

**To: City Executive Board**

**Date: 1<sup>st</sup> April 2009**

**Item No:**

**Report of: Head of Legal and Democratic Services**

**Title of Report: Regulation of Investigatory Powers Act 2000**

### **Summary and Recommendations**

**Purpose of report:** To confirm the Council's position on the use of the Regulation of Investigatory Powers Act 2000

**Key decision? No**

**Executive lead member: Councillor Van Nooijen & Councillor Price**

**Report approved by:**

**Finance: Andy Collett**

**Legal: Jeremy Thomas**

**Policy Framework: Not applicable**

**Recommendation:**

**The Board is asked to endorse the Council's current RIPA procedure and to note that details of the Council's use of RIPA will be reported to full Council**

### **Introduction**

1. The Regulation of Investigatory Powers Act 2000 (RIPA) came into force in October 2000. The main purpose of RIPA is to ensure that the relevant investigatory powers are used in accordance with the Human Rights Act 1998. These powers are:
  - a. the interception of communications
  - b. the acquisition of communications data

- c. intrusive surveillance
  - d. the use of covert human intelligence sources (CHIS)
  - e. access to encrypted data
  - f. covert surveillance
2. To date the Council has not engaged in any of these activities except for category (f). It is unlikely that the Council will carry out any of the other activities, and it cannot carry out intrusive surveillance as these powers are restricted to the Police and Security Services.
3. The Council has used covert surveillance techniques on a number of occasions.
4. The Board will be aware from coverage in the media that councils have been criticised for using RIPA to investigate minor offences such as littering and dog fouling. This prompted the Local Government Association (LGA) to call for an urgent review of the use of RIPA by local councils. The Home Secretary has also announced a consultation on the use of RIPA that will examine:
  - a revision of the current codes of practice
  - which local authorities can use RIPA powers
  - how those powers are authorised, and who authorises their use
5. On 6<sup>th</sup> October 2008 the Council passed a motion relating to the use of RIPA. Appendix 1 is a copy of the motion. Whilst the motion is entitled “use of terror laws” and suggests “the misuse of powers intended as anti-terrorist measures” the Board is asked to note that the more general purpose of RIPA as set out in paragraph 1. Prior to RIPA the use of directed surveillance had been patchily regulated. RIPA is now the primary legislation regulating interceptions and surveillance. Rather than giving councils surveillance powers, RIPA regulates the use of surveillance.

### **The Council’s use of RIPA**

6. Since RIPA came into force in October 2000 the Council has issued 25 authorisations for directed covert surveillance. The details of these are:
  - the detection of benefit fraud - 6
  - the detection of crime and disorder – 14
  - internal disciplinary investigations – 5

None of these authorisations relate to investigations into the type of minor offences which have been the subject of media comment.

7. Appendix 2 is a copy of the Council’s current procedure relating to the use of RIPA. It is available on the Council’s internal and external websites. The procedure will be reviewed periodically but will not be

reported to the Board on each occasion unless significant changes are proposed.

8. The Board is asked to note that the Council's use of RIPA is subject to inspection by the Office of Surveillance Commissioners.

### **Legal Implications**

9. These are addressed in the report.

### **Financial Implications**

10. None.

### **Climate Change Implications**

11. None.

### **Equality Impact Assessment Implications**

12. An application for directed covert surveillance must be authorised by the Chief Executive, an Executive Director or a Head of Service. A copy of the authorisation is also sent to the Head of Legal & Democratic Services. In the circumstances an Equalities Impact Assessment is not required.

### **Recommendation**

13. The Board is asked to endorse the Council's current RIPA Procedure and to note that details of the Council's use of RIPA will be reported to full Council.

**Name and contact details of author:** Jeremy Franklin Tel: 252412 email: [jfranklin@oxford.gov.uk](mailto:jfranklin@oxford.gov.uk)

**List of background papers:** None

**Version number:** 2

# **OXFORD CITY COUNCIL**

## **Regulation of Investigatory Powers Act 2000**

### **Procedure**

**OXFORD CITY COUNCIL  
LEGAL & DEMOCRATIC SERVICES**

**FEBRUARY 2009**

## **1. INTRODUCTION**

1.1 Any covert surveillance conducted by the Council can constitute an interference with the right protected by Article 8 of the European Convention on Human Rights, which provides that every individual has a “right to respect for his private and family life, his home and his correspondence”. Section 6 of the Human Rights Act 1998 provides that it is unlawful for the Council to interfere with those rights unless it is in accordance with the law, proportionate and necessary in a democratic society.

