

Policy Library Pro Forma

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Title: Regulation of Investigatory Powers Act and Surveillance Policy

Aim / Summary: 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 in to account.

Document type (please choose one)

Policy	X	Guidance	
Strategy		Procedure	

Approved by	Date/resolution number	Version number	Review date
Senior Responsible Officer	7 January 2022	4.0	January 2023
Senior Responsible Officer	2 January 2020	3.0	Annually – 2 January 2021
Policy Committee	21 September 2016/ Resolved 2016/051	2.0	
Policy Committee	13 November 2013/ Resolved 2013/084	1.0	

Subject Areas (choose all relevant)

About the Council	X	Older people	
Births, Deaths, Marriages		Parking	
Business		Recycling and Waste	
Children and Families		Roads	
Countryside & Environment		Schools	
History and Heritage		Social Care	
Jobs		Staff	
Leisure		Travel and Transport	
libraries			

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Please include any supporting documents

1.	
2.	
Review date	Amendments
9 December 2021	To add reference to drones use (in the guidance) and Communications Data authorisations being approved by The National Anti-Fraud Network (NAFN)
2 January 2020	To add reference to E-Cigarettes and the change of name to IPCO
21 September 2016	Reference to guidance and forms; approvals/authorisations

13 November 2013	Annual reporting on the operation of RIPA policy be incorporated into the Policy Committee's work programme; that proposals for staff training be endorsed; that the changes in legislation and the frequency with which the Council relies on RIPA be noted.
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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

The County Council is committed to being 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.
- *Applications for Communications Data are referred to the National Anti-Fraud Network for authorisation and progression. This is pursuant to the Investigatory Powers Act 2016 (IPA).

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 or nicotine inhaling products
 - b. The use of covert human intelligence sources, and
 - c. The acquisition of communications data via NAFN pursuant to the Investigatory Powers Act 2016.
3. RIPA makes it clear for which purposes these powers may be used, to what extent, and who may authorise their use.
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, and the Investigatory Powers Commissioner's Office (IPCO).

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 legislation, the Council has made arrangements for authorisations in relation to access to communications data to be actioned by an external organisation, the National Anti-Fraud Network (NAFN).

The Principles of Necessity and Proportionality

8. 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, 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 obtained in other ways.

9. Necessity – where the information sought could be found by 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”.
10. 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.
11. 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

12. Authorising Officers must have received relevant training.
13. 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

14. 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.
15. 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.
16. The programme of review includes annual reporting to the Council’s Governance and Ethics Committee on the implementation of the Policy, and quarterly reporting on usage to the Communities Committee. Councillors are however not involved in making decisions on specific authorisations.

Scrutiny and Tribunal

17. All RIPA authorisations require magistrate court approval.
18. The IPCO 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.
19. The IPCO monitors compliance with IPA in relation to acquisition of communications data. The I P C O will i n s p e c t, from time to time, the Council's records and procedures for this purpose and also requires annual returns.
20. 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.
21. In addition the Council has its own Corporate Complaints procedure.