

Harlow District Council

Policy on Regulation of Investigatory Powers Act 2000

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Regulation of Investigatory Powers Act 2000 (RIPA) Policy

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Harlow District Council

Policy on Regulation of Investigatory Act 2000 (RIPA)

1. Purpose

The purpose of this policy is to explain the scope of RIPA as it applies to Harlow District Council (the Council), and the circumstances when it applies.

Guidance on the application process and forms to be used is issued separately and does not form part of this policy.

2. Introduction

RIPA came into force on 25 September 2000 the main purpose of the Act was to ensure that surveillance was carried out in compliance with the Human Rights Act 1998 which came into force 2 October 2000.

This policy sets out the Council's commitment to act lawfully in relation to the provisions of RIPA. The Council has issued separate guidance to assist officers when making applications or authorising applications for authorisation to use investigatory powers under RIPA. The guidance does not form part of this policy but sets out how officers are to make applications and which forms to use.

The principles in this policy are based on the Office of Surveillance Commissioners Procedures and Guidance: Oversight of arrangements for covert surveillance conducted by public authorities and to the activities of relevant sources issued December 2014.

Chapter 2 Part 1 RIPA as amended by the Protection of Freedoms Act 2012, introduced the requirement for approval of any authorised action under RIPA by a Justice of the Peace and the introduction of a crime threshold for directed surveillance.

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Orders 2010 SI 2010/521 and SI 2012/1500 restrict the local authority grounds under section 28(b) RIPA.

Officers should be aware of the scope and extent of activities covered by the Provisions of RIPA. In most cases investigations carried out by Council officers will not need authorisation as they are carried out overtly not covertly.

What RIPA does

It requires the prior authorisation and judicial approval of directed covert surveillance.

It prohibits the Council from carrying out intrusive surveillance.

It requires the prior authorisation and judicial approval of the conduct of Covert Human Intelligence Sources [CHIS].

It requires safeguards for the conduct and use of CHIS.

What RIPA does not do:

It does not:

- Make an unlawful act lawful.
- Make acts that are lawful unlawful.
- Prejudice existing powers available to the Council to obtain information by any means not involving conduct requiring authorisation under RIPA.
- Authorise the use of directed surveillance unless the crime threshold is met.

Powers which are regulated

- The interception of communications.
- The acquisition of communications data.
- Intrusive surveillance.
- Directed surveillance.
- Use of CHIS.
- Access to encrypted data.

The Council **is not** allowed to intercept record or otherwise monitor the content of communications data.

The Council **may** obtain communications data relating to service use information and subscriber information.

The Council **is not** permitted to carry out intrusive surveillance.

Part II RIPA

The purpose of Part II is to regulate the use of surveillance methods and safeguard the public from unnecessary invasions of privacy.

Compliance with Part II will ensure that the Human Rights Act 1998 is not breached and affords the Council protection from legal challenge.

3. Applications for authorisation

Applications for authorisation must be made to a designated authorised officer; detailed guidance on the procedure to be followed is issued separately to this policy.

The officer applying for authorisation must be different from the authorising officer.

4. Authorisations

RIPA provides the statutory mechanism for authorising certain types of surveillance and information gathering. RIPA safeguards the public from undue interference from a public authority, by balancing the public interest in carrying out surveillance against the rights of the individual not to have their rights infringed unless it is necessary and proportionate to do so.

By following the authorisation procedures the Council will protect itself from legal challenges of infringement of Article 8 and Article 6 of the Human Rights Act 1998.

An Authorising Officer shall not grant authorisation for carrying out of directed surveillance unless s/he believes:

- The action is necessary and proportionate.
- The criminal offence[s] is punishable on summary conviction or indictment of six months in prison or
- The criminal offence[s] relates to underage sale of alcohol or tobacco
- Necessary for the prevention or detection of crime or disorder.
- The authorised surveillance is proportionate

The first three points only apply to Directed Surveillance.

The Authorising Office may authorise a CHIS if they believe it is necessary and proportionate s29(3) RIPA.

Authorising Officers must be satisfied that the authorisation is necessary and proportionate in all cases.

Activity that should be authorised but which is not should be reported to the Chief Surveillance Commissioner in writing as soon as the error is recognised. An initial email should be sent followed by a report. This does not apply to covert surveillance that the Authorising Officer believes does not meet the statutory criteria.

Once authorised by an Authorised Officer an application must be made to a Justice of the Peace prior to the authorised activity taking place.

5. Tribunal and scrutiny

Since 1 November 2012 the Council has to obtain an order from a Justice of the Peace prior to carrying out any covert surveillance. A decision of a Justice of the Peace can only be challenged on a point of law.

The Office of Surveillance Commissioners [OSC] has been established to oversee and monitor compliance with RIPA by local authorities. The OSC will inspect local authority registers and compliance every three years.

RIPA also established an Independent Tribunal to hear complaints of victims of directed surveillance. The Tribunal can order quashing or cancellation of an authority or warrant; destruction of records obtained using a warrant or authority or destruction of information held by the Council relating to any person. The Council, on request, has a duty to disclose all documentation to the Tribunal.

