

Brighton & Hove City Council

Audit and Standards Committee

Agenda Item 51

Subject: Annual Surveillance Report 2022

Date of meeting: 18th April 2023

Report of: Executive Director Finance Governance and Resources

Contact Officer: Name: Jo Player
Tel: 01273 292488
Email: jo.player@brighton-hove.gov.uk

Ward(s) affected: All

For general release

1. Purpose of the report and policy context

1.1 The purpose of this report is to appraise Committee of the activities undertaken utilising the Council's statutory powers to conduct covert surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last report to Committee in April 2022.

1.2 The report also introduces an updated Policy and Guidance document for Committee to review.

2. Recommendations

2.1 That Committee approves the continued use of covert surveillance as an enforcement tool to prevent and detect crime and disorder investigated by its officers, providing the activity is in line with the Council's Policy and Guidance and the necessity and proportionality rules are stringently applied.

2.2 That Committee notes the surveillance activity undertaken by the authority since the report to Committee in April 2022 as set out in paragraph 3.3

2.3 That Committee approves the continued use of the Policy and Guidance document as set out in Appendix 1 in its amended form.

3. Context and background information

3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) as amended is the law governing the use of covert surveillance techniques by public authorities, including local authorities. RIPA was enacted as part of a suite of legislation flowing from the Human Rights Act 1997. RIPA requires that when public authorities need to use covert techniques to obtain information about someone, they may do so only where necessary and in a way which is compatible with human rights.

- 3.2 RIPA regulates the interception of communications, directed and intrusive surveillance and the use of covert human intelligence sources (informants). Local authorities may only carry out directed surveillance, access certain communications data and use informants, provided that strict criteria are met.
- 3.3 Statutory guidance on the use of RIPA is produced in the form of a detailed Code of Practice, which was last revised in December 2022. That provides that elected members should review the authority's use of the 1997 Act and the 2000 Act and set the policy at least once a year. The objective is to ensure that the Council's powers are being used in a way which is consistent with the local authority's policy, which remains fit for purpose. The Council has carried out no surveillance operations since the last report to Committee in April 2022.
- 3.4 The Protection of Freedoms Act was enacted in November 2012. Since then, approval must be sought from a Magistrate when local authorities wish to conduct surveillance activity, access communications data and/or use informants. This is in addition to the authorisation by an Authorising Officer who meets the criteria regarding their position within the authority.
- 3.5 In addition to seeking the approval of a Magistrate, all applications must meet the Serious Offence test. This stipulates that any directed surveillance is restricted to the investigation of offences that carry a custodial sentence of six months or more. The only offence where this will not apply is in regard to the investigation of underage sales of tobacco or alcohol.
- 3.6 In September 2022 the Investigatory Powers Commissioner's Office (previously the Office of the Surveillance Commissioner) audited the authority's use of RIPA in the last four years since the previous audit in 2018. The IPCO reported that she was satisfied that the authority's use of RIPA was appropriate and that our policies and procedures were good. Training for authorising officers was recommended and this was completed in November 2022.

4. Analysis and consideration of alternative options

- 4.1 While the Council could cease using its powers under RIPA completely, this is not considered an appropriate step.

5. Community engagement and consultation

- 5.1 There has been no consultation in the compilation of this report.

6. Conclusion

- 6.1 This Report provides reassurance that officers at this authority are equipped to use the Council's powers under RIPA where necessary and within the threshold set out in the Protection of Freedoms Act 2012, only after excluding all other methods of enforcement. An authorisation will only be

given by the relevant 'Authorising Officer' following vetting by the 'Gatekeeper'. There is now the additional safeguard of judicial sign off.

- 6.2 The implementation of the Annual review has made the whole process transparent and demonstrates to the public that the correct procedures are followed.

7. Financial implications

- 7.1 There are no financial implications arising from this report. Any covert surveillance undertaken needs to be met from within current budget resources.

Name of finance officer consulted: Mike Bentley Date consulted
24/03/23

8. Legal implications

- 8.1 The legal framework that governs the Council's use of its powers under RIPA and related legislation is described in the body of the Report. The annual review by this Committee of the Council's policy on these legal powers and of the use it makes of them (which in the last financial year was nil) is mandated by statutory guidance. This Report provides reassurance that the Council's powers are exercised lawfully and proportionately, and only where relevant criteria have been met.

Name of lawyer consulted: Victoria Simpson Date consulted 27.03.23

9. Equalities implications

- 9.1 The proper and consistent application of the RIPA powers should ensure that a person's basic human rights are not interfered with, without justification. Each application will be assessed by the gatekeeper for necessity and proportionality prior to the authorisation by a restricted number of authorising officers. The application will also be signed off by a Magistrate. This process aims to identify any inconsistencies or disproportionate targeting of minority groups and enable action to be taken to remedy any perceived inequality.

10. Sustainability implications

- 10.1 There are no sustainability implications

11. Other Implications

Crime & disorder implications:

- 11.1 If used appropriately, the activities described in this report should enhance our capacity to tackle crime and disorder

Supporting Documentation

1. Appendices

1. Policy and Guidance Document version January 2023