

Brighton & Hove City Council

Audit & Standards Committee

Agenda Item 37

Subject: Annual Surveillance Report 2023

Date of meeting: 30th January 2024

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 that have been undertaken utilising the powers under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last report to Committee in March 2023
- 1.2 The report also introduces an updated Policy and Guidance document

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 March 2023 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 updated form.

3. Context and background information

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) 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 do it in a way that is necessary and 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.

3.3 The Council has carried out no surveillance operation since the last report to Committee in March 2023.

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 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.

4. Analysis and consideration of alternative options

4.1 The only alternative is for the Council to completely curtail the use of RIPA but 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 as it is a requirement of the Code of Practice pursuant to section 71 of RIPA that elected members review the authority's use of RIPA and set the policy once a year

6. Conclusion.

6.1 It is essential that officers are able to use the RIPA powers where necessary and within the threshold set out in the Protection of Freedoms Act 2012, but only after excluding all other methods of enforcement. An authorisation will only be given by the relevant 'Authorising Officer' following vetting by the 'Gatekeeper' therefore it is unlikely that the powers will be abused. 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 (07/12/23):

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 12.12.23

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 should 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 in this report

11. Other Implications

Crime & disorder implications:

- 11.1 These are contained within the body of the report

Supporting Documentation

1. Appendices

1. Policy and Guidance Document version January 2024

