

## **Appendix A**



### **POLICY DOCUMENT ON THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)**

### **DIRECTED SURVEILLANCE AND USE OF COVERT HUMAN INTELLIGENCE SOURCES**

**Policy approved by CABINET  
on**

**[ ] July 2017**

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# **REGULATION OF INVESTIGATORY POWERS ACT 2000 POLICY IN RELATION TO DIRECTED SURVEILLANCE AND USE OF COVERT HUMAN INTELLIGENCE SOURCES**

## **1 INTRODUCTION**

- 1.1 The Regulation of Investigatory Powers Act 2000 (the Act) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
- 1.2 Hertfordshire County Council (we, us) is included within the Act's framework with regard to the authorisation of both Directed Surveillance and of the use of Covert Human Intelligence Sources (CHIS).
- 1.3 Whilst the Act also regulates acquisition and disclosure of communications data, Directed Surveillance and of the use of CHIS are overseen by the Chief Surveillance Commissioner (the Commissioner). The Commissioner does not oversee acquisition and disclosure of communications data. This policy therefore only relates to the part of the Act that is the responsibility of the Commissioner.
- 1.4 This policy applies to the both the authorisation of Directed Surveillance and of the use of Covert Human Intelligence Sources (CHIS).
- 1.5 The Home Office publish codes of practice pursuant to section 71 of the Act for Directed Surveillance and of the use of Covert Human Intelligence Sources ("CHIS"). This policy should be read in conjunction with current guidance issued by the Home Office and the Chief Surveillance Commissioner which can be found at <https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice>
- 1.6 In summary the Act requires that when the Council undertakes "directed surveillance" or uses a "covert human intelligence source" these activities must only be authorised by an Officer with delegated powers when the relevant criteria are satisfied.
- 1.7 It must be noted that the Council cannot authorise "Intrusive Surveillance" which is defined in the legislation. That relates to surveillance in residential properties or private vehicles.
- 1.8 The Investigatory Powers Act received Royal assent on 29 November 2016 and when it comes in to force this Policy will be updated.

## **2 ROLES**

2.1 The legislation creates a number of roles:

2.2 The Senior Responsible Officer ensures the integrity of the process within the Local Authority, compliance with the Act and the Code of Practice, oversight of the reporting of errors to the Commissioner, engagement with the inspectors when they conduct inspections and where necessary oversight of the implementation of post-inspection action plans. The Senior Responsible Officer is the Chief Legal Officer of Hertfordshire County Council.

2.3 The Senior Authorising Officer is the Deputy Director of Community Protection who has overall responsibility for RIPA issues across the Council and holds the Central Register of Authorisations.

2.4 Each of the Council Service's Scheme of Delegations can nominate at least one officer who can authorise "directed surveillance" and the use of "covert human intelligence sources" (Authorising Officers). The prescribed Local Authority officers who may be Authorising Officers must hold the rank of a director, head of service or service manager or equivalent. For Hertfordshire Fire and Rescue Service the prescribed officer is a group manager. The Authorising Officers are currently all officers within the Community Protection Directorate and the Senior Authorising Officer holds the current list.

2.5 The prescribed Local Authority officer who may authorise surveillance activity when knowledge of confidential information is likely to be acquired, or in the case of a CHIS when a vulnerable individual or juvenile is to be used as a source, is the Head of Paid Service or a person acting in their absence. The Head of Paid Service for Hertfordshire County Council is the Chief Executive.

2.6 Confidential Information relates to medical records or spiritual counselling, confidential journalistic material, confidential discussions between Members of Parliament and their constituents, or matters subject to legal privilege.

## **3 PURPOSE**

3.1 The Act prescribes the purpose for which we can authorise Directed Surveillance and of the use of a CHIS. We will comply with those requirements.

3.2 The only purpose for which we can authorise Directed Surveillance or the use of a CHIS is for the purpose of preventing or detecting crime or of preventing disorder. For Directed Surveillance authorisation is restricted to investigation of offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of

alcohol or tobacco. The Fire and Rescue service may also authorise directed surveillance in the interests of public safety.

- 3.3 Internal disciplinary investigations do not come within the scope of this policy unless we are investigating a criminal breach. If that is the case, the processes within this policy must be followed.

