

ENVIRONMENT SCRUTINY PANEL

A meeting of the Environment Scrutiny Panel was held on Monday 5 February 2024.

PRESENT: Councillors: D Branson (Vice-Chair, in the Chair), J Ewan, TA Grainge, I Morrish, M Nugent and S Platt

OFFICERS: J Dixon and L Hamer

APOLOGIES FOR ABSENCE: Councillors J Ryles, J Banks and L Mason

23/38 DECLARATIONS OF INTEREST

There were no Declarations of Interest made by Members at this point in the meeting.

23/39 MINUTES OF THE PREVIOUS MEETING OF THE ENVIRONMENT SCRUTINY PANEL HELD ON 15 JANUARY 2024

The minutes of the previous meeting of the Environment Scrutiny Panel held on 15 January 2024 were submitted and approved as a correct record, subject to the figures on pages 3/4 being amended to 'millions'.

23/40 UPDATE ON THE USE OF THE SURVEILLANCE POLICY 2023/24

L Hamer, Governance and Information Manager, was in attendance at the meeting to provide the Panel with an update in relation to the Council processes in place to ensure compliance with the Statutory Codes of Practice applying to the Regulation of Investigatory Powers Act 2000 (RIPA).

The Panel was advised that the Council's Surveillance Policy had recently been refreshed and approved by the Executive Member for Finance and Governance in December 2023.

It was explained that RIPA was the law governing the use of surveillance techniques by public authorities, including local authorities, and must only be used to obtain private information about someone where surveillance was necessary, proportionate and compatible with human rights. It was typically used in cases of suspected criminal activity that were likely to result in a custodial sentence of six months or more.

Where covert surveillance was needed to gather sufficient evidence to secure a prosecution, approval was required from a Magistrate.

Since 2019 (the previous refresh of the Policy), the Council had exercised these powers on two occasions – both in 2023 – in relation to the following suspected offences:-

- Underage tobacco sales
- Illicit tobacco sales

Paragraph 5) of the report contained charts showing RIPA activity undertaken by the Council between 2015 and 2023, including the nature of the surveillance and reasons it was undertaken. Activity remained low as the Council would always try to avoid using covert surveillance wherever possible. It was highlighted that between 2020 and 2022 RIPA powers had not been used at all due to Covid.

Furthermore, the Council also had a process, as set out within the Surveillance Policy, for surveillance on non-RIPA grounds. This process tended to be used to investigate issues such as data protection investigation; audit; disciplinary; system audit and inappropriate use of social media, with Council staff or Council contractors.

In 2023, six instances of non-RIPA surveillance were undertaken in relation to staffing matters. Each matter was centrally logged and approved by HR to ensure the use of this power was minimised and that there was a legitimate basis for use which must be identified

prior to approval.

Details of the Council's Surveillance Policy were contained within the report and a copy of the Policy was attached for information.

It was highlighted that the use of RIPA was also reported to Corporate Affairs and Audit Committee on an annual basis as part of the Senior Information Responsible Officer (SIRO) report.

A discussion ensued and the following issues were raised:-

- In response to a query it was confirmed that the figures on when and how the powers had been used was looked at annually and the Policy was refreshed every three years.
- A Panel Member made reference to page 27, paragraph 8) of the report, which stated "... Members will have no direct involvement in surveillance operations or in making decisions on specific authorisations." It was queried why this was the case. The Panel was advised that surveillance operations would not be something that Councillors would normally be involved in, particularly if it was a covert operation. Examples were provided such as a Councillor becoming involved in a noise complaint or gathering evidence in relation to an individual fly-tipping, etc and it was confirmed that this would be outside of the Policy and that Members should seek advice from the appropriate service area in such instances to ensure correct procedures were being followed and also for personal safety reasons.
- Reference was made to separate procedures in place for RIPA and non-RIPA surveillance. It was clarified that RIPA surveillance required Magistrates approval if it was considered to meet the threshold for criminal investigation and that non-RIPA surveillance was logged centrally and approved by the relevant Head of Service and HR and that this mainly related to staff matters. Examples of when this might be used included inappropriate use of social media which may bring the Council's reputation into disrepute or benefit fraud.
- It was queried whether non-RIPA investigations could progress to RIPA surveillance and it was confirmed that this could happen on occasion.
- In terms of inappropriate use of social media, Members were informed that the Council had a Social Media Policy which covered staff and Elected Members but not members of the public.
- Reference was made to page 35 paragraph 61 of the Policy which stated "... from time to time the Council will provide grants for equipment ..." and it was queried what this was for. The Panel was advised that, on occasion, grants might be provided for equipment such as cameras/CCTV equipment to help capture instances of crime and anti-social behaviour for example, that could be used as evidence.
- Panel Members held a discussion regarding the current approval pathways for sanctioning non-RIPA surveillance and suggested that this could potentially be strengthened by including approval from the Monitoring Officer (Director of Legal and Governance Services), as well as notifying the Chief Executive, for non-RIPA cases. Members felt that this would ensure that the process was more robust and independent for non-RIPA investigations which tended to relate to staffing matters.

AGREED as follows:-

1. That the update provided in relation to the Council's Surveillance Policy and RIPA powers be noted.
2. That the Panel's suggestion to introduce involvement/approval of the Chief Executive and Monitoring Officer, for non-RIPA investigations, be fed in to the appropriate route when next reviewing the Council's Surveillance Policy.

The Democratic Services Officer provided a verbal update in relation to the business

conducted at the Overview and Scrutiny Board meeting held on 18 January 2024, namely:

- Executive Forward Work Programme
- Budget Consultation – Scrutiny Feedback
- Local Government Boundary Review – Phase Two
- Next meeting of OSB – Wednesday, 7th February 2024, 4.30pm.

NOTED

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ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED.

Waste Management – Current Scrutiny Topic

During a discussion in relation to the Panel's current scrutiny investigation into Waste Management,

Members requested further information in relation to Middlesbrough's CIPFA nearest neighbours with regards to waste and recycling with potential to contact one or two of those authorities to find out about their recycling systems and associated information.

NOTED

Crustacean Deaths Collaborative Working Group - Update

The Chair advised that the draft report following the one-year investigation by the above group had been circulated to Panel Members for comment and was in the process of being finalised.

Details were provided in relation to the large scale demise of crustaceans that had first occurred in October 2021. It was a major problem in the North East resulting in an 80% decline in catches for local fishermen. As the investigation had progressed it appeared that there were several causal factors and that mass die-offs could not be attributed to one single cause.

In response to a question, the Chair confirmed that it was a widespread problem ranging from Blyth to beyond Scarborough.

NOTED

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DATE AND TIME OF NEXT MEETING - 4 MARCH 2024

The next meeting of the Environment Scrutiny Panel was scheduled to take place on Monday, 4 March 2024 at 10.00am.