

GEDLING BOROUGH COUNCIL

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

POLICY

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GEDLING BOROUGH COUNCIL

POLICY ON REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

Introduction

Gedling Borough Council only carries out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. It recognises its obligation to comply with RIPA when such an investigation is for the purpose of preventing or detecting crime or preventing disorder, and has produced this guidance document to assist officers.

Applications for authority

An officer of at least the level of Assistant Director will consider all applications for authorisation in accordance with RIPA. Any incomplete or inadequate application forms will be returned to the applicant for amendment. The authorising officer shall in particular ensure that: -

- **there is a satisfactory reason for carrying out the surveillance**
- **the covert nature of the investigation is necessary**
- **proper consideration has been given to collateral intrusion**
- **the proposed length and extent of the surveillance is proportionate to the information being sought.**
- **Chief Executive's authorisation is sought where legal/medical/clerical issues are involved**
- **The authorisations are reviewed and cancelled.**
- **Records of all authorisations are sent to Legal & Democratic Services for entry on the Central Register.**

Training

Each Authorising Officer shall be responsible for ensuring that relevant members of staff are aware of the Act's requirements.

The Head of Legal and Democratic Services shall ensure that refresher training is offered once a year to all directorates of the Council and also give advice and training on request.

Central register and records.

Legal and Democratic Services shall retain the Central Register of all authorisations issued by Gedling Borough Council. Legal and Democratic Services will also monitor the content of the application forms and authorisations to ensure that they comply with the Act.

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

GUIDANCE - PART II

DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCE

1. Purpose

The purpose of this guidance is to explain

the scope of RIPA – Chapter I of Part II
the circumstances where it applies, and
the authorisation procedures to be followed.

2. Introduction

2.1 This Act, which came into force in 2000, is intended to regulate the use of investigatory powers exercised by various bodies including local authorities, and ensure that they are used in accordance with human rights. This is achieved by requiring certain investigations to be authorised by an appropriate officer before they are carried out.

2.2 The investigatory powers, which are relevant to a local authority, are directed covert surveillance in respect of specific operations and the use of covert human intelligence sources. The Act makes it clear for which purposes they may be used, to what extent, and who may authorise their use. There are also Codes of Practice in relation to the use of these powers and these are attached at **Appendix C**.

2.3 Consideration must be given, prior to authorisation as to whether or not the acquisition of private information is necessary and proportionate, i.e. whether a potential breach of a human right is justified in the interests of the community as a whole, or whether the information could be gleaned in other ways.

3. Scrutiny and Tribunal

3.1 The Office of Surveillance Commissioners (OSC) was set up to monitor compliance with RIPA. The OSC has “a duty to keep under review the exercise and performance by the relevant persons of the powers and duties under Part II of RIPA”, and the Surveillance Commissioner will from time to time inspect the Council’s records and procedures for this purpose.

3.2 In order to ensure that investigating authorities are using the powers properly, the Act also establishes a Tribunal to hear complaints from persons aggrieved by conduct, e.g. directed surveillance. Applications will be heard on a judicial review basis. Such claims must be brought no later than one year

after the taking place of the conduct to which it relates, unless it is just and equitable to extend this period.

3.3 The Tribunal can order:

- § Quashing or cancellation of any warrant or authorisation
- § Destruction of any records or information obtained by using a warrant or Authorisation
- § Destruction of records or information held by a public authority in relation to any person.

3.4 The Council has a duty to disclose to the tribunal all documents they require if any Council officer has:

- Granted any authorisation under RIPA
- Engaged in any conduct as a result of such authorisation

4. Benefits of RIPA authorisations

4.1 The Act states that if authorisation confers entitlement to engage in a certain conduct and the conduct is in accordance with the authorisation, then it will be lawful for all purposes. Consequently, RIPA provides a defence to an accusation of an infringement of a human right.

4.2 Material obtained through properly authorised covert surveillance is admissible evidence in criminal proceedings.

5. Definitions

5.1 'Covert' is defined as surveillance carried out in such a manner that is calculated to ensure that the person subject to it is unaware that it is or may be taking place. (s.26 (9)(a))

5.2 'Covert human intelligence source' (CHIS) is defined as a person who establishes or maintains a relationship with a person for the covert process of obtaining information about that person. (s.26 (8))

5.3 'Directed surveillance' is defined as covert but not intrusive and undertaken:

- for a specific investigation or operations,
- in such a way that is likely to result in the obtaining of private information about any person,
- other than by way of an immediate response.(s.26 (2))

5.4 'Private information' includes and possibly, goes beyond, information relating to a person's private or family life.

5.5 'Intrusive' surveillance is covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle

and involves the presence of an individual on the premises or in the vehicle or using a surveillance device. **Gedling Borough Council may not authorise such surveillance.**

- 5.6 'Authorising officer' in the case of Gedling Borough Council, is the Chief Executive, Deputy Chief Executive and Heads of Service. If the operation concerns more than one Department in the Council-it can only be authorised by the Chief Executive in his or her absence, the Deputy Chief executive.

