

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

### **Policy and Procedure**

**OXFORD CITY COUNCIL  
LAW AND GOVERNANCE**

**FEBRUARY 2012**

## **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 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 policy 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 procedure 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 contact the Head of Law & Governance.

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. These guidance notes do not cover this activity, as the Council is extremely unlikely to undertake this activity. Please contact the Head of Law & Governance.

### **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 observations which they have made during the normal course of their lives, will not normally be regarded as a Covert Human

Information source. It will be otherwise if they have obtained the information in the course of a friendship or other relationship with the suspect. In case of any doubt, legal advice should be sought from the Head of Law and Governance

- 2.3.3 An authorising officer must consult with the Head of Law & Governance 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 however it is extremely unlikely the Council would contemplate undertaking this activity. 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 The Council's authorising officers are the Chief Executive, The Executive Director (City Services), The Executive Director (Housing and Regeneration), the Corporate Director for Finance and Efficiency), the Head of Law and Governance, the Head of Finance.
- 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 Chief Executive. 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  
<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/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 Law & Governance 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 Law & Governance 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 <http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/code-of-practice-covert>
- 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.

10. **SENIOR RESPONSIBLE OFFICER**

- 10.1 The Council's Senior Responsible Officer for the purposes of RIPA is the Head of Law and Governance.

11. **RIPA COORDINATING OFFICER**

The Council's RIPA Coordinating Officer is Jeremy Franklin (Ext. 2412).

Jeremy Thomas  
Head of Law & Governance  
Oxford City Council

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