

Report of:	Director of Legal and Governance Services
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Submitted to:	Executive Member for Finance and Governance
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Date:	14 December 2022
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Title:	Surveillance Policy 2022/23
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Report for:	Decision
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Status:	Public
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Strategic priority:	All
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Key decision:	No
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Why:	Decision does not reach the threshold to be a key decision
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Urgent:	No
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Why:	Not applicable
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Executive summary

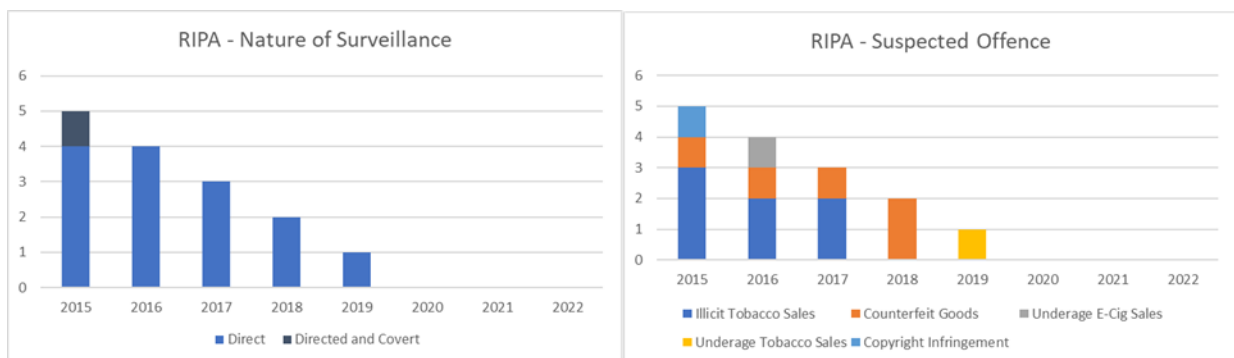
The proposed policy will ensure that surveillance activity undertaken by the Council is pursuit of its strategic priorities is lawful and that due regard is given to human rights and to data protection rights. This report represents the outcome of the annual review of the Council's RIPA related policy contents, in line with statutory guidance.

Purpose

1. This report presents seeks approval of the proposed corporate Surveillance Policy for 2022/23.
2. Guidance underpinning the Regulation of Investigatory Powers Act (RIPA) 2000 states that elected members should review the Council's use of RIPA powers and set the RIPA policy at least once per annum.
3. Use of RIPA powers are considered annually by Corporate Affairs and Audit Committee as part of the annual report of the Senior Information Risk Owner. Statistical information on use of the powers will be reported to a future meeting of the Culture and Communities Scrutiny Panel.

Background and relevant information

4. RIPA is the law governing the use of surveillance techniques by public authorities, including local authorities. RIPA requires that when public authorities need to use covert techniques to obtain private information about someone, they only do so if surveillance is necessary, proportionate, and compatible with human rights. Typically this relates to suspected criminal activity that is likely to result in a custodial sentence of six months or more.
5. In such instances, covert surveillance can be undertaken, subject to magistrate approval, if it is not possible to gather sufficient evidence to secure a prosecution without this.
6. The majority of RIPA applications made by the Council relate for enforcement in relation to tobacco, alcohol and counterfeit goods. The Council's use of RIPA has reduced annually since 2015, with no applications made since 2020 primarily due to the impact of the pandemic on regulatory activity. The charts below set out the number of applications made the Council in the past six years, the nature of the surveillance and the reasons why it was undertaken.



7. This policy is updated annually and was last approved by the then Executive Member for Environment, Finance and Governance in August 2021.
8. As reported in the last annual review of this policy, in late 2020 the Council was subject to a (periodic) inspection by the IPCO regarding its use of RIPA powers. In summary, the conclusions of this inspection (reported in full to Corporate Audit and Affairs Committee on 29 April 2020) were that the Council has a strong compliance regime for

the use of RIPA powers, with the use of the Electronic Document and Records Management System highlighted as a particular strength.

9. No formal recommendations for improvement were made by the IPCO following this inspection, however the Council agreed with the IPCO that from now on it will maintain an overarching Surveillance Policy (Appendix 1), which will cover CCTV, RIPA, non-RIPA covert surveillance and the surveillance of employees. This continues to be reflected in the policy and content was reviewed as part of the 2022 annual review. The 2022 review has also had due regard to draft guidance published by the Information Commissioners Office in October 2022 'Employment practices: monitoring at work draft guidance'¹.
10. This is necessary to ensure that any covert surveillance undertaken by the Council that does not meet the RIPA threshold is lawful and that due regard is given to human rights and to data protection rights, and to clarify for the benefit of employees when and under what circumstances they will be subject to surveillance.

What decision(s) are being recommended?

11. That the Executive Member approves the proposed corporate Surveillance Policy for 2022/23.

Rationale for the recommended decision(s)

12. To demonstrate the Council's compliance with all legal duties relating to surveillance and to provide clarity to all stakeholders in a single policy document the circumstances under which the Council will use surveillance and how this will be done.

Other potential decision(s) and why these have not been recommended

13. The Council could choose to restrict this policy to RIPA activity only and develop and implement separate policies relating to non-RIPA surveillance, employee surveillance and other issues not currently covered by policy. However, this is not recommended, as a single policy provides for a coherent and systematic approach and is in line with the Council's commitment to openness and transparency.

Impact(s) of the recommended decision(s)

Legal

14. The report and its associated action plan, demonstrates how the Council does and will continue to meet its various legal duties when undertaking surveillance.

Strategic priorities and risks

15. Implementation of the proposed surveillance policy mitigates a number of risks within the Council's strategic and information risk registers, having a positive overall impact on the strategic risk that the Council could fail to comply with the law.

¹ <https://ico.org.uk/media/about-the-ico/consultations/4021868/draft-monitoring-at-work-20221011.pdf>

Human Rights, Equality and Data Protection

16. The proposed policy has been subject to Level 1 (screening) equality impact assessment (at Appendix 2). This assessment identified that no negative differential impacts on diverse groups and communities within Middlesbrough is anticipated from the implementation of the policy.

Financial

17. It is anticipated that all activities require by the policy are achievable within existing and planned budgets.

Actions to be taken to implement the recommended decision(s)

18. Following approval, the surveillance policy will be published on the Council's website and staff intranet page. Supporting procedures will be developed and revised as appropriate, with training provided for all managers and case workers, and the Council's privacy notices updated where required.

19. The provides for live monitoring of surveillance activity with issues raised to Risk Management Group and / or Corporate Governance Board on a quarterly basis if Required.

20. The Senior Responsible Owner for surveillance annually report is due to be submitted to Corporate Affairs and Audit Committee next in April 2023.

Appendices

1	Surveillance Policy 2022/23
2	Surveillance Policy 2022/23 – Impact Assessment Level 1: Initial screening assessment

Background papers

Body	Report title	Date
Executive Member for Finance and Governance	RIPA Policy	28/02/2020
Corporate Affairs and Audit Committee	Annual Report of the Senior Information Risk Owner (SIRO)	29/04/2021
Executive Member for Environment, Finance and Governance	Surveillance Policy	10/08/2022
Corporate Affairs and Audit Committee	Annual Report of the Senior Information Risk Owner (SIRO)	31/03/2022

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