

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Legal and Governance Services
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Submitted to:	Environment Scrutiny Panel
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Date:	5 February 2024
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Title:	Update on the use of the Surveillance Policy 2023/4
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Report for:	Information
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Status:	Public
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Strategic priority:	All
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Key decision:	Not applicable
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Why:	Not applicable
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Subject to call in?:	No
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Why:	Not applicable
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Executive summary
That the Panel note the report which provides an update on the processes the Council has in place to ensure compliance in accordance with the Statutory Codes of Practice applying to the Regulation of Investigatory Powers Act 2000 (RIPA).

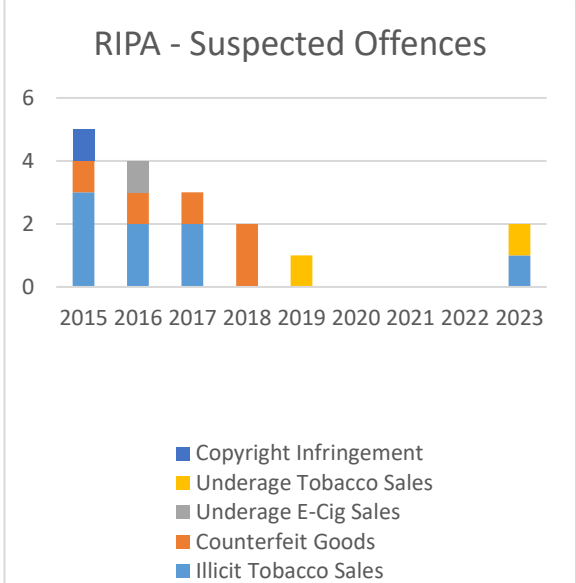
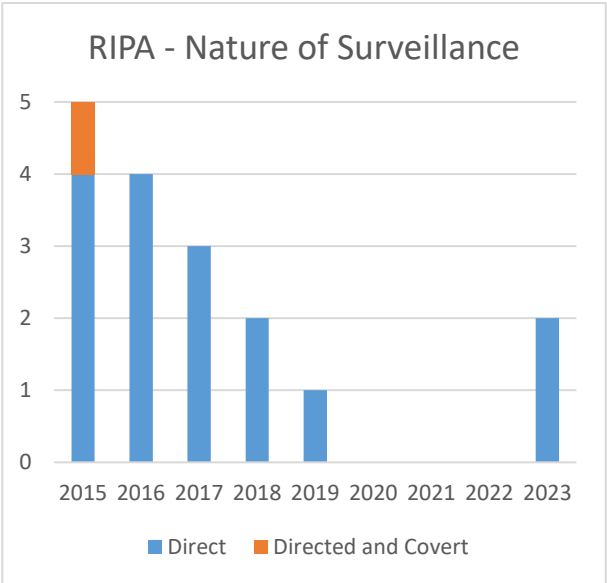
Purpose

1. The report provides an update to the Panel on the processes the Council has in place underpinning the Regulation of Investigatory Powers Act (RIPA) 2000.

Background and relevant information

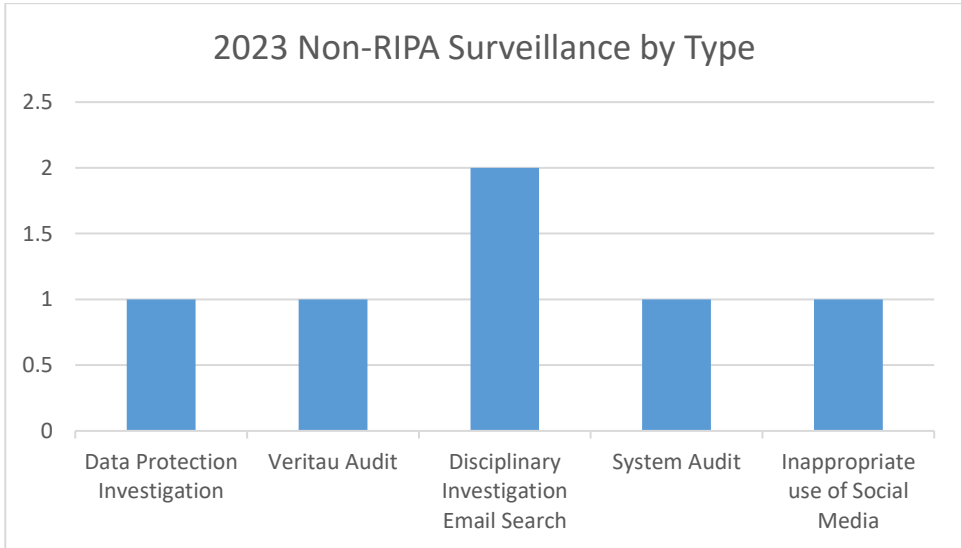
Use of RIPA

2. 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.
3. 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.
The Council has exercised these powers twice since 2019, both in 2023 and in relation to the following suspected offences:
 - Underage tobacco sales
 - Illicit tobacco sales
4. The Act and supporting guidance set out a prescribed process the Council must comply with if it deems that it is necessary to exercise its powers under RIPA.
5. 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.



Non-RIPA surveillance

6. 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:



Surveillance Policy

7. The Council has in place a Surveillance Policy which sets out how the Council would process an application under RIPA. This policy is reviewed by the Executive Member for Finance and Governance on an annual basis and was last reviewed in December 2023.
8. The policy applies to all overt and covert surveillance undertaken by or on behalf of the Council. The policy includes not only RIPA based surveillance but also defines the grounds on which the Council would consider that it has legitimate reasons to conduct surveillance for grounds other than RIPA and the processes that must be complied with before any surveillance can be undertaken. The Surveillance policy identifies that the Council may determine it has a need to carry out covert surveillance to progress investigations outside of the RIPA framework, where (i) while significant, the matters under investigation may not typically result in criminal proceedings, or (ii) the potential criminal offence(s) under investigation are likely to attract a penalty below the RIPA threshold. Examples of such instances include but are not limited to:
 - Suspected benefit fraud;
 - Children at risk as court orders are not being respected
 - Serious cases of anti-social behaviour; or
 - Contractors failing to carry out contracted works.
9. The Policy applies to all Council employees and any other party undertaking surveillance on behalf of the Council by contract.
10. Information on the use of RIPA is also reported to Corporate Affairs and Audit Committee on an annual basis as part of the Senior Information Responsible Officer (SIRO) report.

What decision(s) are being recommended?

11. That this Panel notes the report which provides an update on the processes the Council has in place to ensure continued compliance with the Regulation of Investigatory Powers Act 2000.

Rational for the recommended decision(s)

12. The Panel have requested information on the usage of RIPA powers within the Council.

Impact(s) of the recommended decision(s)

Financial (including procurement and Social Value)

13. There are no financial implications arising from this report which is for information only.

Legal

14. The policy ensures compliance with legal requirements in relation to RIPA activities.

Risk

15. The 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

16. The policy has been subject to Level 1 (screening) equality impact assessment. 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

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

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

18. There are no direct implications arising from the Policy.

Data Protection / GDPR

19. The 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
Not applicable		

Appendices

1	Surveillance Policy 2023/2024
2	Surveillance Policy 2023/24 – Impact Assessment Level 1: Initial screening Assessment
3	Surveillance Policy covering report to Executive Member for Finance and Governance December 2023.

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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