box 29105, London
SW1V 1ZU

Mr Paul Mee
Chief Executive
Rhondda Cynon Taf Council
By email: paul.mee@rctcbc.gov.uk

27 November 2023

Dear Mr Mee,

IPCO recently contacted your council to request information concerning the use of covert investigatory powers. Your colleague Andrew Wilkins, Director of Legal Services provided a comprehensive response in his capacity as Senior Responsible Officer. I am satisfied that your reply provides your assurance that ongoing compliance with the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 will be maintained. As such, your Council will not require further inspection this year.

Mr Wilkins kindly provided copies of authorisation bundles relating to three uses of directed surveillance powers during 2020, two of which were authorised prior to our last inspection and cancelled soon after, and a further authorisation granted shortly after the inspection. The documentation was examined and found to be in good order. All three cases related to the deployment of static covert cameras in locations that had been used for fly tipping to gain evidence of vehicles used to facilitate these events. All three cancellations were submitted promptly; however, I would like to remind you that paragraph 5.14 of the Covert Surveillance and Property Interference Code of Practice (2018) states that any authorisation should be cancelled when it is deemed as no longer

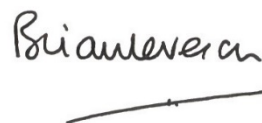
necessary. While the cancellation documents provide the Authorising Officer with a helpful update, all appear to be cancelled shortly prior to their expiry without an explanation of whether this was an advisable course of action, and without further information concerning the duration of the deployment (i.e., the date of commencement of observations and removal of cameras). I understand that RIPA powers of any description have not been used since 2020.

I am pleased to confirm that the actions highlighted in the 2020 Inspection Report were promptly acted upon. The report suggested that the number of nominated Authorising Officers be reduced in number. A copy of the relevant RIPA annual update to Council Members has been provided, evidencing that the list of AOs was significantly reduced. Furthermore, Mr Wilkins has confirmed that all present AOs have either completed RIPA refresher training or are due to do so in the very short term.

I would ask that you ensure that the key compliance issues continue to receive the necessary internal governance and oversight through yourself and your Senior Responsible Officer: policy refreshes; annual updates to your Elected Members; ongoing training and awareness raising; internal compliance monitoring by lead managers within their business areas; and the retention, review and destruction (RRD) of any product obtained through the use of covert powers (Records and Product Management in accordance with the Safeguards Chapters of the relevant Codes of Practice).

Your Council will be due its next inspection in 2026, but please do not hesitate to contact my Office if IPCO can be of assistance in the intervening period.

Yours sincerely,

A handwritten signature in black ink that reads "Brian Leveson". The signature is written in a cursive style and is positioned above a horizontal line.

The Rt. Hon. Sir Brian Leveson
The Investigatory Powers Commissioner