**Report to Cabinet**

**Date: 4 May 2006**

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**Subject: Regulation of Investigatory Powers Act 2000 (RIPA)**
**Approval of Policy-Access Communications Data**

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1. **Purpose of this Report**

To obtain approval to the addition to the Policy and Procedure approved by Cabinet on 2 March 2006.

2. **Background**

The policy and procedure for covert directed surveillance and CHIS(covert human intelligence source), was adopted by Cabinet, on 2 March 2006.

As from 5 January 2005 the Council has had the power to access communications data if they have a registered and trained Single Point of Contact (SPoC) or have out sourced this to a clearinghouse. The Council, currently, has no SPoC and has not out sourced and therefore is not able to exercise the power to access communications data. There has been discussion regarding this, and it was the view of the officers that the power is not needed. That view has now been revised and it is considered an appropriate power to investigate matters such as Benefit Fraud. For example, where an officer suspects a property is being used as a "Giro drop", and not being resided in, he/she can request authorisation for the telephone operator to provide a list of calls from and to the land line at the property.

The Nottingham Districts Working Group has drafted an additional section to the policy and procedure previously approved by Cabinet to deal with the accessing of communications data. That policy has been used as a template and adapted for use by the Council.

The Council intends to use a Clearinghouse to obtain the communications data. The Clearinghouse charges a sum for each request, currently £50.00.

The policy is appended at **Appendix 1**. The forms and Code of Practice have not been copied-Appendix D onwards.

3. **Resource Implications**

The fee per request will be met from existing budgets.

4. **Recommendations**

The additional Procedure attached at **Appendix 1** be adopted by the Council.

**APPENDIX 1**

**GEDLING BOROUGH COUNCIL**

**REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)**

**POLICY**

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**Appendices**

# REGULATION OF INVESTIGATORY POWERS ACT 2000

# GUIDANCE – PART II

# ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

## Introduction

In accordance with Chapter II of Part I of Regulation of Investigatory Powers Act ('the Act'), the Council can authorise the acquisition and disclosure of 'communications data' provided that the acquisition of such data is necessary for the purpose of **preventing or detecting crime or preventing disorder**; and proportionate to what is sought to be achieved by acquiring such data

There is a Code of Practice **(Appendix D**) ('the code')

NOTHING IN THIS CODE PERMITS THE INTERCEPTION OF THE CONTENT OF ANY COMMUNICATION.

The procedure is similar to that of authorisation for directed surveillance and CHIS but has extra provisions and processes.

The purpose and effect of the procedure is the same i.e. to ensure proper consideration is given to permitting such investigations and to provide protection against a human rights challenge.

The Authorising Officer is called a 'Designated Person'.

### 1. What is 'Communications data'?

Communications data is information relating to the use of a communications service e.g. postal service or telecommunications system. It is defined by Section 21(4) of the Act and falls into three main categories: -

Traffic data - where a communication was made from, to whom and when

Service data – use made of service e.g. Itemised telephone records

Subscriber data – information held or obtained by operator on person they provide a service to.

The Council is restricted to subscriber and service use data and only for the purpose of preventing or detecting crime or preventing disorder.

## 2. Designated person

A Designated Person in the case of the Council is the Chief Executive, Deputy Chief Executive and Heads of Service.

## 3. Application forms

All applications must be made on a standard form (**Appendix E).**

## 4. Authorisations

Authorisations can only authorise conduct to which Chapter II of Part I of the Act applies.

In order to comply with the code, a Designated Person can only authorise the obtaining and disclosure of communications data if:

i) It is **necessary** for any of the purposes set out in Section 22(2) of the Act. (NB The Council can only authorise for the purpose set out in Section 22 (2) (b) which is the purpose of preventing or detecting crime or preventing disorder); and

ii) It is **proportionate** to what is sought to be achieved by the acquisition of such data (in accordance with Section 22(5) the Act)

Consideration must also be given to the possibility of collateral intrusion and whether any urgent timescale is justified.

The Designated Person can either grant an authorisation or a notice: -

1) By authorisation of some person in the Council to collect the data (Section 22(3)the Act). This will be rare but may be appropriate in the following circumstances:

- The postal or telecommunications operator is not capable of collecting or retrieving the communications data.

- It is believed the investigation may be prejudiced if the postal or telecommunications operator is asked to collect the data itself;

- There is a prior agreement in place between the relevant public authority and the postal or telecommunications operator as to the appropriate mechanisms for the disclosure of communications data.

2) By notice to the holder of the data to be acquired (Section 22(4)) which requires the operator to collect or retrieve the data. Disclosure may only be required to either the designated person or the single point of contact.

Service provider must comply with the notice if it is reasonably practicable to do so (s.22 (6)-(8)) and can be enforced to do so by civil proceedings.

The postal or telecommunications service can charge for providing this information.

There are standard forms (**Appendix F**) for authorisations and notice.

## 5. Oral authority

The Council is not permitted to apply or approve orally.

## 6. Single point of contact (SPOC)

Notices and authorisations must be passed through a single point of contact. The Council will use a Clearing House for this Purpose.

## 7. Duration

Authorisations and notices are only valid for one month beginning with the date on which the authorisation is granted or the notice given. A shorter period should be specified if possible.

## 8. Renewal and cancellation

An authorisation or notice may be renewed at any time during the month it is valid using the same procedure as used in the original application. A renewal takes effect on the date which the authorisation or notice it is renewing expires.

The code requires that all authorisations and notices should be cancelled by the designated person who issued it as soon as it is no longer necessary, or the conduct is no longer proportionate to what is sought to be achieved. The relevant postal or telecommunications operator should be informed of the cancellation of a notice.

## 9. Retention of records

Applications, authorisations and notices must be retained until the Council has been audited by the Commissioner (see paragraph 10).

Applications must also be retained to allow the Tribunal (see paragraph 10) to carry out its functions.

A record must be kept of:-

- the dates on which the authorisation or notice is started or cancelled.
- any errors that have occurred in the granting of authorisations or giving of notices.

A report and explanation of any errors must also be sent to the Commissioner as soon as is practicable.

Communications data, and all copies, extracts and summaries of it, must be handled and stored securely and the requirements of the Data Protection Act 1998 must be observed.

Legal and Democratic Services will maintain a centrally retrievable register.

## 10. Oversight and Complaints

The Act provides for an Interception of Communications Commissioner whose remit is to provide independent oversight of the use of the powers contained in Part I and the code requires any person who uses the powers conferred by Chapter II to comply with any request made by the Commissioner to provide any information he requires to enable him to discharge his functions.

The Act also establishes an independent Tribunal to investigate and decide any case within its jurisdiction. Details of the relevant complaints procedure should be available for reference at the Council's public offices.