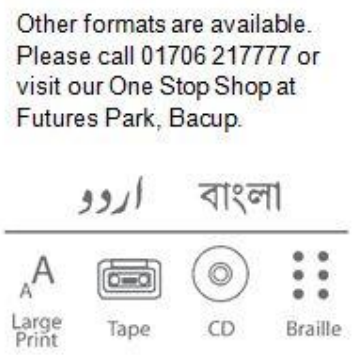
ROSSENDALE BOROUGH COUNCIL

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

POLICY

Amended and approved by Council on 23rd March 2011
Amended by Director of Business in consultation with Councillor Robert Wilkinson, Portfolio Holder on 20th July 2011.
Amended by Director of Business in consultation with Councillor Sean Serridge, Portfolio Holder on 29th July 2014



Responsible Section/Team	Legal	**Version/Status**	V1
Responsible Author	Legal Services Manager	**Date Agreed / Agreed At**	
Date last Amended	17th July 2014	**Due for Review**	

CONTENTS

APPENDICES

é é

Appendix A Directed Surveillance and CHIS Forms

é é

Appendix B Home Office Guidance to Local Authorities in England and Wales on the judicial approval process for RIPAand the crime threshold for directed surveillance

é é

Appendix C Home Office guidance for MagistratesôCourts in England and Wales for a local authority application seeking an order approving the grant or renewal of a RIPA authorisation or notice

é é

Appendix D HO - Codes of Practice ï Covert Surveillance and Property Interference and Covert Human Intelligence Sources

é é

Appendix E Rossendale Borough Councilôs Authorising Officers

é é

Appendix F HO ï Forms - Communications Data

é é

Appendix G HO - Codes of Practice - Acquisition and Disclosure of Communications Data

ROSSENDALE BOROUGH COUNCIL POLICY ON REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

Introduction

Rossendale Borough Council (the Council) only carries out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. It recognises the importance of complying with RIPA when such an investigation is for the purpose of preventing or detecting crime or preventing disorder and has produced this guidance document to assist officers.

Applications for Authority

All requests for authorisation of directed surveillance or a CHIS under RIPA must be approved in advance by an Authorising Officer. An Authorising Officer is a person who has been delegated power to act in that capacity. A list of officers who have, to date, been authorised, is annexed to this policy at Appendix E and is subject to regular review and updating by the Director of Business. Any incomplete or inadequate application forms will be returned to the applicant for amendment. The Authorising Officer shall in particular ensure that:

- there is a satisfactory reason for carrying out the surveillance, and the serious crime threshold is met (see 6.2)
- the covert nature of the investigation is necessary
- proper consideration has been given to collateral intrusion
- the proposed length and extent of the surveillance is proportionate to the information being sought
- the authorisations are reviewed and cancelled
- the authorisations are sent to Legal Services for entry onto the Central Register.

Once authorisation has been obtained from the Authorising Officer, the Investigating Officer, accompanied by a member of the Legal Services team will attend the MagistratesôCourt in order to obtain Judicial Approval for the authorisation.

Training

All officers with an enforcement or investigatory function should receive training on the provisions of RIPA to ensure awareness of the legislative framework and Council Policies and Procedures.

Central Register and Records

Legal Services shall facilitate and retain the Central Register of all authorisations issued by the Council. The Director of Business will monitor the content of the application forms and authorisations to ensure conformity and compliance with RIPA.

RIPA GUIDANCE – PART I

DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCE

1. Purpose

The purpose of this guidance is to explain:

- the scope of RIPA ï Chapter 1 of Part II
- the circumstances where it applies, and
- the authorisation procedures to be followed

2. Introduction

2.1 This Act which came into force in 2000 is intended to regulate the use of investigatory powers exercised by various bodies including local authorities, and ensure that they are used in accordance with human rights legislation. This is achieved by the requirement for certain investigations to be authorised by an appropriate officer together with judicial approval. From 1 November 2012 local authority authorisations and notices under RIPA will only be given effect once an order has been granted by a Justice of the Peace. See **Appendices C and D** for Home Office Guidance.

