

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 (“the 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 Corporate 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**
- **any directed surveillance passes the “serious crime” threshold**
- **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 confidential legal/medical/clerical/parliamentary/journalistic/ spiritual welfare issues are involved**
- **The authorisations are reviewed and cancelled.**
- **Records of all authorisations are sent to Legal Services for entry on the Central Register.**

Once authorisation has been obtained from the Authorising Officer the Investigating Officer will attend the Magistrates’ Court in order to obtain Judicial approval for the authorisation.

Training

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

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

Senior Responsible Officer ("SRO")

The Senior Responsible Officer, a role required by the Office of the Surveillance Commissioner (the "OSC") with oversight of the Council's use of RIPA powers is the Council Solicitor and Monitoring Officer.

RIPA Co-ordinating Officer

The RIPA Co-ordinating Officer role, with the responsibility for the day to day RIPA management and administrative processes observed in obtaining an authorisation and advice thereon is performed by the Senior Solicitor in Legal Services.

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

GUIDANCE ON PART II

DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCE

1. Purpose

The purpose of this guidance is to explain

the scope of RIPA –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 and approved by the judiciary 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, involving criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 month' imprisonment or are related to the underage sale of alcohol and tobacco, and the use of covert human intelligence sources ("CHIS"). 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 B**.
- 2.3 Consideration must be given, prior to authorisation as to whether or not the acquisition of private information or the covert manipulation of a relationship 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 External

- 3.1.1 As of 1st November 2012 the Council has to obtain an order from a Justice of the Peace approving the grant or renewal of any authorisation for the use of directed surveillance or CHIS before the authorisation can take effect and the activity carried out. The Council can only appeal a decision of the Justice of the Peace on a point of law by Judicial review.
- 3.1.2 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.

3.1.3 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.

3.1.4 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.

3.1.5 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

3.2 Internal scrutiny

3.2.1 The Council will ensure that the SRO is responsible for;

- The integrity of the process in place within the Council to authorise directed surveillance and CHIS
- Compliance with PART II of the 2000 Act and with the accompanying Codes of Practice
- Engagement with the Commissioners and inspectors when they conduct their inspections and
- Where necessary overseeing the implementation of any post-inspection action plans recommended or approved by a Commissioner

3.2.2 The elected members of the Council will review the Council’s use of the 2000 Act and the Council’s policy and guidance documents at least once a year. They will also consider internal reports on the use of the 2000 Act (if it has been used) on at least a quarterly basis, to ensure that it is being used consistently with the Council’s policy and that the policy is fit for purpose. The members will not however be involved in making decisions on specific authorisations.

3.3 Unauthorised Activities

3.3.1 If any Officer is concerned that surveillance/CHIS activity is taking place and there is no authorisation under RIPA in place, he/she should contact Legal Services to seek advice.

3.3.2 If any activity is deemed to be unauthorised, it will be reported to the OSC.

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 statutory framework under which covert surveillance or CHIS can be authorised and conducted compatibly with Article 8 of the Human Rights Act 1998 – a person's right to respect for their private and family life, home and correspondence.

4.2 Material obtained through properly authorised covert activity 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 personal or other relationship with a person for the covert process of obtaining/providing access to/disclosing, information obtained through that relationship or as a consequence of the relationship(s.26 (8))

5.3 'Directed surveillance' is defined as covert but not intrusive surveillance 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 any information relating to a person's private or family life (s.26(10)). Private information should be taken generally to include information on any aspect of a person's private or personal relationship with others including family and professional or business relationships.

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 the Council, is the Chief Executive and Corporate Directors. If the operation concerns more than one Department in the Council it can only be authorised by the 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 The Council can only authorise **Directed Surveillance** to prevent and detect conduct which constitutes one or more criminal offences. The criminal offences must be punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months imprisonment or be an offence under:

- a) S.146 of the Licensing Act 2003 (sale of alcohol to children)
- b) S.147 of the Licensing Act 2003 (allowing the sale of alcohol to children)
- c) S.147A of the Licensing Act 2003 (persistently selling alcohol to children)
- d) S.7 of the Children and Young Persons Act 1933 (sale of tobacco, etc, to persons under eighteen)

6.3 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 covertly and in a pre-planned manner as part of a specific investigation or operation 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).