6. When does RIPA apply?

- 6.1 Where the directed covert surveillance of an individual or group of individuals, or the use of a CHIS is necessary for the purpose of preventing or detecting crime or of preventing disorder.

6.2 CCTV

The normal use of CCTV is not usually covert because members of the public are informed by signs that such equipment is in operation. However, authorisation should be sought where it is intended to use CCTV to target a specific individual or group of individuals. Equally a request, say by the police, to track particular individuals via CCTV recordings may require authorisation (from the police).

7. Covert Human Intelligence Source

- 7.1 Put simply, this means the use of "agent provocateur", undercover officers or professional witnesses used to obtain information and evidence. It can also apply to 'entrapment cases'.

- 7.2 The RIPA definition (section 26) is anyone who:

- a) establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraphs b) or c)
- b) covertly uses such a relationship to obtain information or provide access to any information to another person; or
- c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship

Any reference to the conduct of a CHIS includes the conduct of a source which falls within a) to c) or is incidental to it.

References to the use of a CHIS are references to inducing, asking or assisting a person to engage in such conduct.

- 7.3 Section 26(9) of RIPA goes onto define:-

- b) a purpose is covert, in relation to the establishment or maintenance

of a personal or other relationship, if, and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of that purpose; and

- c) a relationship is used covertly, and information obtained as mentioned in ss (8) (c) above and is disclosed covertly, if, and only if it is used or as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

7.4 Juvenile Sources

7.4.1 Special safeguards apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. On no occasion should the use or conduct of a source under the age of 16 years be authorised to give information against his parents or any person who has parental responsibility for him. The duration of a juvenile CHIS is **one** month. The Regulation of Investigatory Powers (Juveniles) Order 2000 SI No. 2793 contains special provisions which must be adhered to in respect of juvenile sources.

7.5 Vulnerable Individuals

7.5.1 A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation. Any individual of this description should only be authorised to act as a source in the most exceptional circumstances.

8. Authorisations (See flowchart at Appendix A.)

8.1 Applications for directed surveillance

8.1.1 All application forms (**see Appendix B**) must be fully completed with the required details to enable the authorising officer to make an informed decision.

No authorisation shall be granted unless the authorising officer is satisfied that the investigation is:

-**necessary** for either the purpose of preventing or detecting crime or of preventing disorder,

-**proportionate** This has 3 elements, namely, (1)that the method of surveillance proposed is not excessive to the seriousness of the matter under investigation, (2)it must be the method which is the least invasive of the target's privacy, (3)the privacy of innocent members of the public must be respected and collateral intrusion minimised-see 8.1.2.

-and that no other form of investigation would be appropriate.

The grant of authorisation should indicate that consideration has been given to the above points. The authorising officer must complete section 13.

Advice should be sought from the Legal and Democratic Section on any issues of concern.

- 8.1.2 The authorising officer must take into account the risk of **'collateral intrusion'** i.e. intrusion on, or interference with, the privacy of persons other than the subject of the investigation, particularly where there are special sensitivities e.g. premises used by lawyers, doctors or priests eg for any form of medical or professional counselling or therapy. The application must include an assessment of any risk of collateral intrusion for this purpose.

Steps must be taken to avoid unnecessary collateral intrusion and minimise any necessary intrusion.

Those carrying out the investigation must inform the authorising officer of any unexpected interference with the privacy of individuals who are not covered by the authorisation, as soon as these become apparent.

- 8.1.3 **Special consideration in respect of confidential information**

Particular attention is drawn to areas where the subject of surveillance may reasonably expect a high degree of privacy eg where confidential information is involved.

Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material. (ss 98-100 Police Act 1997).

Legal privilege

Generally, this applies to communications between an individual and his/her legal adviser in connection with the giving of legal advice in connection with or in contemplation of legal proceedings. Such information is unlikely ever to be admissible as evidence in criminal proceedings.

If in doubt, the advice of the Legal and Democratic Services should be sought in respect of any issues in this area.

Confidential personal information

This is oral or written information held in (express or implied) confidence, relating to the physical or mental health or spiritual

counselling concerning an individual (alive or dead) who can be identified from it. Specific examples provided in the codes of practice are consultations between a health professional and a patient, discussions between a minister of religion and an individual relating to the latter's **spiritual welfare** or matters of **medical or journalistic confidentiality**

Confidential journalistic material

This is material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence.

It should be noted that matters considered to be confidential under RIPA may not necessarily be properly regarded as confidential under section 41 Freedom of Information Act.

Where such information is likely to be acquired, the surveillance may only be authorised by the Chief Executive, or, in his absence, a Chief Officer.

8.1.4 Authorisations must be in writing except in urgent cases but these should be followed up in writing as soon as possible. Urgency only arises where to await written authorisation would endanger life or jeopardise the operation. Delay caused in obtaining an authorisation cannot justify an urgent, oral authorisation.