2.2 The investigatory powers which are relevant to a local authority are directed covert surveillance and covert human intelligence sources in respect of specific operations involving criminal offences that are either punishable, whether on summary conviction or indictment by a term of imprisonment of at least six months, or are related to the underage sale of alcohol and tobacco. The Act makes it clear for which purposes they may be used, to what extent, and who may authorise their use. There are Codes of Practice relevant to the use of these powers, the links to which are attached as **Appendix D.**

2.3 Consideration must be given, prior to authorisation as to whether or not the surveillance and associated collateral intrusion is **necessary** and **proportionate** i.e. whether a potential breach of human rights legislation is justified in the interests of the community as a whole, or whether the information could be gleaned in other ways.

2.4 The Office of Surveillance Commissioners has produced a restricted Procedures and Guidance Document to be used by local authorities.

2.5 A public authority may only engage the 2000 Act when in performance of its **core functions,** that is the specific public functions undertaken by the authority in contrast to the ordinary functions that are undertaken by every authority for example employment issues, contractual arrangements etc.

3. Scrutiny and Tribunal

3.1 External

3.1.1 From 1 November 2012 the Council must obtain an Order from a Justice of the Peace approving the Grant or Renewal of any authorisation for the use of directed surveillance or CHIS before the authorisation can take effect and the activity carried out. The Council can only appeal a decision of a Justice of the Peace on a point of law by the Judicial Review process.

3.1.2 The Office of Surveillance Commissioner (OSC) was set up to monitor compliance with RIPA. The OSC has ña duty to keep under review the exercise and performance by the relevant persons of the powers and duties under Part II of RIPAò, and the Surveillance Commissioner will from time to time inspect the Councilôs records and procedures for this purpose.

3.1.3 In order to ensure that investigating authorities are using the powers properly, the Act also establishes a Tribunal to hear complaints from persons aggrieved by conduct, e.g. directed surveillance. Applications will be heard on a judicial review basis. Such claims must be brought no later than one year after the taking place of the conduct to which it relates, unless it is just and equitable to extend this period.

The Tribunal can order:

- quashing or cancellation of any warrant or authorisation
- destruction of any records or information obtained by using a warrant or Authorisation
- destruction of records or information held by a public authority in relation to any person.

The Council has a duty to disclose to the tribunal all documents they require if any Council officer has:

- granted any authorisation under RIPA
- engaged in any conduct as a result of such authorisation

3.2 Internal Scrutiny

3.2.1 The Council will ensure that a senior officer is responsible for:

- the integrity of the process in place within the Council to authorise directed surveillance and CHIS **Appendix E**
- compliance with Part II of the 2000 Act and with the accompanying Codes of Practice
- engagement with the Commissioners and Inspectors when they conduct their inspections and
- where necessary oversee the implementation of any post-inspection action plans recommended or approved by a Commissioner

3.2.2 The elected members of the Council will review the authority's use of the 2000 Act quarterly via the Corporate Overview and Scrutiny committee. They will ensure that it is being used consistently with the Council's policy and that that policy is fit for purpose. The members will not however be involved in making decisions on specific authorisations.

4. Benefits of RIPA authorisations

The Act states that if authorisation confers entitlement to engage in a certain conduct and the conduct is in accordance with the authorisation, then it will be lawful for all purposes. Consequently, RIPA provides a statutory framework under which covert surveillance can be authorised and conducted compatibly with Article 8 of the Human Rights Act 1998 ï a person's right to respect for their private and family life, home and correspondence.

Material obtained through properly authorised covert surveillance is admissible evidence in criminal proceedings.

Section 78 Police and Criminal Evidence Act 1984 allows for the exclusion of evidence if it appears to the Court that, having regard to all the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse affect on the fairness of the proceedings that the Court ought not to admit it. Evidence obtained through covert surveillance will not be excluded unless the test of unfairness is met.

5. Definitions

5.1 ôCovertô is defined as surveillance carried out in such a manner that is calculated to ensure that the person subject to it is unaware that it is or may be taking place. (s.26 (9)(a).

5.2 ôCovert human intelligence sourceô (CHIS) is defined as a person who establishes or maintains a personal or other relationship with a person for the covert process of obtaining/providing access to/disclosing, information obtained through that relationship or as a consequence of the relationship (s.26 (8))

5.3 ôDirected surveillanceô is defined as covert but not intrusive and undertaken:

- for a specific investigation or operations,
- in such a way that is likely to result in the obtaining of private information about any person,
- other than by way of an immediate response.(s.26 (2))

5.4 ôSurveillance' includes monitoring, observing, listening, with or without the assistance of a surveillance device, and includes recording of any information obtained.