6. Benefits

RIPA states if the authorisation is given to engage in certain approved conduct including applying for Judicial approval, if the conduct is that which is authorised then that conduct is lawful.

Following the correct procedure as laid out in the Council's Guidance will therefore afford the Council a defence if challenged.

Material obtained under properly conducted authorised covert surveillance is admissible in Court as evidence.

7. Statutory definitions

“**surveillance**” includes:

- Monitoring, observing, listening, following, watching people their conversations or their other activities or communications
- Recording any of the above activities
- Surveillance by or with the assistance of appropriate surveillance devices

Overt surveillance:

Is when there is nothing secretive, clandestine or hidden about the surveillance to be carried out. If there is sufficient signage to inform people, or the person has been told that they will be subject to surveillance for example environmental health and noise, then surveillance will be overt. Overt surveillance does not require authorisation by RIPA.

However there may be instances when Overt surveillance becomes Covert surveillance for example befriending someone on Facebook or social media. An officer of the Council should not set up an on line account in a false name for the purpose of surveillance without prior authorisation, nor should they adopt the identity of someone known or likely to be known to the subject or of a person who could be of interest to the users of an on line site without prior authorisation [see page 68 OSC Procedures and Guidance for further information]. Where for example a Planning enforcement officer makes repeated visits to a site regarding enforcement without the knowledge of the person this may amount to systematic surveillance, that will need prior authorisation. The use of binoculars or cameras to reinforce normal sensory

perception does not require authorisation under RIPA as long as the systematic surveillance of an individual does not take place.

Covert surveillance:

Is carried out in manner calculated to ensure that the person subject to the surveillance is unaware that it is taking place or it may take place. RIPA requires the authorisation of both **directed** and **intrusive surveillance**.

Directed Surveillance under RIPA is surveillance which:

- Is covert and
- Is not intrusive surveillance [the Council cannot by law carry out intrusive surveillance]
- Is not carried out due to events that by their nature would prevent prior authorisation being obtained
- Is for a specific investigation or operation
- Is likely to obtain private information about an individual whether targeted or not.

Private information:

Is any information about a person relating to their private or family life, their home or their correspondence. Even if the covert surveillance is at a business premises private information may be obtained.

For example CCTV signposted in public spaces will not normally require authorisation however if the camera is to be used to target specific persons or areas for a specific purpose then authorisation will be needed.

Other examples include

- following an individual over a period of time either physically or on line to establish if they are committing benefit fraud.
- Test purchases if a hidden camera or recording device is used.

Surveillance that is needed for an immediate response does not require authorisation however any investigation that results from the immediate response will.

Intrusive surveillance:

MUST NOT BE CARRIED OUT BY COUNCIL STAFF.

- Is covert
- Involves a residential premise [this does not include communal areas] or private vehicle
- Involves the presence of a person in the residence or vehicle or is carried out by a surveillance device in the residence or vehicle.

Intrusive surveillance can only be carried out by the police or other law enforcement agencies.

Covert Human Intelligence Source [CHIS]:

Is a person with whom a relationship is established or maintained for the covert purpose of obtaining information or providing access to information for another person or covertly discloses information obtained during the relationship or as a consequence of the relationship.

Authorising officer:

These are specified as being assistant Chief Officers and more senior officers, assistant heads of service, service managers or equivalent responsible for the management of the investigation. The Authorising Officers are set out below:

Head of Paid Service

Chief Operating Officer

Heads of Service

Applicant officer:

Is an Officer of the Council who make the application for RIPA authorisation.

Crime Threshold:

The purpose of the Authorisation is for the prevention or detection of crime which either carries a maximum sentence of at least six months imprisonment or an offence relating to the sale of alcohol or tobacco products to minors.

8. When RIPA applies

Where there is directed covert surveillance of an individual or individuals for the prevention or detection of crime.

When overt surveillance becomes systematic surveillance directed at an individual or individuals.

When CCTV cameras are used to survey a particular person or group[s] of individuals may require authorisation from the police.

It will not normally apply to the ordinary business of the Council for example in employment matters unless it authorised to prevent fraud or criminal activity.

9. Working with other agencies

A person who is not an employee of the Council but is authorised to undertake covert surveillance on behalf of the Council, whether a private contractor or a person from another local authority acts as the Council's agent. The policy of the Council is to obtain written confirmation from such third-party agents that they will conform to the requirements in the authorisation.

10. Training

The Head of Governance will be responsible for ensuring that all relevant officers in the Council are properly trained.

11. Central Register and Records

A central register of all authorisations including applications for judicial approval will be held by the Head of Governance. The contents of the forms and authorisations will be monitored to ensure that they comply with RIPA.

12. Responsibilities

The Head of Governance will:

- ensure that there is compliance with RIPA, this policy, the guidance and legislation
- Engage with and meet with the Commissioner when inspections are due [every three years].
- Oversee any post-inspection action recommended by the Commissioner

13. Overview and Scrutiny of this Policy

This Policy will be reviewed and where necessary amended, at least yearly.

The Policy and any amendments on review will be approved by Head of Governance.

Elected Councillors will not be involved in any decision[s] made on specific authorisations granted.