1.2 As the Council has a number of functions to undertake which involve the enforcement of laws and regulations, officers will need to conduct investigations and where appropriate take legal proceedings. The Council will not normally make use of covert surveillance and similar activities unless it is necessary and proportionate for an investigation. The covert surveillance method requested must also be the least intrusive available.

1.3 The Regulation of Investigatory Powers Act 2000 (RIPA) regulates the way in which the Council conducts surveillance for the purposes of law enforcement. The fundamental requirement of RIPA is that when the Council considers undertaking directed surveillance or using a covert human intelligence source it must only do so if:

- a) the activity has been authorised by an officer with appropriate powers, and
- b) the relevant criteria are satisfied.

1.4 Some activities of Council enforcement officers (e.g. environmental health officers, benefit fraud investigators, planning enforcement officers, licensing officers) are covered by the provisions of this Act. Also covered by the Act, and less obviously, are activities, which involve surveillance for purposes, which, might be said to be internally focussed.

1.5 Compliance with RIPA will ensure any interference is in accordance with domestic law. Compliance with RIPA assists to defend complaints against the Council and officers of interference with the right to respect for private and family life protected by Article 8 of the Convention. The Council can thus claim any interference is “in accordance with the law”. Provided the activities undertaken are also necessary and proportionate there will be no contravention of human rights legislation.

1.6 All investigations or enforcement actions involving covert surveillance or the use of a covert human intelligence source must comply with the provisions of RIPA.

1.7 This procedure applies to all staff and agents working for the Council. The purpose of this guidance is to advise Council enforcement officers and their managers of the steps that should be followed where surveillance activities are contemplated, to ensure compliance with RIPA.

1.8 The Council will from time to time issue further guidance and procedures to staff.

1.9 The Council will ensure adequate training takes place for authorising and investigating officers.

## **2. RIPA REGULATED ACTIVITIES**

2.1 If an investigating officer identifies a contemplated surveillance activity as regulated by RIPA, a written authorisation in accordance with this guidance should be obtained, before the activity commences. If enforcement officers, or their managers are in any doubt, they should seek the advice of Legal Services.

Activities covered by RIPA:

### **2.2 The Interception of Communications**

Where interception of the communication has not been authorised, or agreed by the sender and addressee of the communication. This procedure does not cover this activity, as the Council is extremely unlikely to undertake it. The advice of Legal Services should always be sought should such an activity be contemplated.

### **2.3 The Use of Covert Human Intelligence Sources**

This is defined as the use of an individual to create a relationship with a subject, for the purposes of obtaining information, where the purpose of the relationship is not disclosed to the subject. Interaction with the subject of surveillance is therefore required in order for an individual to be regarded as a covert human intelligence source (CHIS). Activities of an undercover officer could fall within this definition.

2.3.1 Examples might include an undercover police officer who, attempts to infiltrate a drug smuggling ring. Another example might be the use of a professional witness or private investigator to obtain information and evidence where that individual interacts with the subject of surveillance.

2.3.2 Members of the public who volunteer information as part of their civic duty i.e. they voluntarily disclose to the Council information received during the normal course of their lives, will not be regarded as a covert human intelligence source.

2.3.3 An authorising officer must consult with the Head of Legal & Democratic Services before authorising the use of a CHIS.

### **2.4 Directed Surveillance**

As this activity is the most likely to be carried out, this policy addresses this activity in more detail. Where there is to be directed surveillance written authorisation must be obtained in accordance with the provisions of RIPA before the surveillance commences. Directed surveillance is defined as surveillance which is covert, but not intrusive and which is undertaken for the purposes of a specific investigation, and which is likely to result in obtaining private information about a person and which is carried out otherwise than as an immediate response to events where it would be impracticable to obtain prior authorisation.

2.4.1 Therefore investigating officers need to consider a number of key questions to determine whether a proposed activity falls within this definition of directed surveillance:

i) **Is the proposed activity surveillance?**

Surveillance is defined in wide terms as: any activity involving the monitoring, observing or listening to persons, their movements, their conversations or other activities or communications; the recording of anything monitored, observed or listened to in the course of surveillance; and the surveillance by or with the assistance of a surveillance device.

ii) **Is the surveillance covert?**

Surveillance is covert where it is carried out in a manner calculated to ensure that the subjects of the surveillance are unaware that it is, or may be taking place. It is therefore the intention of the officer carrying out the surveillance, which is relevant to this issue of covertness.