5.5 Private information includes, and possibly goes beyond, information relating to a persons private or family life, and aspects of business and professional life.

5.6 Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle or using a surveillance device. **The Council may not authorise such surveillance**.

5.7 Authorising officer in the case of local authorities these are specified as the Deputy Chief Executive (and more senior officers), Heads of Service, Service Managers or equivalent, responsible for the management of an investigation (see Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010 No.521) As amended (from 1st November 2012) by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources (Amendment) Order 2012 No. 1500.

5.8 Senior Responsible Officer is responsible for:

- the integrity of the process in place within the public authority for the management of CHIS;
- compliance with Part II of the Act and with the Codes;
- oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- engagement with the OSC inspectors when they conduct their inspections, where applicable; and
- where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner.

Within local authorities, the Senior Responsible Officer should be a member of the corporate leadership team and should be responsible for ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the Office of the Surveillance Commissioner. Where an inspection report highlights concerns about the standards of authorising officers, this individual will be responsible for ensuring the concerns are addressed.

5.9 RIPA Monitoring Officer is responsible for:

- Maintaining the central record and collation of documents,
- Day to day oversight of the RIPA process
- Organising training in RIPA, and
- Raising awareness of RIPA within the Council

6. When does RIPA apply?

6.1 RIPA applies where the directed covert surveillance of an individual or group of individuals, or the use of a CHIS is necessary for the purpose of preventing or detecting crime, (see below).

6.2 The Council can only authorise **Directed Surveillance** to prevent and detect a criminal offence if is punishable, whether on summary conviction or indictment, by a period of imprisonment of at least six months, or would constitute an offence under:

(a) Section 146 Licensing Act 2003 (sale of alcohol to children)
(b) Section 147 Licensing Act 2003 (allowing the sale of alcohol to children)
(c) Section 147a Licensing Act 2003 (persistently selling alcohol to children)
(d) Section 7 of the Children and Young Persons Act 1933 (sale of tobacco, etc, to persons under eighteen)

6.3 CCTV

The normal use of CCTV is not usually covert because members of the public are informed by signs that such equipment is in operation. However, authorisation should be sought where it is intended to use CCTV in a covert and pre-planned manner as part of a specific investigation or operation, for the surveillance of a specific person or group of people. Equally a request, say by the police, to track particular individuals via CCTV recordings may require authorisation (from the police).

7. Covert Human Intelligence Source

7.1 The RIPA definition (section 26) is anyone who:

a) establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraphs b) or c)
b) covertly uses such a relationship to obtain information or provide access to any information to another person; or
c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship

Any reference to the conduct of a CHIS includes the conduct of a source which falls within a) to c) or is incidental to it.

References to the use of a CHIS are references to inducing, asking or assisting a person to engage in such conduct.

Section 26(9) of RIPA goes on to define:

- a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if, and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of that purpose; and

- a relationship is used covertly, and information obtained as mentioned in 7 (c) above and is disclosed covertly, if, and only if it is used or as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

7.2 There is a risk that an informant who is providing information to the Council voluntary may in reality be a CHIS even if not tasked to obtain information covertly. It is the activity of the CHIS in exploiting a relationship for a covert purpose which is ultimately authorised in the 2000 Act, not whether or not the CHIS is asked to do by the Council. When an informant gives repeat information about a suspect or about a family, and it becomes apparent that the informant may be obtaining the information in the course of a neighbourhood or family relationship, it may mean that the informant is in fact a CHIS. Legal advice should always be sought in such instances **before** acting on any information from such an informant.

7.3 Juvenile Sources

Special safeguards apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. On no occasion should the use or conduct of a source under the age of 16 years be authorised to give information against his parents or any person who has parental responsibility for him. The duration of a juvenile CHIS is **one** month. The Regulation of Investigatory Powers (Juvenile) Order 2000 SI No 2793 contains special provisions which must be adhered to in respect of juvenile sources. This can only be authorised by the Director of Business.

7.4 Vulnerable Individuals

A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation. Any individual of this description should only be authorised to act as a source in the most exceptional circumstances. Again this can only be authorised by the Director of Business.

7.5 Legal Advice

Please consult the Director of Business before taking any practical steps to authorise a CHIS.

7.6 Handler and Controller

There needs to be in place arrangements for the proper oversight and management of CHIS, including appointing individual officers as defined in section 29(5)(a) and (b) of the 2000 Act for each CHIS.

