

# THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) – OUTLINE GUIDANCE



**OXFORDSHIRE  
COUNTY COUNCIL**

## **Background Information**

The Regulation of Investigatory Powers Act (RIPA) provides a framework for the use of covert investigatory techniques by public authorities. It does not provide any powers to carry out covert activities but regulates the use of these techniques so that they are compatible with human rights legislation.

Covert surveillance carried out by the council must be **authorised, necessary and proportionate** and **avoid collateral intrusion**. The only exception to this being where the surveillance is carried out by way of an immediate response to events which were unforeseeable and it is impractical to obtain prior authorisation.

Surveillance:

- Includes monitoring, observing or listening to persons, their movements, conversations or other activities;
- Is only covert if it is carried out in a manner that ensures that any persons who are the subject to the surveillance are unaware that it is taking place;
- May either be – Intrusive, Directed or Covert Human Intelligence Source (CHIS).

**Intrusive Surveillance** is a covert activity carried out in a residential place or a private vehicle by a person or a surveillance device being present in the premises or vehicle. Local authorities are not allowed to use this type of surveillance.

**Directed Surveillance** is a covert activity that is not intrusive, but carried out in support of a specific operation or investigation, likely to result in obtaining private information about any person.

**Covert Human Intelligence Source** is an undercover operation whereby an informant or undercover officer establishes or maintains some sort of relationship with the persons in order to obtain private information.

**Private information** includes any information relating to a person's private or family life. Generally taken to include; any aspect of a person's private or personal relationships with others, including family and professional or business relationships; personal data, names, telephone numbers and address details.

Further guidance can be found in the Home Office Codes of Practice made under the Regulation of Investigatory Powers Act 2000. See-

<https://www.gov.uk/government/collections/ripa-codes>

In addition, the Office of Surveillance Commissioners issue a procedures and guidance document with explanation of the procedures and interpretational guidance. See-

<https://osc.independent.gov.uk/>

## **Compliance**

To ensure compliance with RIPA the council has developed a policy and associated forms that can be downloaded from the following link: [RIPA Policy and Forms](#)

Covert surveillance which is directed surveillance will only fall within the scope of RIPA when the crime the activity will 'prevent or detect' meets the 'serious crime' threshold. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.

## **The Policy**

The council's policy provides the procedures on which it may authorise the use of surveillance for a range of activities relating to the detection of: abuse, fraud, theft and other criminal offences. Legislation regulates the use of covert activities by Local Authorities.

This also includes the use of social media sites for gathering evidence to assist in enforcement activities, as set out below:

- officers must not create a false identity in order to 'befriend' individuals on social networks without authorisation under RIPA.
- officers viewing an individual's public profile on a social network should do so only to the minimum degree necessary and proportionate in order to obtain evidence to support or refute the suspicions or allegations under investigation.
- repeated viewing of open profiles on social networks to gather evidence or to monitor an individual's status, must only take place once RIPA authorisation has been granted and approved by a Magistrate.
- officers should be aware that it may not be possible to verify the accuracy of information on social networks and, if such information is to be used as evidence, take reasonable steps to ensure its validity.

The Home Office also issue Codes of Practice that need to be followed. See- <https://www.gov.uk/government/collections/ripa-codes>  
<https://osc.independent.gov.uk/>

## **Process for obtaining covert surveillance authorisation**

All requests for covert surveillance must be submitted to the Director of Law and Governance for authorisation to proceed. Applications must be on the prescribed form and supported by the relevant Deputy Director/Head of Service. Trading Standards have their own procedures and authorisation process. If you are considering making an application for covert surveillance authorisation the Head of Community Protection Services or Trading Standards Operations Manager can provide advice.

The Director of Law and Governance will check to make sure the surveillance is necessary and is a proportionate response to the purpose of the operation or

investigation. The Director of Law and Governance also maintains a central register of all authorisations.

Once approved internally an application must be made for Judicial Approval before the activity concerned can commence. Legal Services (or the Head of Community Protection Services for Trading Standards authorisations) will provide advice on this part of the process. CHIS applications require greater preparation due to the potential additional intrusion of this type of covert surveillance and that justification and explanation for the activity, and issues of collateral intrusion, may be required.

A flow chart showing the procedure and considerations for an application to a Justice of the Peace for approval of a RIPA authorisation is in annex 1 of this Guidance.

### **Communications data**

Communications data is the 'who', 'where' and 'when' of communications (such as details of telephone subscribers from BT etc.), but not the 'what' (i.e. the content of what was said or written).

Communications data can be obtained "for the purpose of preventing crime or preventing disorder". For advice and guidance contact the Head of Community Protection Services who will make the necessary arrangements through a Home Office authorised 'Single Point of Contact' (SPOC) for the authority to proceed.

### **Failure to comply**

Evidence obtained during an unauthorised operation or investigation may be excluded in court and it may be a breach of the Human Rights Act 1998 leading to legal proceedings against the Council.

### **Implementation Procedure**

See Policy for Compliance with the Regulation of Investigatory Powers Act 2000.

### **Some examples of surveillance requiring authorisation**

1. Officers of the council wish to drive past a garage for the purposes of obtaining a photograph of the exterior. Reconnaissance of this nature is not likely to require a directed surveillance authorisation as no private information about any person is likely to be obtained or recorded. However, if the authority wished to conduct a similar exercise, for example to establish a pattern of occupancy of the premises by any person, the accumulation of information is likely to result in the obtaining of private information about that person and a directed surveillance authorisation should be considered.
2. A surveillance officer intends to record a specific person providing their name and telephone number to a shop assistant, in order to confirm their identity, as part of a criminal investigation. Although the person has disclosed these

details in a public place, there is nevertheless a reasonable expectation that the details are not being recorded separately for another purpose. A directed surveillance authorisation should therefore be sought.

3. An observation post outside residential premises which provides a limited view compared to that which would be achievable from within the premises does not constitute intrusive surveillance. However, the use of a zoom lens, for example, which consistently achieves imagery of the same quality as that which would be visible from within the premises, would constitute intrusive surveillance (which local authorities cannot undertake).
4. Council officers attend a car boot sale where it is suspected that counterfeit goods are being sold, but they are not carrying out surveillance of particular individuals and their intention is, through reactive policing, to identify and tackle offenders. Again this is part of the general duties of public authorities and the obtaining of private information is unlikely. A directed surveillance authorisation need not be sought.
5. Intelligence suggests that a local shopkeeper is openly selling alcohol to underage customers, without any questions being asked. A trained employee or person engaged by the council is deployed to act as a juvenile in order to make a purchase of alcohol. In these circumstances any relationship, if established at all, is likely to be so limited in regards to the requirements of the Act, that a public authority may conclude that a CHIS or a directed surveillance authorisation is unnecessary. However, if the test purchaser is wearing recording equipment but is not authorised as a CHIS, consideration should be given to granting a directed surveillance authorisation.
6. Surveillance officers intend to follow and observe Z (who is a convicted child sex offender). This is part of a covert pre-planned operation to determine whether he has remained in contact with a particularly vulnerable family. It is proposed to conduct covert surveillance of Z and record their activities as part of the investigation. In this case, private life considerations are likely to arise and the covert surveillance is pre-planned and not part of general observational duties or reactive policing. A directed surveillance authorisation should be sought.

Further assistance and guidance can be obtained by contacting the Director of Law and Governance or the Trading Standards and Community Safety Manager.

Date: June 2017

Review Date: June 2018

## Annex 1: Procedure for Local Authority applications to a Justice of the Peace for an Order to Approve the Grant of a RIPA Authorisation

