

Regulation of Investigatory Powers Act and Surveillance Policy

Context

The purpose of this Policy is to set out the scope of the legislation relating to covert surveillance, the circumstances where it applies, the authorisation procedures that must be followed, and the considerations that must be taken into account.

Scope of this policy

This Policy applies to the whole of the County Council.

It applies to all covert surveillance undertaken by the Council. This includes surveillance relating to core functions such as Trading Standards that is carried out under the provisions of the Regulations of Investigatory Powers Act (RIPA), and all other covert surveillance.

Principles and Commitments

It is the policy of the County Council to be open and transparent in the way that it works and delivers its services, including the use of covert surveillance. Wherever possible, overt (non-secret) investigation techniques should be used. Covert surveillance is a last resort where there is no other practical option and it is necessary and proportionate.

Key actions to meet the commitments set out in the policy

- Detailed guidance and forms are supplied for use by staff seeking authorisation for covert surveillance activities.
- All authorisations are approved by senior officers with appropriate training.
- Some authorisations also require magistrate court approval.

RIPA Surveillance

1. The Regulation of Investigatory Powers Act (RIPA) is intended to regulate the use of investigatory powers and ensure that they are used in accordance with Human Rights. This means that any interference with a person's right to a private and family life has to be carefully justified. 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. The investigatory powers which are relevant to the Council are: -
 - a. Directed covert surveillance in respect of specific operations or specific investigations involving criminal operations that are punishable by a maximum term of at least 6 months' imprisonment, or are related to the underage sale of alcohol and tobacco
 - b. The use of covert human intelligence sources, and
 - c. The acquisition of communications data.
3. RIPA makes it clear for which purposes these powers may be used, to what extent, and who may authorise their use. The Council has taken a policy decision **not** to use covert human intelligence sources.
4. In complying with RIPA, Officers must have full regard to the Codes of Practice on the use of covert surveillance and communications data issued by the Home Office, the Office of the Surveillance Commissioner (OSC) and the Interception of Communications Commissioner (IOCCO).

Covert Surveillance Authorisations

5. The use of any method of covert surveillance to pursue a particular line of enquiry must be properly authorised.
6. **Authorising Officers** have been appointed at appropriate senior levels, and are trained to enable them to fulfil their duties. Wherever possible they are not involved directly in the investigation they are considering an authorisation for. A list of Authorising Officers is maintained.
7. In accordance with best practice guidance, the Council has made arrangements for authorisations in relation to access to communications data to be considered by an external organisation, the National Anti-Fraud Network (NAFN).
8. All RIPA authorisations require magistrate court approval.

The Principles of Necessity and Proportionality

9. Consideration must be given, prior to authorisation of all covert surveillance, as to whether or not the acquisition of private information is necessary and proportionate, ie 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 obtained in other ways.

10. Necessity – where the information sought could be found in another means such as walking past and observing an address or asking a question, the use of surveillance will not be “necessary”. Or put another way, can the information be obtained openly? If the answer is yes, then the surveillance is not “necessary”.
11. Proportionality – this entails asking what the least intrusive form of the surveillance is that would result in the information sought being obtained. The method proposed must not be excessive in relation to the seriousness of the matter under investigation.
12. In particular the risk of “collateral intrusion”, that is intrusion on, or interference with, the privacy of persons other than the subject of the investigation, will be considered in relation to each proposed use of covert surveillance. Steps must be taken to avoid unnecessary collateral intrusion and minimise any necessary intrusion into the lives of those not directly connected with the investigation or operation.

Training and Awareness

13. Authorising Officers must have received relevant training.
14. Departments may develop their own additional guidance; however, the principles and procedures contained in any departmental guidance must be compatible with this Policy and the corporate guidance documents. It would be appropriate for the Senior Responsible Officer to be provided with a copy of any separate guidance produced by individual departments.

Monitoring and Review

15. The Council’s Monitoring Officer is the Senior Responsible Officer (SRO) in relation to RIPA and covert surveillance. The SRO is responsible for implementing the activities outlined in this document, providing support to departments seeking to establish compliance, reviewing the implementation of the Policy, including training.
16. The RIPA Co-Coordinating Officer is nominated by the SRO to be responsible for day to day matters such as training and awareness, oversight of authorisations and keeping records, including a centrally retrievable record of authorisations.
17. The programme of review includes annual reporting to the Council’s Policy Committee on the implementation of the Policy, and quarterly reporting on statistics to the Community Safety Committee. Councillors are however not involved in making decisions on specific authorisations.

Scrutiny and Tribunal

18. The Council has to obtain an order from a Justice of the Peace approving the grant or renewal of any authorisation under RIPA before authorisation can take effect and the activity be carried out.

19. The Office of the Surveillance Commissioners (OSC) monitors compliance with RIPA in relation to directed surveillance and CHIS. The Surveillance Commissioner will from time to time inspect the Council's records and procedures for this purpose and also requires annual returns.
20. The Interception of Communications Commissioner (IOCCO) monitors compliance with RIPA in relation to acquisition of communications data. The Communications Commissioner will from time to time inspect the Council's records and procedures for this purpose and also requires annual returns.
21. In order to ensure that investigating authorities are using their powers properly, RIPA established a Tribunal to hear complaints from persons aggrieved by conduct. The Investigatory Powers Tribunal has power to cancel authorisations and order destruction of information obtained. The Council is under a duty to disclose to the Tribunal all relevant documentation.
22. In addition the Council has its own Corporate Complaints procedure.

DRAFT