



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

CABINET (POLICY AND RESOURCES SUB COMMITTEE)

REPORT OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES – MR CRAIG GRIFFITHS

4th October 2022

Matter for Information

Wards Affected: All Wards

Regulation of Investigatory Powers Act 2000

Purpose of the Report:

1. The purpose of this paper is to provide the Cabinet (Policy and Resources) Sub Committee with information on the instances that Neath Port Talbot County Borough Council (“the Council”) used its investigatory powers in the last financial year, as required by the Code of Practice issued by the Home Office. It is also to provide assurance that the Council uses its surveillance powers in a lawful and proportionate way.

Executive Summary:

2. The Regulation of Investigatory Powers Act 2000 (RIPA) controls and regulates surveillance and other means of information gathering which public bodies employ in the discharge of their functions. RIPA provides an authorisation process for covert

surveillance and information gathering, and an authorisation can be used as a defence against a claim that the council has interfered with an individual's right to private life under Article 8 of the European Convention on Human Rights.

3. This report confirms that there has been one use of surveillance powers for the year 1st April 2021 – 31st March 2022.

Background:

4. RIPA controls and regulates surveillance and other means of information gathering which public bodies employ in the discharge of their functions. RIPA provides an authorisation process for covert surveillance and information gathering, and an authorisation can be used as a defence against a claim that the council has interfered with an individual's right to private life under Article 8 of the European Convention on Human Rights.
5. RIPA regulates:
 - directed surveillance;
 - intrusive surveillance;
 - the conduct and use of covert human intelligence sources (CHIS);
 - intercepting communication; and
 - the acquisition and disclosure of communications data.
6. The Council has a RIPA Policy (copy enclosed at Appendix 1) which says that the Council will apply a presumption in favour of overt investigation methods, and that covert methods will be used only when other reasonable options have been considered and ruled out. Authorisations can generally only be made by the Authorising Officers (as detailed in the Policy) with ultimate responsibility for the Council's use of RIPA powers vesting in the Monitoring Officer.

7. The Council can only authorise the use of covert methods in very limited circumstances. The Council cannot authorise intrusive surveillance. The Council can only authorise directed surveillance where this is necessary and proportionate for the purpose of preventing or detecting serious criminal conduct, and an authorisation cannot take effect until a Justice of the Peace (JP) or District Judge has made an order approving it.
8. The Council can only authorise the use of a Covert Human Intelligence Sources, or authorise the acquisition of communications data where this is necessary and proportionate for the purpose of preventing or detecting crime or of preventing disorder, and again an order by a JP approving the authorisation is required.
9. In the period of 1st April 2021 to 31st March 2022, the Council has had only one requirement to undertake any surveillance actions. This continues the theme for recent years:

Year	Number of Surveillance Applications
2018-2019	0
2019-2020	0
2020-2021	0
2021-2022	1

10. In this one application, cameras were placed in an area, known to be used regularly for dumping waste, which was often then set alight. When recorded footage was examined, a successful prosecution was then able to take place. In this case, the defendant was given a 2 month community order with 120 hours unpaid work, a £95 victim surcharge and £500 towards prosecution costs. The District Judge also ordered the forfeiture of the transit van used to commit the offence and additionally disqualified the defendant from driving for 12 months.

11. The Council's use of surveillance powers is regularly subject to external inspection by the Investigatory Powers Commissioner's Office. This Office was formed in September 2017 as a result of the introduction of the Investigatory Powers Act 2016, and is an amalgamation of three separate commissioners. These were the Office of the Surveillance Commissioner, the Interception of Communication Commissioner's Office, and the Intelligence Services Commissioner. In his regulatory function, the Assistant Surveillance Commissioner reviews the Council's use of directed surveillance, covert human intelligence source and CCTV systems under the Regulation of Investigatory Powers Act. The last inspection by the Investigatory Powers Commissioner's Officer, undertaken as a remote desktop inspection as a result of the COVID-19 pandemic, occurred in Spring 2021.

12. The following commentary was provided by the Inspector:
 - *"It is evident your staff have an intrusive and robust approach to oversight and to their credit have introduced measures to mitigate the dangers of staff overusing online surveillance and internet research, and other forms of surveillance, as possible tactics in cases where the protection of RIPA may not be offered or is not required."*
 - *"One such case was examined where online resources were used in a test purchase operation targeting the illegal dumping of waste and trading standards offences. Despite the operational objectives and tactics not requiring the protection of RIPA, the application process used was very robust, mirroring that of RIPA without being overly bureaucratic. I would consider this process to be an example of good practice and demonstrates a mature approach to oversight."*
 - *"It was outlined that a forward work programme is being developed to widen internal training, which demonstrates a proactive approach to training and development. It was highlighted that the training already delivered, and that to be delivered in the future, includes a focus on online surveillance."*

The wider promulgation of knowledge and awareness around the use of internet research and social media in conducting council business is good practice and will enable you to have confidence that Council resources are being used appropriately.”

- *“During the remote inspection, IPCO’s Data Assurance Programme was discussed and Inspector is satisfied that you have appropriate protocols and guidance in place outlining the rules to be applied to the retention, review and destruction of material obtained as a result of covert tactics.”*
- *“The role of your SRO is central to the above issue and in maintaining a strong oversight regime, and my Inspector was impressed by the attitude of both members of your authority, who not only demonstrate an enthusiasm and good knowledge on matters related to RIPA, but have a very proactive and intrusive approach to governance and oversight of any potential use of the powers.*
- *“I am pleased to report there being suitably strong governance processes in place within your Council to ensure compliance with the legislation and Codes of Practice and that some good practice has been identified.”*

13. The principal reasons for the use of surveillance are for prevention and detection of crime and not for criminal proceedings. As such, conviction rates, although high, are not the only measure of success (different methods of disposal such as letters of written warning, Simple Cautions and website takedowns are also justifiable indicators of RIPA usage).

Financial Impacts:

14. No implications.

Integrated Impact Assessment:

15. An Integrated Impact Assessment is not requirement for this report.

Valleys Communities Impacts:

16. No implications

Workforce Impacts:

17. No implications

Legal Impacts:

18. Compliance is had at all times with RIPA and other associated legislation.

Consultation:

19. There is no requirement for external consultation on this item

Recommendations:

20. It is recommended that members:
 - note the Neath Port Talbot County Borough Council Regulation of Investigatory Powers Act 2000 enclosed at Appendix 1
 - note the contents of this report and that the Neath Port Talbot County Borough Council's surveillance powers continue to be exercised appropriately and proportionately.

Appendices:

21. Appendix 1 – NPTCBC RIPA Policy

List of Background Papers:

22. None

Officer Contact:

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