



Covert Surveillance and Acquisition of Communications Data Policy

Adopted by Council on 20 July 2010

Introduction:

The purpose of the Regulation of Investigatory Powers Act 2000 ("RIPA") is to regulate certain covert investigatory activities and to ensure that they are used in accordance with the Human Rights Act 1998.

One of the principles of the 1998 Act is that investigating authorities may only infringe particular rights, such as the right to respect for privacy protected by Article 8 of the European Convention of Human Rights, where specific legislation allows for investigations to be conducted in a *lawful* interference of the Convention right (i.e. the requirement of "legality").

Investigative activities pursued in accordance with the provisions of RIPA will conform to the requirement of "legality", because their lawful use is likely to be assured where an investigating authority has complied with the RIPA provisions. In this way, conformity to the Council's policy and procedures in accordance with RIPA will protect the investigative activity of the Council, the outcome of investigations, and the reputation of the Council.

It is the responsibility of the Council to ensure that its investigations are conducted effectively and ethically in accordance with legislation.

Part 2 of RIPA dictates that the Council can use the following three covert techniques:

Directed Surveillance:

Covert surveillance that is not intrusive but is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person, and which is undertaken otherwise than as an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under RIPA.

Covert Human Intelligence Sources:

A person authorised by a local authority to establish or maintain a relationship in order covertly to obtain information and disclose it to that local authority. The person acting as a 'CHIS' can be an undercover officer or a tasked informant (e.g. a member of the public).

Part 1 of RIPA now permits the Council to obtain communications data from Telecoms Services Operators or a Postal Service and places obligations on operators to make disclosures in certain circumstances.

Interception of Communications Data:

Information about a communication, such as telephone numbers involved and the time and place a call was made, but not the content of the communication. The same applies in respect of an email. The Council is only permitted to intercept service use data and subscriber data, and it cannot intercept communications during the course of their transmission.

Preliminary Human Rights Considerations:**1. Whether covert surveillance is necessary**

In accordance with RIPA and to comply with the 1998 Act, the action being authorised must not only conform to the Council's RIPA procedures, but must also be necessary to achieve a legitimate aim.

For the investigative purposes of the Council covert surveillance may properly be regarded as necessary only where it is conducted for the prevention and detection of crime or the prevention of disorder.

In considering whether covert surveillance on behalf of the Council is necessary, 'Authorising Officers' will be required to be satisfied that alternative investigative procedures not entailing covert surveillance have been considered. Authorising Officers will require to be satisfied that for reasons of urgency or effectiveness the covert surveillance technique selected is the most appropriate for securing the relevant information.

2. Whether covert surveillance is proportionate

The use of covert surveillance techniques must be proportionate to the aims of the Council in pursuing the investigation. For the investigative purposes of the Council covert surveillance may properly be regarded as proportionate where it is conducted in such a way that the extent of the necessary interference with the human rights of individuals (the subject of the investigation or others) is proportionate to achieving the legitimate aim of the investigation.

Policy Statement

1. Waverley Borough Council periodically needs to use covert surveillance and acquire communications data in order to carry out certain statutory functions. It is the policy of the Council to conduct all investigations involving the use of covert surveillance techniques in accordance with the Regulation of Investigatory Powers Act 2000.
2. To ensure that investigations are compliant with the requirements of the Human Rights Act 1998 and are fairly and lawfully conducted, covert surveillance techniques will be used only where they relate to a specific investigation, where they are necessary, and where they are proportionate to the aims of the investigation.

3. Investigations involving covert surveillance techniques will only proceed if authorised by an officer of the requisite statutory level.¹ Please refer to the Appendix to this Policy for a list of Authorising Officers, by position, who may authorise the use of directed surveillance, Covert Human Intelligence Sources and the acquisition of communications data.
4. The Council will comply with all relevant Codes of Practice issued by the Secretary of State current at the time of a specific and authorised investigation.
5. The Council has appointed the Chief Executive as its Senior Responsible Officer, with the Deputy Chief Executive acting as Deputy Senior Responsible Officer, who is responsible for:
 - the integrity of the process in place within the Council for authorising the use of directed surveillance, Covert Human Intelligence Sources and acquiring communications data;
 - compliance with RIPA and the supporting Codes of Practice;
 - engagement with the Office of Surveillance Commissioners (“OSC”) and the Interception of Communications Commissioner’s Office (“IOCCO”), and their inspectors;
 - overseeing the implementation of any post-inspection action plans recommended or approved by the OSC or IOCCO; and
 - ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations from the OSC or IOCCO.
6. The Council will provide regular training for all staff who may conduct or be involved in covert surveillance operations, and all who may authorise such surveillance activity.

¹ See *The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (Statutory Instrument No. 521 of 2010)* and *The Regulation of Investigatory Powers (Communications Data) Order 2010 (Statutory Instrument No. 580 of 2010)*.

7. The Council's Executive will review the Council's use of RIPA, and review and set this Policy, annually, and will consider reports from Officers on a quarterly basis to ensure that this Policy is being used in a manner consistent with this Policy and that this Policy remains fit for purpose.

APPENDIX

COUNCIL OFFICERS RESPONSIBLE FOR AUTHORISING COVERT SURVEILLANCE

The following officers of Waverley Borough Council have been approved as 'Authorising Officers' for the purposes of the Regulation of Investigatory Powers Act 2000 at a meeting of the Council on 20 July 2010:-

- Chief Executive
- Deputy Chief Executive
- Strategic Director

- Head of Environmental Health and Community Safety
- Head of Environmental Services
- Head of Housing
- Head of Human Resources
- Head of Internal Audit
- Head of Planning Services
- Head of Revenues and Benefits