The Handler has day to day responsibility for:

- Dealing with the CHIS on behalf of the authority;
- Directing the day to day activities of the CHIS
- Recording the information supplied by the CHIS, and
- Monitoring the CHISÕs security and welfare.

The Handler will usually be a rank or position below that of the authorising officer.

The Controller will normally be responsible for the management and supervision of the Ñhandlerò and general oversight of the use of the CHIS

8. Authorisation Process and Oversight Arrangements

8.1 Applications for directed surveillance

All application forms (**see Appendix A**) must be fully completed with the required details to enable the Authorising Officer to make an informed decision. Sections 12 and 13 of the form must be completed by the Authorising Officer.

An authorisation under the 2000 Act will only ensure that there is a justifiable interference with an individualÕs Article 8 rights if it is **necessary** and **proportionate** for these activities to take place. Therefore, the grant of authorisation should indicate that consideration has been given to these points and no authorisation shall be granted unless the Authorising Officer is satisfied that the investigation is:

- **necessary** for either the prevention or detection of crime, involving a criminal offence punishable whether by summarily or on indictment by a maximum sentence of at lease six months imprisonment or related to the underage sale of alcohol or tobacco (see paragraph 6.2 for offences). Covert surveillance cannot be said to be necessary if the desired information can reasonably be obtained by overt means

- **proportionate** - if the activities are necessary, the person granting the authorisation must believe that they are **proportionate** to what is sought to be achieved by carrying them out. This involves balancing the intrusiveness of the activity on the target and others (see 8.4 Collateral intrusion) that might be affected by it against the need for the activity in operational terms.

The method of surveillance proposed must not be **excessive** in relation to the seriousness of the matter under investigation. It must be the method which is the **least invasive** of the targetôs privacy.

The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

The **privacy** of innocent members of the public must be respected and collateral intrusion minimised ï see 8.4 below.

It must be at an **appropriate** level (i.e. not excessive) and no other form of investigation would be appropriate.

8.2 Necessity

The Authorising Officer must be satisfied that the use of covert surveillance is necessary for one of the purposes specified in Section 28(3) of RIPA. In order to be satisfied, the conduct that it is aimed to prevent or detect must be identified and clearly described, particularly if it is questionable whether the serious crime criteria are met.

8.3 Proportionality

Proportionality is not only about balancing the effectiveness of covert methods over overt methods but of explaining why a particular covert method, technique or tactic is the least intrusive. It is insufficient to make a simple assertion or to says that the `seriousness` of the crime justifies any or every method available. It may be unacceptable to advance lack of resources or a potential cost saving as sufficient ground to use technological solutions which can be more intrusive than a human being. This critical judgment can only be reached once all aspects of an authorisation have been fully considered. It will be helpful to consider the following elements:

(i) That the proposed covert surveillance is proportional to the mischief under investigation;

(ii) That is proportional to the degree of anticipated intrusion on the target and others, and

(iii) It is the only option, other overt means having been considered and discounted.

The following elements of proportionality should therefore be considered:

- balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
- explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others,

- that the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result, and
- providing evidence of other methods considered and why they were not implemented

The Authorising Officer should set out, in his own words, ñ*I am satisfied*ò and ñ*I believe*òwhy he is satisfied or why he believes the activity is necessary and proportionate

8.4 Collateral intrusion

The privacy rights of members of the public who are not the subject of the investigation, must be minimised and the surveillance must be carefully controlled so as to respect those rights.

The Authorising Officer must also take into account the risk of **'collateral intrusion'** i.e. intrusion on, or interference with, the privacy of persons other than the subject of the investigation, particularly where there are special sensitivities e.g. premises used by lawyers, MPs, doctors or priests e.g. for any form of medical or professional counselling or therapy. The application must include an **assessment** of any risk of collateral intrusion for this purpose.

Steps must be taken to avoid unnecessary collateral intrusion and minimise any necessary intrusion.

Those carrying out the investigation must inform the Authorising Officer of any unexpected interference with the privacy of individuals who are not covered by the authorisation as soon as these become apparent.

Where such collateral intrusion is unavoidable, the activities may still be authorised, provided the intrusion is considered proportionate to what is sought to be achieved.

8.5 Special consideration in respect of confidential information

Particular attention is drawn to areas where the subject of surveillance may reasonably expect a high degree of privacy e.g. where confidential information is involved.