iii) **Is the surveillance for the purposes of a specific investigation?**

General observation, not forming part of any investigation into suspected breaches of the law and not directed against any specific person or persons is not directed surveillance e.g. CCTV cameras in Council car parks are readily visible and if they are used to monitor the general activities of what is happening within the car park, it falls outside the definition. If, however, the cameras are targeting a particular known individual, the usage will become a specific operation, which will require authorisation.

iv) **Is the surveillance undertaken in such a manner that is likely to result in the obtaining of private information about a person?**

“Private Information” is any information concerning a person’s private or family life. Whether information is personal in nature is relevant when deciding whether information is private. The fact that observation of individuals occurs from the public highway will not prevent the discovery of private information. When officers consider this question they should give due weight to the probability of discovering such information, as authorisation is not required if there is only a slight possibility of discovering private information.

- v) **Is the surveillance otherwise than by way of an immediate response to events or circumstances where it is not reasonably practicable to obtain prior authorisation?**  
If the surveillance were an immediate response to something happening during the course of an officer's work, it would not be reasonable to obtain prior authority. If this occurs, the officer must report the incident back to an authorising officer so a note can be made on the relevant department file and the central register.
- vi) **Is the surveillance intrusive?**  
The Council is not authorised to carry out intrusive surveillance. Directed surveillance turns into intrusive surveillance if it is carried out in relation to anything taking place on residential premises or in a private vehicle, and involves the presence of an individual on the premises or in the vehicle. If a surveillance device is used and if the device is not on the premises or in the vehicle, it is only intrusive if it consistently produces information of the same quality as if it were.

### 3. **AUTHORISATION**

3.1 No authorising officer shall grant an authorisation for the carrying out of directed surveillance or the use of a CHIS **unless** he/she is **satisfied**:

- a) that an authorisation is necessary for the purpose of preventing or detecting crime or of preventing disorder, and
- b) that the authorised activity is proportionate to what is sought to be achieved by carrying it out.

3.2 The contemplated activity must be considered necessary in the particular circumstances of the case.

3.3 When considering whether the proposed activity is proportionate, factors to be considered include whether the activity is excessive in the circumstances of the case or if the information sought could reasonably be obtained by other less intrusive means.

### 4. **AUTHORISING OFFICERS**

4.1 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 No. 3171 prescribes the authorising officer must be at least an Assistant Chief Officer, Assistant Head of Service, Service Manager or equivalent.

4.2 Under the Constitution's scheme of delegation The Chief Executive, Executive Directors and Heads of Service have delegated authority to issue RIPA authorisations.



4.3 Authorising officers should not be responsible for authorising investigations or operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable in cases where it is necessary to act urgently. Where an authorising officer authorises such an investigation or operation a note of the authorisation should be placed on the central record of authorisations (see paragraph 8.3).

4.4 Authorising officers must be aware of the requirements of RIPA and how to properly consider requests for authority. Authorising officers must demonstrate that these requests have been properly considered when they complete the authorisation form.

4.5 Where the surveillance is likely to lead to the obtaining of confidential information, a RIPA authorisation can only be given by the Head of Legal & Democratic Services or in his absence the Deputy Monitoring Officer. In these circumstances the power to issue RIPA authorisations cannot be delegated. For these purposes confidential information is:

- (a) legally privileged information e.g. communications between a professional legal adviser and a client
- (b) confidential personal information, which is information kept in confidence and relating to a person's physical or mental health or relating to spiritual counselling given to a person e.g. consultations between a health professional and a patient, information from a patient's medical records or conversations between an individual and a Minister of Religion
- (c) confidential journalistic information, which is any information, held for the purposes of journalism on the basis that it or its source would not be revealed.

4.6 If any such information is obtained during surveillance legal advice should be sought immediately.

4.7 Chapter 3 of both Codes of Practice referred to at paragraph 9.1 below provide further guidance relating to confidential material.

## 5. **FORMS OF AUTHORITY**

5.1 The Act does not contain prescribed forms of authority. The Home Office model forms should be used. This will ensure a consistent approach is adopted across the Council and ensure all relevant issues are addressed during the decision-making process. Forms relating to directed surveillance and the use of covert human intelligence sources are available from the Home Office at [www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms](http://www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms)

## 6. **DURATION OF AUTHORISATIONS**

6.1 A written authorisation for directed surveillance lapses, if not renewed, three months from the grant or last renewal. Officers should ensure authorisations only last for as long as is considered necessary and proportionate. Regular reviews of authorisations should be undertaken to assess the need for continued surveillance.

