

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Legal and Governance Services
Relevant Executive Member:	Executive Member for Finance and Governance
Submitted to:	Executive Member for Finance and Governance
Date:	20 December 2023
Title:	Surveillance Policy 2023/4
Report for:	Decision
Status:	Public
Strategic priority:	All
Key decision:	No
Why:	Decision does not reach the threshold to be a key decision
Subject to call in?:	Yes
Why:	Not urgent

Proposed decision(s)	That Executive Member approves the annual review of the Surveillance Policy.
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Executive summary	<p>This report seeks Executive approval of an updated Surveillance Policy. In accordance with the Statutory Codes of Practice applying to the Regulation of Investigatory Powers Act 2000 (RIPA) The Authority is required to review its use and set out the Policy at least annually.</p>
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Purpose

1. This report presents seeks approval of the proposed corporate Surveillance Policy 2023/24.
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 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 relevant Scrutiny Panel.

Recommendations

4. That the Executive Member approves the annual review of the Surveillance Policy.

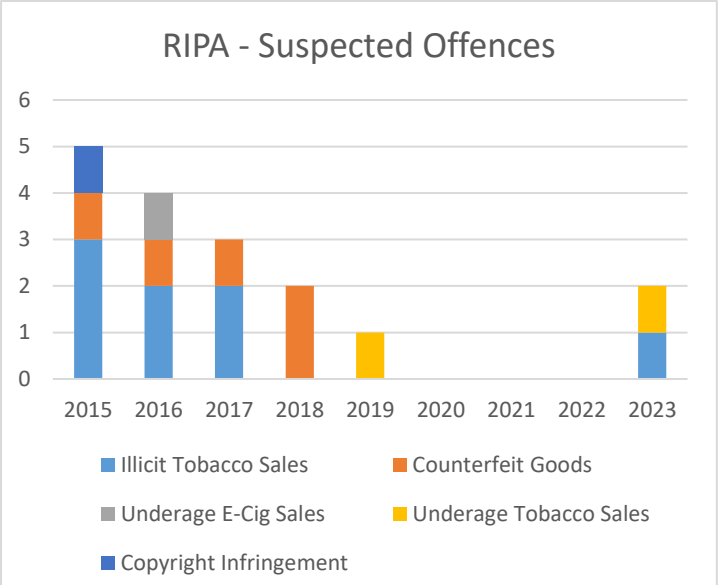
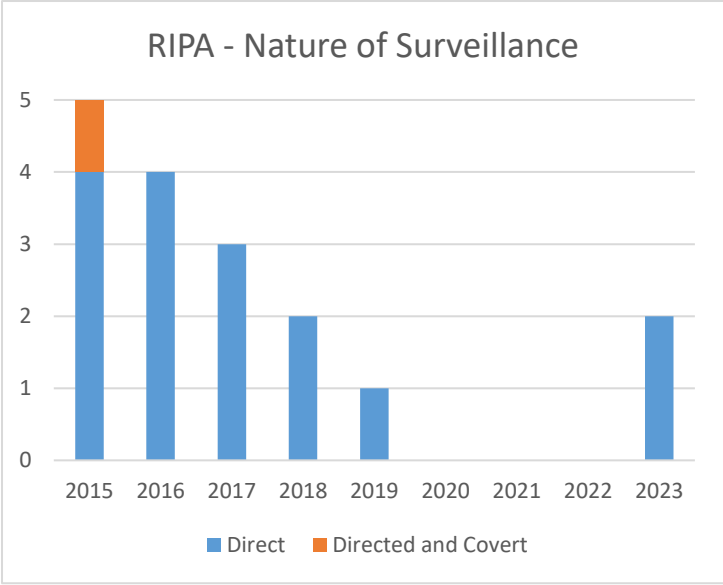
Rationale for the recommended decision(s)

5. The proposed policy will ensure that surveillance activity undertaken by the Council complies with its strategic priorities and statutory obligations, is lawful and that due regard is given to human rights and to data protection rights.

