



RIPA PROCEDURE

Effective from February 2016

THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - GUIDANCE

1.0 Background Information

- 1.1 The Regulation of Investigatory Powers Act (RIPA) provides a framework for the use of covert investigatory techniques by public authorities. It does not provide any powers to carry out covert activities but regulates the use of these techniques so that they are compatible with human rights legislation. Special authorisation arrangements need to be put in place whenever the Local Authority considers commencing a covert surveillance or obtaining information by the use of informants or officers acting in an undercover capacity.
- 1.2 Local Authorities do operate covert activities in a number of key areas. Activities can include covert surveillance in relation to internal audit and personnel where fraud, deception or gross misconduct by staff might be suspected, or as part of an Environmental Health or Trading Standards investigation. The legal requirements are now supplemented by codes of practice issued by the Home Office for certain surveillance activities (covert surveillance activity and covert human intelligence sources), breaches of which can be cited in Court as evidence of failure to abide by the requirements of RIPA. This may mean that the evidence obtained by that surveillance is excluded.
- 1.3 This policy applies to all employees of Wokingham Borough Council, and **also to those companies or individuals working on our behalf.**
- 1.4 From 1 November 2012, two significant changes have been made governing how local authorities use RIPA:
 - Approval of Local Authority Authorisations under RIPA by a Justice of the Peace: The amendments in the Protection of Freedoms Act 2012 will mean that local authority authorisations and notices under RIPA for the use of particular covert techniques can only be given effect once an order approving the authorisation or notice has been granted by a Justice of the Peace (JP).
 - Directed surveillance crime threshold: Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 ("the 2010 Order") mean that a local authority can now only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.
- 1.5 **Surveillance** – includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained.

- 1.6 **Covert Surveillance** – This is carried out to ensure the person who is the subject of the surveillance is unaware that it is or may be taking place. The provisions of RIPA apply to the following forms of covert surveillance:
- **Intrusive Surveillance** is a covert activity carried out in a residential place or a private vehicle by a person or a surveillance device being present in the premises or vehicle. Local authorities are not allowed to use this type of surveillance.
 - **Directed Surveillance** is a covert activity that is not intrusive, but carried out in support of a specific operation or investigation, likely to result in obtaining private information about any person.
 - **Covert Human Intelligence Source (CHIS)** is an undercover operation whereby an informant or undercover officer establishes or maintains some sort of relationship with the persons in order to obtain private information.
- 1.7 Covert surveillance carried out by the council must be **authorised, necessary and proportional**. The only exception to this being where the surveillance is carried out by way of an immediate response to events, which were unforeseeable and impractical to obtain prior authorisation. Surveillance:
- includes monitoring, observing or listening to persons, their movements, conversations or other activities;
 - is only covert if it is carried out in a manner that ensures that any persons who are the subject to the surveillance are unaware that it is taking place;
 - may either be – Intrusive, Directed or Covert Human Intelligence Source (CHIS).
- 1.8 **Private information** includes any information relating to a person's private or family life. Generally taken to include; any aspect of a person's private or personal relationships with others, including family and professional or business relationships: personal data, names, telephone numbers and address details.
- 2.0 **Compliance**
- 2.1 From 1st November 2012 covert surveillance which is directed surveillance will only fall within the scope of the RIPA when the crime the activity will 'prevent or detect' meets the 'serious crime' threshold.
- 2.2 This threshold is met where:
- a) The offence the activity seeks to prevent or detect is punishable by imprisonment for a period of at least 6 months or more, or
 - b) The activity is related to the prevention or detection of offences concerning the supply of alcohol or tobacco to persons under 18 years of age. Directed surveillance that does not meet one of these tests will fall outside the scope of the RIPA. In this instance specific authorisation must be sought from the Council's Monitoring Officer before the activity can take place.
- 3.0 **The Policy**
- 3.1 The Council's policy provides the procedures on which it may authorise the use of surveillance for a range of activities relating to the detection of: abuse, fraud, theft and other criminal offences. Legislation regulates the use of covert activities by Local Authorities. The Home Office also issue Codes of Practice that must be followed.
- 3.2 Directed surveillance must be authorised prior to it taking place, be subject to regular review and must be shown to be necessary and proportionate. RIPA does not enable a local authority to make any authorisations to carry out intrusive surveillance.

- 3.3 All non-intrusive covert surveillance and CHIS requires prior authorisation by the appropriate Local Authority Authorising Officer (as set out in this policy) before any surveillance activity takes place. The only exception to this is where covert surveillance is undertaken by way of an immediate response to events that means it was not foreseeable and not practical to obtain prior authorisation.
- 3.4 All requests for covert surveillance must be submitted (using only the prescribed forms) supported by the relevant authorising officers. The Council's authorising officers are:
- Catherine Hickman - Service Manager, Shared Audit and Investigation Service.
 - Paul Ohsan Ellis - Team Manager, Internal Audit.
 - Julie Holland – Service Manager, Business Improvement (only for urgent authorisations in the absence of any other authorising officers).
- 3.5 The RIPA Coordinator is **Julie Holland - Service Manager, Business Improvement**.
- 3.6 The authorising officer will check to make sure the surveillance is, necessary and has a proportionate response to the purpose of the operation or investigation (this will be done in liaison with the relevant Head of Service). The authorising officers should send a copy of the authorisation to the RIPA Coordinator where it is included on a central register.
- 3.7 Once approved internally an application must be made for Judicial Approval before the activity concerned can commence. Shared Legal Solutions will provide advice on this part of the process.
- 3.8 Failure to comply with the policy may result in evidence obtained during an unauthorised operation or investigation being excluded in court and it may be a breach of the Human Rights Act 1998. The Investigatory Powers Tribunal is able to investigate complaints from anyone who feels aggrieved by a public authority's exercise of its powers under RIPA. Obtaining authorisation will ensure the Local Authority's actions are carried out in accordance with the law and satisfy the stringent and necessary safeguards against abuse.