8.1.5 **Notifications to Inspector/Commissioner**

The following situations must be brought to the inspector/commissioner's attention at the next inspection:

- Where an officer has had to authorise surveillance in respect of an investigation in which he/she is directly involved.
- Where a lawyer is the subject of an investigation or operation;
- Where confidential personal information or confidential journalistic information has been acquired and retained.

8.1.6 **Applications for CHIS**

Same as for directed surveillance except that the authorisation must specify the activities and identity (by pseudonym only) of the CHIS and that the authorised conduct is carried out for the purposes of, or in connection with, the investigation or operation so specified.

All application forms (**see Appendix B**) must be fully completed with the required details to enable the authorising officer to make an informed decision.

8.1.7 **Working in partnership with the Police**

Authorisation can be granted in situations where the police rather than Gedling Borough Council require the surveillance to take action, as long as the behaviour complained of, meets all criteria to grant and in addition is also of concern to the Council. Authorisation cannot be granted for surveillance requested by the police for a purely police issue.

9. **Unique Operation Reference Number**

Each Application for Directed Surveillance and CHIS, must have an Unique Operation Reference Number. This UORN will begin with either ENV (if it is granted in the Environment and Planning Department) or FIN (if it is granted in the Finance Department), followed by a sequential number, followed by 200?. ? being the year in which the Authority was applied for, e.g. ENV/27/2005

10. **Duration and Cancellation**

- An authorisation for **directed surveillance** shall cease to have effect (if not renewed) 3 months from the date of grant or renewal.
- An authorisation for **CHIS** shall cease to have effect (unless renewed or unless juvenile) 12 months from the date of grant or renewal.
- An **oral** authorisation or renewal shall cease to have effect (unless renewed) 72 hours from the date of grant or renewal

This does not mean that the authorisation should continue for the whole period so that it lapses at the end of this time. The applicant must apply to cancel each authorisation as soon as that officer decides that the surveillance should be discontinued.

On cancellation the cancellation form should detail what product has been obtained as a result of the surveillance activity. The forms should include the dates and times of the activity, the nature of the product obtained and its format, any associated log or reference numbers, details of where the product is to be held and the name of the officer responsible for its future management.

11. **Reviews**

The authorising officer should review all authorisations at intervals determined by him/herself. This should be as often as necessary and practicable-usually monthly. **The reviews should be recorded.**

Particular attention should be paid to the possibility of obtaining confidential information.

12. Renewals

Any authorised officer may renew an existing authorisation on the same terms as the original at any time before the original ceases to have effect.

A CHIS authorisation must be thoroughly reviewed before it is renewed.

13. Central Register of authorisations

13.1 All authorities must maintain the following documents:

- Copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the authorised officer;
- A record of the period over which the surveillance has taken place;
- The frequency of reviews prescribed by the authorising officer;
- A record of the result of each review of the authorisation;
- A copy of any renewal of an authorisation and supporting documentation submitted when the renewal was requested;
- The date and time when any instruction was given by the authorising officer.

13.2. To comply with 13.1 the Legal and Democratic Services hold the central register of all authorisations issued by officers of Gedling Borough Council. The original authorisation, reviews, renewal and cancellation issued should be passed immediately to Legal and Democratic Services. A copy should be kept by the applicant Department and the authorising officer.

13.3 The Council must also maintain a centrally retrievable record of the following information:

- § type of authorisation
- § date the authorisation was given
- § name and rank/grade of the authorising officer
- § unique reference number of the investigation/operation
- § title (including brief description and names of the subjects) of the investigation/operation;
- § whether urgency provisions were used, & if so why
- § details of renewal
- § whether the investigation/operation is likely to result in obtaining confidential information
- date of cancellation

These records will be retained for at least 3 years and will be available for inspection by the Office of Surveillance Commissioners.

14. Retention of records

All documents must be treated as strictly confidential and the Authorising Officer must make appropriate arrangements for their retention, security and destruction, in accordance with the Council's Data Protection Policy and the RIPA codes of practice. The retention period for the purposes of this guidance is three years from the ending of the period authorised. The Central Register of Authorisations will be kept securely in a locked cabinet.

15. Complaints procedure

- 15.1.1 The Council will maintain the standards set out in this guidance and the Codes of Practice (**See Appendix C**). The Chief Surveillance Commissioner has responsibility for monitoring and reviewing the way the Council exercises the powers and duties conferred by RIPA.
- 15.2 Contravention of the Data Protection Act 1998 may be reported to the Information Commissioner. Before making such a reference, a complaint concerning a breach of this guidance should be made using the Council's own internal complaints procedure. To request a complaints form, please contact the One Stop Shop, Gedling Borough Council, Civic Centre, Arnot Hill Park, Arnold, Nottingham or telephone 0115 9013793.