Confidential information consists of matters subject to legal privilege, communication between a Member of Parliament and another person on constituency matters, confidential personal information or confidential journalistic material. (Sections 98-100 Police Act 1997).

8.6 Legal privilege

Generally, this applies to communications between an individual and his/her legal adviser in connection with the giving of legal advice in connection with or

in contemplation of legal proceedings. Such information is unlikely ever to be admissible as evidence in criminal proceedings.

If in doubt, the advice of Legal Services should be sought in respect of any issues in this area.

8.7 Confidential personal information

This is oral or written information held in (express or implied) confidence, relating to the physical or mental health or spiritual counselling concerning an individual (alive or dead) who can be identified from it. Specific examples provided in the codes of practice are consultations between a health professional and a patient, discussions between a minister of religion and an individual relating to the latterÕs **spiritual welfare** or matters of **medical or journalistic confidentiality.**

8.8 Confidential journalistic material

This is material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence.
It should be noted that matters considered to be confidential under RIPA may not necessarily be properly regarded as confidential under section 41 Freedom of Information Act.

Where confidential information as referred to in sections 8.4 to 8.5 is likely to be acquired, the surveillance may only be authorised by the Director of Business and should only be authorised where there are exceptional and compelling circumstances.

8.9 Authorisations must be in writing.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources (Amendment) Order 2012 amended the 2010 Order - see the new 7A which states that the serious crime threshold of investigating criminal offences with a sentence of at least six months imprisonment and those offences related to the underage sale of alcohol and tobacco apply.

8.10 Notifications to Inspector/Commissioner

The following situations must be brought to the Inspector/CommissionerÕs attention at the next inspection:

- where an officer has had to authorise surveillance in respect of an investigation in which he/she is directly involved;
- where a lawyer is the subject of an investigation or operation;
- where confidential personal information or confidential journalistic information has been acquired and retained.

8.11 Applications for CHIS

The application is the same as for directed surveillance except that the serious crime threshold of investigating criminal offences with a sentence of at least six months imprisonment does not apply. The authorisation must specify the activities and identity of the CHIS and that the authorised conduct is carried out for the purposes of, or in connection with, the investigation or operation so specified.

There are additional requirements in s29(5) relating to responsibility for dealing with the source and maintenance of records relating to the source.

All application forms must be fully completed with the required details to enable the Authorising Officer to make an informed decision.

In addition to the requirements of RIPA, the duties set out in the Source Records Regulations (S.I.2000/2725) must also be observed.

Please consult the Director of Business before taking any practical steps to authorise a CHIS.

8.12 Judicial Approval of authorisations

Once the Authorising Officer has authorised the directed surveillance or CHIS, the Investigating Officer who completed the application form should contact Legal Services who will arrange at hearing at the appropriate Magistratesô Court. A member of the Legal Services Team will accompany the Investigating Officer to present the application for approval by a Justice of the Peace. The hearing is a legal proceeding and therefore, if not represented by Legal Services, local authority officers need to be formally designated to appear.

The Investigating Officer or Authorising Officer will provide the Justice of the Peace with a copy of the original authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the Justice of the Peace and should contain all information that is relied upon.

In addition the Investigator will provide the Justice of the Peace with two copies of a partially completed judicial application/order form.

The hearing must be in private (unless the Court otherwise directs) and the officer will be sworn in and present evidence as required by the Justice of the Peace. Any such evidence should be limited to the information in the authorisation. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided.

The Justice of the Peace will consider whether he/she is satisfied that, at the time the authorisation was granted or renewed or the notice given or renewed, there was reasonable grounds for believing that the authorisation or notice was necessary and proportionate and whether that continues to be the case.

They will also consider whether the authorisation was given by the appropriate designated person at the correct level within the Council and whether (in the case of directed surveillance) the crime threshold has been met.

The Order Section of the above mentioned form will be completed by the Justice of the Peace and will be the official record of his/her decision. The Council will to retain a copy of the form after it has been signed by the Justice of the Peace.

The Justice of the Peace can:

(a) approve the Grant of or renewal of an Authorisation or Notice, which means the authorisation will then be effective.
(b) refuse to approve the Grant of Authorisation or Notice, which means that the authorisation will not take effect but the Council could look at the reasons for refusal, make any amendments and reapply for judicial approval.
(c) refuse to approve the Grant of Authorisation or renewal and quash the original authorisation. The Court cannot exercise its power to quash the authorisation unless the applicant has at least two business days from the date of the refusal to make representations.

