

Appendix 1



Warwick District Council

Regulation of Investigatory Powers Act 2000 (RIPA) Policy

1.0 Introduction

1.1 In carrying out its statutory duties and as part of the Council's responsibilities to protect the public purse, there may be occasion when surveillance or the gathering of information of a covert nature by individual officers may be required. In exercising this function, the Council must ensure that any action is not unlawful under the Human Rights Act 1998 and therefore must meet the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) and The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010.

1.2 The main purpose of RIPA is to ensure that the relevant investigatory powers are used in accordance with Human Rights and covers both surveillance of members of the public and members of staff.

1.3 Article 8 of the European Convention on Human Rights states:

Article 8.1 Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 8.2 there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedom of others.

1.4 This means that in certain circumstances the council **may** interfere with a persons rights outlined in Article 8.1 and 8.2 provided the interference is

- in accordance with the law
- necessary, and
- proportionate

and in order to ensure that the Council does not act unlawfully in carrying out these duties, the requirements under RIPA must be adhered to. The Council must have procedures in place to ensure that any surveillance undertaken is necessary, proportionate and correctly authorised. Surveillance should only be undertaken where there is no reasonable alternative mechanism for obtaining information.

2.0 Warwick District Council Procedures

2.1 Training

Officers who are required to undertake surveillance in the course of their duties, and officers with delegated powers to authorise such requests, will be required to attend relevant training on a tri-annual basis to ensure that all surveillance requests comply with RIPA requirements and codes of practise. Officers who have not had relevant training should not request or authorise requests for surveillance. The monitoring officer will be responsible for arranging training and keeping a log of those who have attended training, anyone who needs to undertake either of these duties but who has not had training should contact the monitoring officer in the first instance to make the necessary arrangements. All investigating officers and those officers who have been allocated specific roles in accordance with RIPA should be fully conversant with the RIPA codes of practise which are can be found at <http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/>

3.0 Necessity and Proportionality

3.1 Consideration must be given as to whether information can be obtained using another source other than covert surveillance and if it can, what would be the effect of obtaining it using other means. If the information can be obtained using other means then covert surveillance should not be used.

3.2 Consideration must also be given as to whether the expected outcome is proportionate to the level of intrusion that covert surveillance may cause. This includes giving consideration to the risk of intrusion into the privacy of persons other than the individual being investigated. The investigating officer set out how they intend to minimise this, surveillance will not be proportionate if it is excessive in the circumstances of the case, or could reasonably be obtained using less intrusive methods.

3.3 Covert surveillance

Any officer intending to carry out covert surveillance in the course of their duties will explore and consider all alternative methods available in order to obtain the required information before making a request for the authorisation of surveillance. If surveillance appears to be the only option then this should be discussed with the line manager. The investigating officer will provide sufficient information to enable the line manager to consider whether the level of intrusion caused by using surveillance is proportionate when considering both the crime that it is believed to have been committed and the likely consequences of that crime and also the effect that the intrusion may have on other affected parties who are not the subject of the investigation.

3.4 It is anticipated that in most cases, surveillance will take place in a public place, however where it is deemed necessary to use private premises in order to conduct the surveillance, permission should always be sought from the premises owner.

3.5 Collateral Intrusion

Before authorising a request, the authorising officer should have regard to the risk of obtaining private information about individuals other than the subject of the surveillance and the risks should be clearly outlined in the application for authorisation including details of how these risks will be minimised. When applying the proportionality test, consideration should be given to the risks to others who do not form part of the investigation.

3.6 Use of a CHIS

It is understood that there may be occasion when an officer would deem it necessary to use a CHIS in order to obtain information relevant to their investigation. Using a CHIS requires officers to receive specific training and certain roles would need to be undertaken other than those required for surveillance purposes. We could provide this training however if officers were not exercising these duties regularly it is doubtful that we could guarantee compliance with the law should a CHIS be used. Therefore any investigations which require the use of a CHIS will only be undertaken after seeking advice and guidance from Warwickshire County Council and Warwickshire Police.

3.7 In order to protect the health and safety of both the investigating officer and the subject of the surveillance, a risk assessment should be carried out identifying the risks to both individuals.

3.8 Confidential Information

If there is a risk that through the use of surveillance, confidential information may be acquired then the authorisation should be only be considered by an Assistant Chief Executive in the absence of the Chief Executive. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic information and authorisation in these cases should only be granted in exceptional and compelling circumstances.

4.0 Authorisations

- 4.1** All applications for covert surveillance will be made using the recommended OSC forms which can be found at <http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/> . The forms will be submitted for approval by an authorising officer. Individuals will be responsible for ensuring that their own applications for surveillance are reviewed and monitored in accordance with the intervals prescribed by legislation and forward copies of the relevant forms to the monitoring officer. An authorisation will last no longer than 3 months unless an application for a renewal has been made before the end of the 3 months has elapsed, the renewal must be approved by the authorising officer.
- 4.2** Authorisation for the use of a CHIS will last for 12 months from the date of the authorisation unless it is renewed.
- 4.3** An authorisation must be cancelled if it is believed that the surveillance no longer meets the criteria upon which it was authorised and the Cancellation of a Directed Surveillance authorisation form should be used for this purpose. The monitoring officer will be responsible for checking that the correct process and timescales have been adhered to by the individual officers.
- 4.4** Copies of all surveillance forms including refusals should be passed to the monitoring officer as soon as they are completed. The monitoring officer will be responsible for maintaining the central register for requests and ensuring that the correct timescales are maintained.
- 4.5 Reviewing authorisations**
All authorisations must reviewed on a regular basis by the authorising officer to assess the continuing need for surveillance and these review periods should be set at the outset. More frequent reviews will be necessary where the surveillance activities involve a high level of intrusion into private life.
- 4.6** A review will be necessary where the level of intrusion increases above what was originally stated or the circumstances change from those stated in the original request and the authorising officer must reconsider the test of proportionality.
- 4.7** If the original authorisation provided for surveillance of an unidentified individual and the identity of the individual becomes known during the operation, an immediate review will be required to update the authorisation with the details. This will not require completion of a new authorisation.

