

REGULATION OF INVESTIGATORY POWERS ACT 2000
COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL POLICY

1. INTRODUCTION

The Council is committed to working for the overall good of the people of Herefordshire. In carrying out its duties the Council may need to conduct appropriate investigations into allegations or concerns brought to its attention. Occasionally, our investigation will require us to gather information in respect of individuals who may be unaware of what we are doing (through covert surveillance). In conducting our investigations we need to draw a fair balance between the public interest and the rights of individuals. In order to achieve that balance, the Council will take into account and comply with both the Regulation of Investigatory Powers Act 2000 (RIPA) and the Human Rights Act 1998. This policy therefore sets out the Council's approach to covert surveillance issues falling within the framework of RIPA in order to ensure consistency, balance and fairness. This information will provide additional protection and safeguards where these covert activities are likely to cause us to obtain what is called "private information" about individuals or where we go "under cover" in certain circumstances. This policy also makes it clear to the public what checks and balances will apply.

The purpose of this policy is to provide overarching guidance and a framework for the Council's activities under RIPA.

The Office of the Surveillance Commissioners (OSC) both advises the Council and members of the public about these issues and the OSC also audits and inspects the way in which Local Authorities including the Council work in accordance with RIPA.

2. DEFINITION OF KEY TERMS

The essential key to understanding the way that RIPA works is to understand the definitions used within the Act. Awareness as to whether a particular proposed activity comes within the ambit of the Act is critical in establishing which authorisation needs to be sought, if any, and at what level.

There are three categories of covert activity:-

- a) **"Intrusive surveillance"** – this is covert and carried out in relation to anything taking place on any residential premises or any private vehicle. It involves a person on the premises or in the vehicle or is carried out by surveillance device. Except in cases of emergency, it requires OSC approval. The power is available only to law enforcement agencies. Intrusive surveillance cannot be undertaken by the Council.

- b) **"Directed surveillance"** – this is covert surveillance but not intrusive surveillance. It is undertaken for a specific investigation or operation in a way likely to obtain private information about a person. It must be necessary and

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proportionate to what it seeks to achieve and may be used by the wide range of public authorities identified in the legislation which includes the Council.

- c) **“Covert human intelligence sources”** (CHIS) – is the use or conduct of someone “undercover” who establishes or maintains a personal or other relationship with a surveillance subject for the covert purpose of obtaining information. An Authorising Officer must be satisfied that the CHIS is necessary, that the conduct authorised is proportionate to what is sought to be achieved and that arrangements for the overall management and control of the under cover officer are in force. CHIS may be used by the wide range of authorities identified in the legislation, which again includes the Council.

The following definitions are usefully explained:

- a) **“Overt surveillance”** This covers all situations where surveillance is not covert. Overt surveillance does not require authorisation under RIPA.
- b) **“Surveillance”** This is the monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications or recording anything monitored, observed or listened to in the course of surveillance and includes surveillance by or with the assistance of a surveillance device.

3. **THE CODES OF PRACTICE**

The Home Office website contains 2 useful Codes of Practice, in relation to covert surveillance and CHIS respectively. Officers likely to conduct surveillance and Authorising Officers will be familiar with the content of these. Whilst the Codes are not themselves law, they are citable in a court of law and any deviation from them may have to be proven to be justified, with the risk of valuable (often critical) evidence being ruled inadmissible by courts. The Home Office website is: www.homeoffice.gov.uk

4. **CONDUCTING COVERT SURVEILLANCE AND USING CHIS IN ACCORDANCE WITH RIPA**

Authorisation

As soon as a plan of action is decided upon which involves covert surveillance or the use of CHIS the appropriate authorisations should be sought. This involves an Investigating Officer completing the Council’s Authorisation forms as appropriate, depending on the activity sought to be authorised.

By virtue of the Regulation of Investigatory Powers (Prescription of Officers, Ranks and Positions) Order 2000 the appropriate level of Authorising Officer is the “Assistant Chief Officer” or the “Officer Responsible for the Management of an Investigation”. This will vary from Department to Department within the Council as to particular job title but the officer authorising will be not lower in rank than the person managing the team who are investigating or the Officer to whom the team are accountable. There is reproduced at Appendix 1 a list of the Authorising Officers from whom authorisation may be sought.

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In general authorisation should be sought prudently and in advance of the activity constituting the covert surveillance or use of CHIS.

In exceptional circumstances this may not be possible. In circumstances where it is not practicable to secure written authorisation prior to undertaking the activity, for example when fairly innocuous overt surveillance reveals something that needs covert surveillance immediately, then oral authorisation must be given in advance.

Once oral authorisation has been given a permanent note should be made by the Authorising Officer.

As soon as practicable the Investigating Officer and the Authorising Officer must ensure that the appropriate form is completed and dealt with in the same way as authorisations obtained conventionally.

In any event oral authorisation must be backed up by written authorisation not more than 72 hours after the oral authorisation was given.

Undertaking Surveillance

Investigating Officers of the Council should:-

- i. Only undertake surveillance or use of CHIS as long as is needed for the purpose for which is authorised.
- ii. Seek to reduce any collateral intrusion into the lives and business of both the surveillance subject (where appropriate) and also the subject's family, colleagues or associated third parties.
- iii. Seek to minimise (where possible) the amount of private information received in the course of the surveillance.
- iv. Ensure that adequate safety and welfare checks have been carried out prior to the use of CHIS. Where the CHIS being used is not an employee of the Council or is not trained for such work the officer in charge of the surveillance should endeavour to secure that assistance of council staff is close to hand and readily available to the CHIS.
- v. Act professionally and diligently regarding their own safety and the safety of any surveillance equipment at their disposal.