Background and relevant information

Use of RIPA

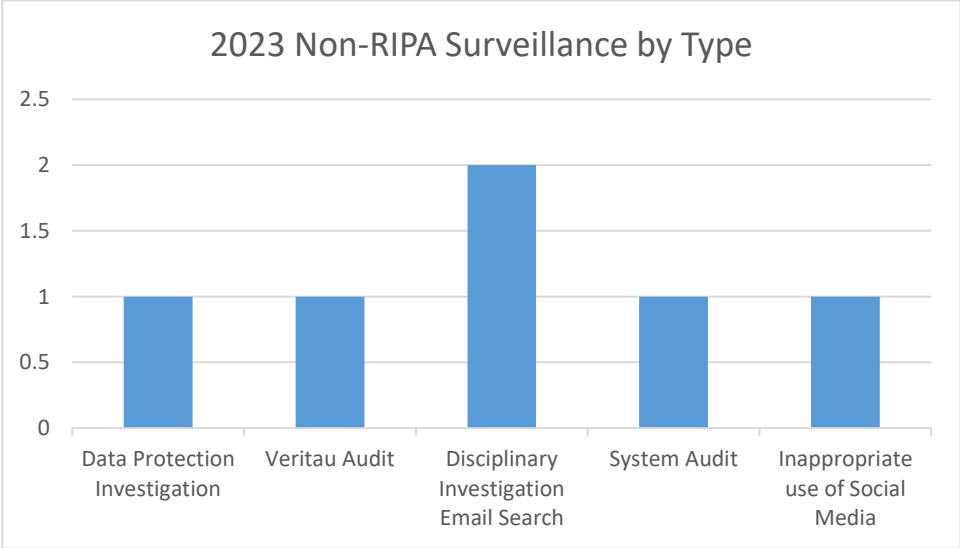
6. RIPA is the law governing the use of surveillance techniques by public authorities, including local authorities. RIPA requires that when public authorities need to use covert techniques to obtain private information about someone, they only do so if surveillance is necessary, proportionate, and compatible with human rights. Typically, this relates to suspected criminal activity that is likely to result in a custodial sentence of six months or more.
7. 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.
8. The charts below set out the past nine years of RIPA activity undertaken by the Council, the nature of the surveillance and the reasons why it was undertaken. To note, the Council always looks to methods to gather information that do not require covert surveillance to be undertaken, in order to minimise use of this power, therefore activity remains low.



9. Since this policy was last reviewed, two RIPA applications were submitted in 2023.

Non-RIPA surveillance

10. The Council also has in place a process, set out within the Surveillance policy, which governs the application of requests for surveillance on non-RIPA grounds. The data for 2023 relates to staffing matters, these are centrally logged and approved by HR to again ensure the use of this power is minimised and there is a legitimate basis for use is identified prior to approval. The table below sets out the reasons this power used to investigate the following potential issues:



Monitoring and review

11. This Policy is updated annually and was last approved by the then Executive Member for Finance and Governance in December 2022.

12. As was agreed with the IPCO following their inspection in late 2020 we continue to maintain an overarching Surveillance Policy (Appendix 1), which covers CCTV, RIPA, non-RIPA covert surveillance and the surveillance of employees.
13. The then draft guidance published by the Information Commissioners Office in October 2022 was approved as guidance on monitoring workers¹ on 3 October 2023. It substantially follows the draft guidance with some additional examples and pointers on where employers “must”, “should”, or “could” follow the approach. This Policy has used the guidance for reference to ensure compliance. The policy this year has had minor changes to reflect staffing and the addition of now approved requirements from the ICO which were in draft at the last publication, no other change has been necessary as the policy was already compliant.

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

14. 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)

Financial (including procurement and Social Value)

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

Legal

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

Risk

17. 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.

Human Rights, Public Sector Equality Duty and Community Cohesion

18. 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.

Climate Change / Environmental

¹ [Employment practices and data protection: monitoring workers | ICO](#)

19. There are no climate or environmental impacts associated with the proposed policy.

Children and Young People Cared for by the Authority and Care Leavers

20. There are no direct implications arising from this Policy on this group as identified in the equality impact assessment (Appendix 2).

Data Protection / GDPR

21. This policy aims to balance the business interests of the Council as an employer and workers’ rights and freedoms under data protection law. It is imperative that the Council has an up-to-date policy which advises staff on proper use of these powers to ensure any action is lawful, necessary and proportionate.

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

Action	Responsible Officer	Deadline
Publication of surveillance policy on the MBC Website and Intranet pages	L Hamer	5 January 2024
Refresh of the RIPA and Non RIPA e-Learning for all staff	L Hamer	30 January 2024
Senior Information Risk Owner (SIRO) annual report to Corporate Affairs and Audit Committee	Ann-Marie Johnstone	April 2024

Appendices

1	Surveillance Policy 2023/2024
2	Surveillance Policy 2023/24 – 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
Corporate Affairs and Audit Committee	Annual Report of the Senior Information Risk Owner (SIRO)	April 2023

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