6.3 Online Covert Activity

The use of the internet and social media sites may be required to gather information prior to and during an operation/investigation which may amount to directed surveillance. Where the definition of directed surveillance is met, (see para 5.3) an authorisation for directed surveillance under RIPA should be obtained. Officers viewing sites where individuals have not applied privacy settings should be wary, a one off viewing may be acceptable but when repeatedly viewing those sites, an authorisation for directed surveillance may still be required.

An authorisation for the use and conduct of a CHIS may be necessary if a covert relationship is established and maintained by an officer of the Council or person acting on his behalf through social media sites.

Officers using social media sites as part of an investigation should seek advice from Legal Services as to when an authorisation for directed

surveillance or CHIS would be required. Where the serious crime threshold is not met in relation to an investigation, surveillance of social media sites could amount to a breach of an individual's Article 8 rights for which there is no protection offered by RIPA.

7. Covert Human Intelligence Source

7.1 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.

7.2 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.

7.3 With any authorised use of a CHIS, the Council must ensure that arrangements are in place for the proper oversight and management of the CHIS, this includes appointing individual officers as handlers and controllers in relation to the CHIS (s.29(5)(a) and (b)).

7.4 There is a risk that an informant who is providing information to the Council voluntarily may in reality be a CHIS even if not tasked to obtain information covertly. It is the activity of the CHIS in exploiting a relationship for a covert purpose which is ultimately authorised in the 2000 Act, not whether or not the CHIS is asked to do so by the Council. When an informant gives repeat information about a suspect or about a family and it becomes apparent that the informant may be obtaining the information in the course of a neighbourhood or family relationship, it may mean that the informant is in fact

a CHIS. Legal advice should always be sought in such instances before acting on any information from such an informant.

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. Any authorisation of a juvenile CHIS must be by the Chief Executive.

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. Any authorisation of a vulnerable individual as a CHIS must be by the Chief Executive.

8. Authorisations

8.1 Applications for directed surveillance

- 8.1.1 All application forms must be fully completed with the required details to enable the authorising officer to make an informed decision. Application forms are available on the Home Office website, officers should ensure they are using the most up to date forms for RIPA authorisations.

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,

-Involves a criminal offence punishable whether summarily or on indictment by a maximum sentence of at least six months imprisonment or related to the underage sale of alcohol or tobacco (see para 6.2 for offences)

-**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)the method used must be 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.

Advice should be sought from the Legal Services 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. 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 it becomes apparent. Where such collateral intrusion is unavoidable, the activities may still be authorised, provided this intrusion is considered proportionate to what is sought to be achieved.

The Authorising Officer should also fully understand the capabilities and sensitivity levels of any equipment being used to carry out directed surveillance so as to properly assess the risk of collateral intrusion in surveillance techniques.

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, communication between a Member of Parliament and another person on constituency matters, 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 Legal 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 2000.

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 and should only be authorised where there are exceptional and compelling circumstances that make the authorisation necessary.

8.1.4 Authorisations must be in writing and have a "wet" signature .

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**

The process for CHIS applications is the same as for directed surveillance except that the serious crime threshold of investigating

criminal offences with a sentence of at least 6 months in imprisonment does not apply. The authorisation must be in writing, 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.

Again the Authorising Officer must be satisfied that the authorised use and conduct of the CHIS is proportionate to what is sought to be achieved by that conduct and the CHIS must be necessary for the prevention or detection of crime or the prevention of disorder.

All application forms must be fully completed with the required details to enable the Authorising Officer to make an informed decision. A risk assessment and record must be prepared for each CHIS.

8.1.7 **Judicial Approval of authorisations (see guidance at Appendix C and D)**

Once the Authorising Officer has authorised the Directed Surveillance or CHIS, the Investigating Officer who completed the application form should contact the Magistrates Court to arrange a hearing for the authorisation to be approved by a Justice of the Peace.

The Investigating Officer will provide the Justice of the Peace with a copy of the original authorisation and the supporting documents setting out the case. This forms the basis of the application to the Justice of the Peace and should contain all information that is relied upon.