4.0 Grounds of Necessity and Proportionality

- 4.1 The authorisation by itself does not ensure lawfulness, as it is necessary also to demonstrate that the interference was justified as both necessary and proportionate.
- 4.2 Once a ground for necessity is demonstrated, the person granting the authorisation must also believe that the use of an intelligence source or surveillance is proportionate, to what is aimed to be achieved by the conduct and use of that source or surveillance. This involves balancing the intrusive nature of the investigation or operation and the impact on the target or others who might be affected by it against the need for the information to be used in operational terms. Other less intrusive options should be considered and evaluated. All RIPA investigations or operations are intrusive and should be carefully managed to meet the objective in question and must not be used in an arbitrary or unfair way.
- 4.3 An application for an authorisation should include an assessment of the risk of any collateral intrusion i.e. the risk of obtaining private information about persons other than those directly targeted by the operation. Measures should be taken wherever practicable to avoid unnecessary intrusion into the lives of those not directly connected with the operation.
- 4.4 All applications must be renewed every 3 months and cancellation of authorisations should be requested as soon as possible i.e. as soon as the surveillance is no longer considered necessary. Judicial approval is required for the renewal of an authorisation but it is not required for any internal review or cancellation.

4.5 All applications for authorisation and authorisations must be made in accordance with the procedure and on the appropriate forms. The forms can be obtained from the RIPA coordinator:

RIPA Form 1 – Authorisation Directed Surveillance

RIPA Form 2 – Review of a Directed Surveillance Authorisation

RIPA Form 3 – Renewal of a Directed Surveillance Authorisation

RIPA Form 4 – Cancellation of a Directed Surveillance Authorisation

RIPA Form 5 – Application for Authorisation of the conduct or use of a Covert Human Intelligence Source (CHIS)

RIPA Form 6 – Review of a Covert Human Intelligence Source (CHIS) Authorisation

RIPA Form 7 – Application for renewal of a Covert Human Intelligence Source (CHIS) Authorisation

RIPA Form 8 – Cancellation of an Authorisation for the use or conduct of a Covert Human Intelligence Source (CHIS)

RIPA Form 9 – Application request for Communications Data

RIPA Form 10 – Application for a Judicial Order

4.6 All Directors have responsibility for ensuring that they have sufficient understanding to recognise when an investigation or operation falls within the requirements of RIPA. Authorising Officers will keep up to date with developments in the law and best practice relating to RIPA.

4.7 Authorising Officers must ensure full compliance with the RIPA Authorisation Procedure.

4.8 The role of the RIPA coordinator is to have day-to-day oversight of all RIPA authorisations and maintain a central register of all authorisations, review dates, cancellations and renewals.

4.9 All forms should be passed through the coordinator to ensure that there is a complete record of all authorisations, contents of the forms will be monitored to ensure they are correctly filled in and the coordinator will supply annual statistics to the Office of Surveillance Commissioners. All officers will co-operate fully with any inspection arranged by the Office of Surveillance Commissioners.

5.0 Communications Data

5.1 Part I of RIPA sets out these requirements. The Council can access certain communications data only “for the purpose of preventing or detecting crime or of preventing disorder”.

5.2 The Council is able to obtain certain details (e.g. name and address) of a telephone subscriber from communication service providers (CSP) such as: BT, Vodafone, Orange etc.

5.3 The applications to obtain communications data, must be made by a Home Office designated “Single Point of Contact (SPOC)”. Please contact the RIPA Co-ordinator who will be able to advise you.

6.0 Further information

6.1 Home Office guidance to local authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance

<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/local-authority-ripa-guidance/local-authority-england-wales?view=Binary>

6.2 Home Office Code of Practice on the interception of communications.

[Code of practice for the interception of communications | Home Office](#)

6.3 Home Office Code of Practice on the acquisition and disclosure of communications data

- 6.4 Home Office Code of Practice on covert surveillance and property interference
[Code of practice for covert surveillance and property interference | Home Office](#)
- 6.5 Home Office Code of Practice on the use of covert human intelligence sources
[Code of practice for the use of human intelligence sources | Home Office](#)
- 6.6 Home Office Code of Practice for the investigation of protected electronic information
[Code of practice for the investigation of protected electronic information | Home Office](#)
- 6.7 The Regulation of Investigatory Powers Act 2000
[Regulation of Investigatory Powers Act 2000](#).
- 6.8 RIPA Explanatory Notes
[Regulation of Investigatory Powers Act 2000 - Explanatory Notes](#)

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