Using Surveillance Equipment

Council officers conducting surveillance must endeavour to use any equipment that is necessary in the conduct of such surveillance in a responsible and discrete manner. Officers should be particularly wary that the use of any such surveillance equipment is restricted to being used in a manner that constitutes covert surveillance only. In instances where there is a risk that the use of such equipment will transform the operation into an intrusive one the surveillance should cease.

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Upon the cessation of surveillance officers should ensure that any equipment is properly checked upon its return to storage both as to condition and that it does not contain material that could fall into the possession of unauthorised staff. For example staff should ensure that any video tapes, discs etc are removed from the equipment prior to storage and possible use by other persons.

If any faults with the equipment are detected this should be brought to the attention of the Authorising Officer as soon as possible. Under no circumstances should the Authorising Officer seek to rectify any faults as this could affect admissibility of the evidence contained within it or obtained by using it.

The Authorising Officer

Upon turning their mind as to whether or not authorisation is warranted in a particular circumstance the Authorising Officer has to be satisfied on a two stage test:-

- a. **Is the surveillance necessary?** To be necessary it must fall within one of the following categories, ie it is:
- In the interest of national security;
 - For the purpose of preventing and detecting crime or of preventing disorder;
 - In the interest of the economic wellbeing of the UK;
 - In the interest of public safety;
 - For the purpose of protecting public health;
 - For the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a Government Department; or
 - For any other purpose prescribed by an order made by the Secretary of State.

Authorising Officers should be particularly mindful of the actual weight and importance of individual words as to each of these categories and if in doubt should seek a second opinion from either their head of service or the Council's legal team.

- b. **Is the conduct of the surveillance proportionate to its aim?** In other words the objective is important enough to justify the interference with a persons liberty and privacy.

The Authorising Officer ought also to pay attention to the means by which the surveillance is proposed and whether or not that means is the most appropriate for the particular circumstances of the case. Does it, for example, minimise collateral intrusion and is it readily workable.

Authorising Officers should be keen to limit the scope of authorisation where at all possible and where such limitation is imposed the authorising officer must bring such limitation to the attention of the investigating officer.

The Council's forms automatically impose a restriction of three months on the grant of any authorisation and further authorisation will need to be sought in the form of a renewal where appropriate.

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In the case of verbal authorisations these will cease to have effect 72 hours after the authorisation is given unless a formal application for directed surveillance authorisation has been completed within that time.

Review

Notwithstanding the initial authorisation may only be valid for three months if in the opinion of the authorising officer a more regular review is required this should be entered into the appropriate diary or calendar system by both the Authorising Officer and the surveillance officer involved.

Renewals

Authorising Officers may renew authorisations to conduct surveillance (including oral reviews in the case of emergencies) and such a renewal will last for a further three months running from the date of the original authorisation terminating.

Authorising Officers conducting renewals should be particularly mindful of changes in circumstances to particular cases and any effects such changes would have on the need for surveillance or the nature of it. In every case it should be noted on the renewal form whether or not it is a first renewal or a subsequent renewal.

Cancellation of Authorisation

Where appropriate the Authorising Officer should cancel an authorisation to conduct surveillance as opposed to letting an authorisation lapse.

Obviously it is of paramount importance that all officers involved in the surveillance are made aware of either the cancellation or lapse of an authorisation.

Council officers who continue to conduct surveillance once it is brought to their attention that it is no longer authorised may be liable to disciplinary proceedings from the Council and potential Court action by any party affected by the unauthorised surveillance.

Care and Custody of Authorisation Forms

The initial authorisation form and any renewals will be kept by the authorising officer for the length of the authorisation. Upon the cessation of the authorisation or the operation involved in general arrangements will be made to promptly send the authorisation forms to the Council's Monitoring Officer to arrange safe storage of them. These will be stored in a readily accessible state for a period of three years from the date of authorisation ceasing unless they are recalled by the officer applying for authorisation or the Authorising Officer because, for example, an investigation has restarted. Any removal from the custody of the Monitoring Officer must be accompanied by the completion of a tracking marker (see Document 9 of Appendix 2).

The officer removing the authorising forms will be responsible for the safe keeping of those forms and any lapse in such safe keeping may be dealt with as a disciplinary offence.

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Under no circumstances must the forms that have been removed from the Monitoring Officers' custody be altered or amended in any way. This may also be treated as a disciplinary offence.

As a general rule authorisation forms that are no longer active should be returned to the Monitoring Officer as soon as possible.

Dependant on the data management systems in place at the time it may be the case that the Monitoring Officer will render the forms into another format eg microfiche or electronically scanned documents for the sake of practicality.

5. GENERAL INFORMATION

This policy is a public document and is available for public inspection at the Council's principal offices at Brockington, 35 Hafod Road, Hereford HR1 1SH and also upon the Council's website. Copies of this policy will be held in all Directorates and made accessible to all Authorising Officers and those who may need to provide authorisation. The policy will be reviewed and updated from time to time.

Complaints by members of the public, surveillance subjects or others which relate to any aspect of the surveillance may be dealt with in one of two ways.

- i. By means of the Council's normal complaints procedure in which case the complainant will be given a copy of the Council's standard complaints form.
- ii. By virtue of a complaint to the Investigatory Powers Tribunal, PO Box 3320, London SW1H 9ZQ (Tel: 020 2723 4514).

These procedures are mutually exclusive and it is the complainants choice whether or not to make a complaint to the Council, to the Tribunal or both.

Additionally dependant upon the nature of the complaint the complainant may be put in touch with the Local Government Ombudsman.

Dated this day of2003