In addition the Investigator will provide the Justice of the Peace with a partially completed judicial application/order form.

The hearing will be in private and the officer will be sworn in and present evidence as required by the Justice of the Peace. Any such evidence should be limited to the information in the authorisation.

The Justice of the Peace will consider whether he/she is satisfied that at the time the authorisation was given there were reasonable grounds for believing that the authorisation or notice was necessary and proportionate and whether that continues to be the case. They will also consider whether the authorisation was given by the appropriate designated person at the correct level within the Council and whether (in the case of directed surveillance) the crime threshold has been met.

The Justice of the Peace can :

- a) **Approve the grant of the authorisation** ,which means the authorisation will then take effect.
- b) **Refuse to approve the grant of the authorisation**, which means the authorisation will not take effect but the Council could

look at the reasons for refusal, make any amendments and reapply for judicial approval.

- c) **Refuse to approve the grant of the authorisation** and quash the original authorisation. The court cannot exercise its power to quash the authorisation unless the applicant has at least 2 business days from the date of the refusal in which to make representations.

8.1.8 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.

The Police, as an emergency service may authorise RIPA without Magistrates Approval, if an urgent situation arises and RIPA authorisation would be required urgently the Council should contact the Police.

9. Unique Operation Reference Number

Each Application for Directed Surveillance and CHIS, must have a Unique Operation Reference Number. This URN 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 20?? 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 or cancelled) 3 months from the date the Justice of the Peace approves the grant
- If renewed the authorisation shall cease to have effect 3 months from the expiry date of the original authorisation.
- An authorisation for **CHIS** shall cease to have effect (unless renewed or unless juvenile) 12 months from the date the Justice of the Peace approves the 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 authorisation must be cancelled 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.

Documentation of any instruction to cease surveillance should be retained and kept with the cancellation form.

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.**

If the directed surveillance authorisation provides for the surveillance of unidentified individuals whose identity is later established, the terms of the authorisation should be refined at review to include the identity of these individuals. It would be appropriate to call a review specifically for this purpose.

Particular attention should be paid to the possibility of obtaining confidential information and an assessment as to the information gleaned should take place at every review.

12. Renewals

Any Authorising Officer may renew an existing authorisation on the same terms as the original at any time before the original ceases to have effect. The renewal must then be approved by the Justice of the Peace in the same way the original authorisation was approved. The process outlined in paragraph 8.1.7 should be followed for reviews.

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 form and the approval order from the Magistrates together with any supplementary documentation
- 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 Order made by the Magistrates Court and supporting documentation submitted when the renewal was requested;
 - The date and time when any instruction to cease surveillance as given
 - The date and time when any other instruction was given by the Authorising Officer
- 13.2. To comply with 13.1 Legal 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 Services. A copy should be kept by the applicant Department and the Authorising Officer. Any original authorisations and renewals taken to the Magistrates Court should be retained by the Council, the court must only keep copies of the authorisations or renewals.
- 13.3 The Council must also maintain a centrally retrievable record of the following information:
- type of authorisation
 - date the authorisation was given
 - details of attendance at the Magistrates' Court, the date of the attendance, the determining Justice of the Peace, the decision of the court and the time and date of the decision
 - 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 reviews
 - dates of any renewals including the name and rank of the Authorising Officer
 - whether the investigation/operation is likely to result in obtaining confidential information
 - whether the authorisation was granted by an individual directly involved in the investigation
 - 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

The Council must ensure that arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed surveillance or CHIS. The Authorising Officers through their relevant Data Controller must ensure compliance with the appropriate data protection

requirements under the Data Protection Act 1998 and any relevant codes of practice relating to the handling and storage of material.

The Central Register of Authorisations will be kept securely in a locked cabinet in the Legal Services department.

15. Complaints procedure

- 15.1.1 The Council will maintain the standards set out in this guidance and the Codes of Practice (**See Appendix B**). The Chief Surveillance Commissioner has responsibility for monitoring and reviewing the way the Council exercises the powers and duties conferred by RIPA.
- 15.1.2 Contravention of RIPA may be reported to the Investigatory Powers Tribunal. 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.