Appeals

The Council may only appeal a Justice of the Peaceôs decision on a point of law by making an application for judicial review in the High Court. The Investigatory Powers Tribunal (IPT) will continue to investigate complaints by individuals about the use of the RIPA techniques by public bodies, including local authorities. If, following a complaint to them, the IPT finds fault with a RIPA authorisation or notice it has the power to quash the Justice of the Peaceôs order which approved the grant or renewal of the authorisation or notice.

8.13 Working in partnership with the police

Authorisation can be granted in situations where the police rather than the Council require the surveillance to take action, as long as the behaviour complained of meets all criteria to grant and in addition is also of concern to the Council. Authorisation cannot be granted for surveillance requested by the police for a purely police issue.

9. Duration and Cancellation

- An authorisation for **directed surveillance** shall cease to have effect (if not renewed) 3 months from the date the Justice of the Peace approves the grant.

- If renewed the authorisation shall cease to have effect 3 months from the expiry of the original authorisation.

- An authorisation for **CHIS** shall cease to have effect (unless renewed) 12 months from the date the Justice of the Peace approves the grant or renewal.

- An **oral** authorisation or renewal shall cease to have effect (unless renewed) 72 hours from the date of grant or renewal

This does not mean that the authorisation should be given for the whole period so that it lapses at the end of this time. The Authorising Officer, in accordance with s45 of the Act, must cancel each authorisation as soon as that officer decides that the surveillance should be discontinued. Authorisations should continue for the minimum period reasonable for the purpose they are given and in any event will not last longer than 3 months.

On cancellation the cancellation form should detail what product has been obtained as a result of the surveillance activity. The forms should include the dates and times of any activity, the nature of the product obtained and its format, any associated log or reference numbers, details of where the product is to be held and the name of the officer responsible for its future management. Documentation of any instructions to cease surveillance should be retained and kept with the cancellation form.

10. Reviews

The Authorising Officer should review all authorisations at intervals determined by him/her. This should be as often as necessary and practicable. **The reviews should be recorded.**

If the directed surveillance authorisation provides for the surveillance of unidentified individuals whose identity is later established, the terms of the authorisation should be refined at review to include the identity of these individuals.

Particular attention should be paid to the possibility of obtaining confidential information.

11. Renewals

If for any reason a Review is not carried out on time the authorisation may be cancelled. Notice of this cancellation must be given to the Authorising Officer immediately.

Any Authorised Officer may renew an existing authorisation on the same terms as the original at any time before the original ceases to have effect. The renewal must then be approved by a Justice of the Peace in the same way the original authorisation was approved. The process already outlined in section 8 above should be followed.

A CHIS authorisation must be thoroughly reviewed before it is renewed.

12. Central Register of authorisations

12.1 The Council must maintain the following documents:

- copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the Authorising Officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation and Order made by the Magistratesô Court together with supporting documentation submitted when the renewal was requested;
- the date and time when any instruction to cease surveillance was given;
- the date and time when any instruction was given by the Authorising Officer;

12.2. To comply with section 12.1 the Director of Business will hold the Central Register of all authorisations issued by an officer of the Council. A copy of every authorisation, renewal and cancellation issued should be lodged immediately with the Director of Business in an envelope marked ñPrivate and Confidentialò

Any original authorisations and renewals taken to the Magistratesô Court should be retained by the Council because the Court only keep copies of the authorisations or renewals.

12.3. The Council must also maintain a centrally retrievable record of the following information:

- type of authorisation
- date the authorisation was given
- date the Approval Order was given by the Justice of the Peace.
- name and rank/grade of the authorising officer
- confidential information
- self-authorisations
- unique reference number of the investigation/operation
- title (including brief description and names of the subjects) of the investigation/operation;
- reviews
- details of renewal

- dates of any Approval Order for renewal given by the Justice of the Peace.
- whether the investigation/operation is likely to result in obtaining confidential information
- date of cancellation

These records will be retained for at least **3 years** and will be available for inspection by the Office of Surveillance Commissioners.

13. Retention of records

The Council must ensure that arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed surveillance. The Authorising Officers, through their relevant Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 1998 and any relevant Codes of Practice relating to the handling and storage of material.