## **4 SCOPE**

- 4.1 Definitions are given in the legislation and codes of practice. The following is a brief guide only and are not complete definitions.
- 4.2 If directed surveillance is undertaken then authorisation is required. Surveillance includes monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication by recording anything monitored, observed or listened to in the course of surveillance
- 4.3 Covert surveillance is any surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.
- 4.4 Directed surveillance is covert but not intrusive surveillance undertaken for the purposes of a specific investigation in such a manner as is likely to result in the obtaining of private information about a person (whether or not one is specifically identified for the purposes of the investigation or operation).
- 4.5 Directed surveillance does not include covert surveillance carried out by way of an immediate response to events or circumstances which, by their very nature, could not have been foreseen. For example, a Trading Standards Officer would not require an authorisation to conceal them self and observe a suspicious person that they came across in the course of a visit to a trader. However, if as a result of that a specific investigation subsequently takes place then it would be within the framework of the 2000 Act.
- 4.6 If a Covert Human Intelligence Source is used then authorisation is required.
- 4.7 A person is a Covert Human Intelligence Source if he/she establishes or maintains a personal or other relationship with a person for the covert purpose and they covertly uses such a relationship to obtain information or to provide access to any information to another person; or they covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.
- 4.8 A purpose is covert, in relation to the establishment or maintenance of a relationship, if and only if the relationship is conducted in a manner that is

calculated to ensure that the other party to the relationship is unaware of that purpose.

4.9 The use of a CHIS can include inducing, asking or assisting a person to engage in the conduct of a CHIS or obtain information by using that CHIS.

4.10 Where members of the public volunteer information to the Council, as part of their normal civic duties, they would not generally be regarded as a CHIS. However, a member of the public may become a CHIS if he provides information on more than one occasion or has been asked or assisted by a Council Officer to provide information.

## **5 CONSIDERATIONS**

5.1 Authorisation and renewal is a 2 stage process. The first being the internal authorisation, which if successful then has to go before a court for judicial approval.

5.2 The Authorising Officer will need to be made aware of particular sensitivities in the local community with respect to the activities authorised and the purpose of the investigation. In addition, as required by the legislation they must have regard to whether the acquisition is necessary and proportionate and the degree, if any, of interference with the privacy of persons other than the direct subject(s) of the application.

5.3 No Authorising Officer shall grant an authorisation for the conduct or use of a CHIS unless he believes arrangements exist for ensuring:

5.3.1 that there will at all times be a person who will have day-to-day responsibility for dealing with the CHIS on behalf of the Council, and for the CHIS's security and welfare which will normally be the investigating Officer

5.3.2 that there will at all times be another person who will have general oversight of the use made of the CHIS which will normally be the Authorising Officer

5.3.3 the investigating Officer will have responsibility for maintaining a record of the use made of the CHIS

5.3.4 that the records that disclose the identity of the CHIS will only be available for access to those Officers deemed necessary

5.4 The Authorising Officer must consider the safety and welfare of a CHIS, and the foreseeable consequences to others of the tasks they are asked to carry out. The Authorising Officer must ensure a risk assessment has been carried out before authorisation is given. Consideration from the start for the safety and welfare of the CHIS, even after cancellation of the authorisation, should also be considered. In practice this means that the authorisation of a CHIS by HCC will only take place in exceptional

circumstances, or not at all. **The Senior Authorising Officer must be consulted before a CHIS authorisation is to take place.**

- 5.5 Additional safeguards contained in Regulation of Investigatory Powers (Juveniles) Order 2000 SI No. 2793 apply to a CHIS under the age of 18 years. Only Trading Standards investigations are likely to require the use of CHIS's under the age of 18. Such use must be authorised by the Head of Paid Service or a person acting in their absence.
- 5.6 Once the internal process is approved a duly authorised officer within HCC (usually an appropriate officer within Trading Standards) will request the judicial approval.
- 5.7 Further guidance is available from the procedure: Procedure Document on the Regulation of Investigatory Powers Act 2000 (RIPA) – Directed Surveillance and Use Of Covert Human Intelligence Sources. This document can be found on the intranet.

## **6 FORMS AND KEEPING OF RECORDS**

- 6.1 The Senior Authorising Officer shall be responsible for ensuring the authority has the appropriate forms and records to comply with the requirements of the legislation and code. The Senior Authorising Officer is responsible for retaining and keeping secure the Central Register of Authorisations.
- 6.2 Whatever the nature of the decision taken by the Authorising Officer it should be confirmed in writing with reasons for the decision.
- 6.3 Authorising Officers must ensure that the relevant details of each authorisation are sent to the Senior Authorising Officer as soon as practicable and within 5 working days.
- 6.4 Authorising Officers are responsible for ensuring that authorisations undergo timely reviews and are cancelled promptly after the authorised activity is no longer necessary.

## **7 COMPLAINTS**

- 7.1 The Authority's complaints procedure applies to complaints about activities within the scope of this policy.
- 7.2 The Act establishes an independent Tribunal, called the Investigatory Powers Tribunal that has full powers to investigate and decide on any case within its jurisdiction.

## **8 SCRUTINY**

- 8.1 This policy must be examined by Members on a yearly basis and approved as fit for purpose.