6.2 Any time before the authorisation would cease to have effect, the authorising officer may renew, in writing, if he/she still considers it necessary and proportionate.

6.3 Authorisations may be renewed more than once provided they continue to meet the criteria for authorisation. The renewal does not have to be authorised by the same authorising officer who granted the original authorisation.

6.4 The authorising officer who granted the authorisation or last renewed the authorisation must cancel it if he is satisfied the directed surveillance no longer meets the criteria upon which it was authorised.

## 7. **ORAL GRANTS OF AUTHORITY IN URGENT CASES**

7.1 A request for authorisation can be made orally, and authority granted orally, only in cases of urgency where there is insufficient time to make a written application and to grant a written authority. The authorising officer must consider that the time, which would elapse before the written authority could be granted, would jeopardise the investigation.

7.2 The Authorising Officer must still consider all relevant circumstances, and be satisfied that the covert surveillance is necessary for the purpose of preventing or detecting crime or of preventing disorder and that the surveillance requested is proportionate to what is sought to be achieved.

7.3 Oral authorities subsist for no more than 72 hours. They can be renewed (for periods not exceeding 72 hours) but further oral renewals are unsatisfactory, as the original urgency will pass giving time for a full written request to be made and a written grant issued, if continued surveillance is necessary.

7.4 If oral authority is granted, the Authorising Officer should prepare a memorandum detailing the request made to him/her, the details of the oral authority granted, and the reasons why the matter was considered so urgent that the grant of oral authority was justified. A copy of this memorandum must be sent to Legal Services for inclusion in the central register of authorisations.

## 8. **RETENTION AND SECURITY OF FORMS AND RECORDS**

8.1 Requests for authorisations, renewals, cancellations, and any memoranda recording the oral grant of urgent authorisations or renewals are confidential material. The documents and any information contained therein must not be disclosed to any person who has no legitimate need to have access to the document, or to the information that it contains. Authorising Officers must ensure that there are proper arrangements within their departments or services for the retention and security of such documents.

8.2 Such documents may need to be securely kept for a period (considered appropriate by the relevant Head of Service) following the completion of any surveillance, as they may have to be produced in Court, or to the other party in Court proceedings as part of legal disclosure requirements. Superfluous copies should not be made or kept.

8.3 The Head of Legal & Democratic Services maintains a central register of all authorisations, reviews, cancellations and renewals. Authorising officers should ensure that hard copies of these documents are sent to the Head of Legal & Democratic Services as soon as is practicable.

8.4 The central register will be “weeded” of information that is more than six years old, unless there are relevant outstanding Court proceedings. All documentation that is no longer needed will be shredded.

## 9. **CODES OF PRACTICE**

9.1 The Covert Surveillance Code of Practice is available at [www.security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/covert-cop](http://www.security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/covert-cop)

9.2 The Code of Practice is admissible as evidence in criminal and civil proceedings. The Council will follow the requirements of any Codes of Practice issued by the Home Secretary unless there are exceptional circumstances justifying a departure from the recommended approach.

Jeremy Thomas  
Head of Legal & Democratic Services  
Oxford City Council

**Motion adopted at a meeting of the City Council on 6<sup>th</sup> October 2008:-**

**Use of Terror Laws**

“The Council note comments by the Local Government Association (LGA) that there should be an “urgent review” of the way surveillance under the 2000 Regulation of Investigatory Powers Act (RIPA) has been carried out by local government following concerns over misuse of powers intended as anti-terrorist measures. This Council notes that the LGA recommends that “investigations under the RIPA powers should go ahead only after approval from senior politicians and officers and if they were considered ‘necessary and proportionate’ to detect crime.”

This Council recognises that RIPA is a poorly drafted Act which, far from strengthening communities, undermines the mutual trust between a local authority and its residents. Indeed, even responsible authorities, which choose to eschew the full scope of powers available under RIPA nonetheless suffer from the understandable perception that its communities are to be targeted, covertly, by unknown and unaccountable officials.

Council therefore resolved to establish its opposition to the Act as currently drafted, and to make this aversion public. This will be achieved by placing in the public domain (for example in a prominent position on the Council website):-

- (i) a statement indicating this Council’s opposition to the use of aggressive or intrusive surveillance, as provided for under RIPA;
- (ii) a clear record, updated annually, of the number of times RIPA powers are used, along with a description of the nature of such implementations.

Council also invites the Executive to consider Council’s resolution and review the City Council’s procedures for dealing with RIPA investigations.”