The Central Register of Authorisations will be kept securely in a locked cabinet in the Legal Services department.

14. Complaints procedure

14.1 The Council will maintain the standards set out in this guidance and the Codes of Practice. The Chief Surveillance Commissioner has responsibility for monitoring and reviewing the way the Council exercises the powers and duties conferred by RIPA.

14.2 Contravention of the Data Protection Act 1998 may be reported to the Information Commissioner. Before making such a reference, a complaint concerning a breach of this guidance should be made using the Council's own internal complaints procedure.

RIPA GUIDANCE – PART II

ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

Introduction

With effect from 5 January 2004, and in accordance with Chapter I of Part I of Regulation of Investigatory Powers Act (õthe Actõ), local authorities can authorise the acquisition and disclosure of õcommunications dataõprovided that the acquisition of such data is necessary for the purpose of **preventing or detecting crime or preventing disorder**; and proportionate to what is sought to be achieved by acquiring such data.

A link to the Home Office Code of Practice ï Acquisitions and Disclosure of Communications data is at Appendix G

The Protection of Freedoms Act 2012 made changes to the provisions under the Regulation of Investigatory Powers Act 2000 requiring the need for a local authority to seek judicial approval of the grant or renewal of an authorisation or of the giving or renewal of a notice.

NOTHING IN THIS CODE PERMITS THE INTERCEPTION OF THE CONTENT OF ANY COMMUNICATION.

The procedure is similar to that of authorisation for directed surveillance and CHIS but has extra provisions and processes.

The purpose and effect of the procedure is the same i.e. to ensure proper consideration is given to permitting such investigations and to provide protection against a human rights challenge.

The Authorising Officer is called a õDesignated Personõ

1. What is `Communication Data`?

Communications data is information relating to the use of a communications service e.g. postal service or telecommunications system. It is defined by Section 21(4) of the Act and falls into three main categories:

Traffic data - where a communication was made from, to whom and when
Service data ï use made of service e.g. Itemised telephone records
Subscriber data ï information held or obtained by operator on person they provide a service to.

Local authorities are restricted to subscriber and service use data and only for the purpose of preventing or detecting crime or preventing disorder.

2. Application Forms

The application form should be completed via the National Anti- fraud Network website at www.nafn.gov.uk. The National Anti-fraud Network SPoC Service (acting as SPoC for the Council), will assess and quality control the application. If it meets the legal threshold for obtaining communications data the SPoC will post it on the website for approval by the appropriate Designated Person.

This procedure necessitates the applicant to be registered with the National Anti-fraud Network prior to making the application. For details on how to do this the applicant should visit www.nafn.gov.uk.

If rejected, by the Designated Person or the SPoC, the SPoC will retain the application and inform the applicant in writing of the reason(s) for its rejection. Comprehensive guidance on the application process is also available via the National Anti-fraud Network website at www.nafn.gov.uk

3. Authorisations

Authorisations can only authorise conduct to which Chapter II of Part I of the Act applies.

In order to comply with the code, a Designated Person can only authorise the obtaining and disclosure of communications data if:

i) it is **necessary** for any of the purposes set out in Section 22(2) of the Act. (NB the Council can only authorise for the purpose set out in Section 22 (2) (b) which is the purpose of preventing or detecting crime or preventing disorder); and

ii) it is **proportionate** to what is sought to be achieved by the acquisition of such data (in accordance with Section 22(5) the Act)

Consideration must also be given to the possibility of collateral intrusion.

Once a Designated Person has decided to grant an authorisation or a notice is to given there are two methods:

1) By authorisation of some person in the same relevant public authority as the Designated Person, whereby the relevant public authority collects the data itself (Section 22(3) the Act). This may be appropriate in the following circumstances:

- the postal or telecommunications operator is not capable of collecting or retrieving the communications data,
- it is believed the investigation may be prejudiced if the postal or telecommunications operator is asked to collect the data itself,
- there is a prior agreement in place between the relevant public authority and the postal or telecommunications operator as to the appropriate mechanisms for the disclosure of communications data,

2) By notice to the holder of the data to be acquired (Section 22(4)) which requires the operator to collect or retrieve the data. Disclosure may only be required to either the Designated Person or the SPOC.

A service provider must comply with the notice if it is reasonably practicable to do so (s.22 (6)-(8)) and can be enforced to do so by civil proceedings.

The postal or telecommunications service can charge for providing this information.