4.8 Urgent Authorisations

If a situation should arise where it is deemed necessary to carry out surveillance as a matter of urgency, verbal authorisation may be sought giving due regard to the principles of necessity and proportionality, this should be followed up by a relevant application as soon as reasonably practicable. Urgent authorisations will only be applicable if there is a risk of endangering life or jeopardising an investigation or operation. An urgent authorisation will last for 72 hours from the time granted, unless a subsequent written authorisation has been granted.

5.0 Surveillance not requiring authorisation

- 5.1** Authorisation is not required if surveillance is required due to an immediate response to an event or in the circumstances it is not reasonably practicable to obtain authorisation and therefore is not directed surveillance.
- 5.2** General observation activities do not require authorisation whether covert or overt. Such observations frequently form part of the legislative function of public authorities. For example attending a premises to check that no smoking legislation was being adhered to would not need authorisation because this would be part of the general duties of public authorities.
- 5.3** The use of CCTV cameras does not require authorisation **except** when used in a covert and pre-planned manner and in this instance please refer to the CCTV protocol for further guidance.
- 5.4** The use of a recording device by a covert human intelligence source in respect of whom appropriate use or conduct authorisation has been granted.
- 5.5** Overt or covert recording of an interview with a member of the public where it is made clear that the interview is voluntary and the interviewer is a member of a public authority.
- 5.6** The recording of excessive noise levels from adjoining premises where the recording device is calibrated only to record excessive noise levels.

Responsibilities

Senior Responsible Officer

Andrew Jones Assistant Chief Executive

Authorising Officers

Christopher Elliott Chief Executive
Andrew Jones Assistant Chief Executive
Bill Hunt Assistant Chief Executive

Monitoring Officer

Andrea Wyatt Benefits and Fraud Manager

Definitions

Confidential Personal Information

Section 99(1) of the 1997 Act: Personal Information which a person has acquired or created in the course of any trade, business, profession or other occupation, and which he holds in confidence; and communications as a result of which personal information is acquired or created and held in confidence.

Personal Information

Section 99(2) of the 1997 Act: Information concerning an individual (living or dead) who can be identified from it and relating to his physical or mental health or to spiritual counselling or assistance given or be given to him.

Surveillance

Section 48(2) of RIPA:

- Monitoring, observing, listening to persons, their movements, conversations, other activities or communications
- Recording anything monitored, observed or listened to in the course of surveillance
- Surveillance, by or with, assistance of a surveillance device.

Overt Surveillance

General observations usually made by staff whilst carrying out their duties, includes surveillance where the subject of the surveillance has been notified that such surveillance will be taking place. Overt surveillance does not require authorisation under RIPA.

Covert Surveillance

Section 26(9)(a) of RIPA: If, and only if, carried out in a manner calculated to ensure that persons subject to the surveillance are unaware that it is taking place.

Directed Surveillance

Section 26(2) of RIPA: Covert but not intrusive, and undertaken

- For a specific investigation or operation
- In a manner likely to obtain private information about an individual (whether or not that person is specifically targeted for the purposes of an investigation); and
- Not as an immediate response to events which would otherwise make seeking authorisation under the Act unreasonable, eg spotting something suspicious and continuing to observe it.

Intrusive

Section 26(3) of RIPA: Only if covert and

- Carried out in relation to anything taking place on residential premises or in a private vehicle; and
- Involves the presence on an individual on the premises or vehicle or is carried out by a surveillance device.

Officers from the Council are prohibited from undertaking intrusive surveillance.

Private Information

Section 26(10) of RIPA: In relation to a person, includes any information relating to his private or family life.

Covert Human Intelligence Source (CHIS)

Section 26(8)(a)-(c) of RIPA: A person who establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything that

- Covertly uses such a relationship to obtain information or to provide access to information to another person; or
- Covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship

Conduct and use of a CHIS

Section 26(7)(a)(b) of RIPA:

- **Conduct**
Establishing or maintaining a personal or other relationship with a person for the covert purpose of (or is incidental to) obtaining and passing on information **ie the task in hand**
- **Use**
Actions inducing, asking or assisting a person to act as a CHIS **ie setting up the CHIS**

Interception of Communications.

Interception of communications can only be undertaken by an officer of the Council in the following circumstances;

In the course of normal business practise.

Employees e mails, telephone conversations and internet access can be monitored without RIPA authorisation for the purposes of prevention or detection of crime or the detection of unauthorised use of these systems.

Interception with the consent of both parties

If both parties consent then RIPA authorisation is not required but any such interception should be recorded in an appropriate manner.

Interception with the consent of one party

Such interception will require RIPA authorisation because it falls within the definition of surveillance, however if the interception forms part of a previously authorised request, additional authorisation is not required.

Interception of communications where neither party is aware that this is taking place is prohibited unless a Warrant has been granted by the Secretary of State.