There are standard forms for authorisations and notice which are available using the link provided at Appendix F.

4. Oral Authority

The Council is not permitted to apply or approve orally.

5. Duration

Authorisations and notices are only valid for one month beginning with the date on which the authorisation is granted or the notice given. A shorter period should be specified if possible.

6. Renewal and Cancellation

An authorisation or notice may be renewed at any time during the month it is valid using the same procedure as used in the original application. A renewal takes effect on the date which the authorisation or notice it is renewing expires.

The code requires that all authorisations and notices should be cancelled by the Designated Person who issued it as soon as it is no longer necessary, or the conduct is no longer proportionate to what is sought to be achieved. The relevant postal or telecommunications operator should be informed of the cancellation of a notice.

7. Retention of Records

Applications, authorisations and notices must be retained until the Council has been audited by the Commissioner (see paragraph 10).

Applications must also be retained to allow any Tribunal (see paragraph 10) to carry out its functions.

A record must be kept of:-

- the dates on which the authorisation or notice is started or cancelled,
- any errors that have occurred in the granting of authorisations or giving of notices.

A report and explanation of any errors must also be sent to the Commissioner as soon as is practicable.

Communications data, and all copies, extracts and summaries of it, must be handled and stored securely and the requirements of the Data Protection Act 1998 must be observed.

The Director of Business will maintain a centrally retrievable register.

10. Oversight and Complaints

The Act provides for an Interception of Communications Commissioner whose remit is to provide independent oversight of the use of the powers contained in Part I and the code requires any person who uses the powers conferred by Chapter II to comply with any request made by the Commissioner to provide any information he requires to enable him to discharge his functions.

The Act also establishes an Independent Tribunal to investigate and decide any case within its jurisdiction.

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

APPENDIX A

Directed Surveillance and CHIS Forms

S:\General Folder\RIPA\APPENDIX 1 - DS FORM.doc

S:\General Folder\RIPA\APPENDIX 2 - DIRECTED SURVEILLANCE review.doc

S:\General Folder\RIPA\APPENDIX 3 - DIRECTED SURVEILLANCE renewal.doc

S:\General Folder\RIPA\APPENDIX 4 - DIRECTED SURVEILLANCE cancellation.doc

S:\General Folder\RIPA\APPENDIX 5 - CHIS form.doc

S:\General Folder\RIPA\APPENDIX 6 - DIRECTED SURVEILLANCE review.doc

S:\General Folder\RIPA\APPENDIX 7 - CHIS RENEWAL FORM.doc

S:\General Folder\RIPA\APPENDIX 8 - CHIS CANCELLATION FORM.doc

S:\General Folder\RIPA\APPENDIX 9 - DS FORM with notes.doc

S:\General Folder\RIPA\APPENDIX 10 - Surveillance Risk Assess Pro Forma.doc

S:\General Folder\RIPA\APPENDIX 11 CHANGE OF CIRCUMSTANCES.doc

S:\General Folder\RIPA\APPENDIX 12 - Surveillance Control Matrix.doc

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

APPENDIX B

Home Office Guidance to Local Authorities in England
and Wales on the judicial approval process for RIPA
and the crime threshold for directed surveillance

https://www.gov.uk/government/publications/changes-to-local-authority-use-of-ripa

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

APPENDIX C

Home Office guidance for Magistrates` Courts in England and Wales for a local authority application seeking an order approving the grant or renewal of a RIPA authorisation or notice

https://www.gov.uk/government/publications/changes-to-local-authority-use-of-ripa

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

APPENDIX D

Home Office - Codes of Practice ï Covert Surveillance and Property Interference and Covert Human Intelligence Sources

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97960/code-of-practice-covert.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276013/CovertHumanIntelligenceSources.pdf

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

APPENDIX E

ROSSENDALE BOROUGH COUNCIL'S AUTHORISING OFFICERS

DIRECTOR OF BUSINESS

LEGAL SERVICES MANAGER

HEAD OF HEALTH, HOUSING AND REGENERATION

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

APPENDIX F

Forms - Communications Data

www.nafn.gov.uk

https://www.gov.uk/government/collections/ripa-forms--2

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

APPENDIX G

Home Office - Codes of Practice - Acquisition and Disclosure of Communications Data

https://www.gov.uk/government/publications/code-of-practice-for-the-acquisition-and-disclosure-of-communications-data