

**Committee:** FULL COUNCIL  
**Date:** 14 October 2003  
**Agenda Item No:** 9  
**Title:** Regulation of Investigatory Powers Act 2000  
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### **Summary**

- 1 This report advises Members of the impact of the Regulation of Investigatory Powers Act 2000 ("RIPA") and recommends a Corporate Policy for adoption.

### **Background**

- 2 Article 8 Schedule 1 Human Rights Act 1998 provides that everyone shall be entitled to respect for his private and family life, his home and correspondence. Covert investigations into a persons activities may breach this principal. However such investigations are sometimes necessary for the detection of crime or the prevention of anti-social behaviour.
- 3 Article 8 does permit interference with the right to privacy for these purposes providing that the interference is in accordance with law. In order to give legitimacy to covert investigations for permitted purposes RIPA was passed.
- 4 RIPA sets out the basis upon which covert surveillance can be authorised. It is supplemented by Codes of Practice published by the Home Office and approved by Parliament. The operation of RIPA is overseen by the Office of Surveillance Commissioners who also publish guidance for those affected by the Act. Part of that guidance is that all local authorities should have a corporate policy for the application of RIPA.
- 5 As part of its monitoring process the Office of Surveillance Commissioners arranges visits of local authorities by Deputy Surveillance Commissioners (who are circuit judges).
- 6 This Council received a visit from a Deputy Surveillance Commissioner, His Honour Dr Kolbert, on 15 August 2003. The visit was pre-arranged and in anticipation of the same officers drafted a Corporate Code of Practice and departmental Codes for those services which may from time to time use covert surveillance. Copies of all the Codes were sent to Dr Kolbert in advance of the visit.
- 7 During the visit Dr Kolbert made a few helpful suggestions and these have been incorporated into the Draft Codes. Dr Kolbert's report has now been received. Subject to Dr Kolbert's minor comments the training provided and

the practices and procedures set out in the draft Codes of Practice were described as “particularly commendable”. The draft Corporate Code of Practice is attached at Appendix 1

RECOMMENDED that Members adopt the Draft Code of Practice as the Councils Corporate Policy on the application of the Regulation of Investigatory Powers Act 2000

Background Papers: Home Office Code of Practice  
Report of the Deputy Surveillance Commissioner

**Uttlesford District Council Corporate Policy - The Regulation of Investigatory Powers Act 2000**

**1 Purpose**

- 1.1 This is the corporate policy of Uttlesford District Council for the implementation of the Regulation of Investigatory Powers Act 2000 (RIPA) when conducting investigations requiring directed surveillance as defined by the Act or investigations requiring the use of a covert human intelligence source.
- 1.2 THE EVIDENCE GATHERED FROM SURVEILLANCE OPERATIONS IS ADMISSIBLE IN BOTH CIVIL AND CRIMINAL COURTS. THEREFORE, ANY BREACH OF RIPA COULD MEAN THE EVIDENCE IS INADMISSIBLE IN COURT. ANY SURVEILLANCE NOT PROPERLY AUTHORISED COULD ALSO LEAD TO A CHALLENGE AND/OR CLAIM FOR COMPENSATION UNDER ARTICLE 8 OF THE HUMAN RIGHTS ACT.

**2 Background**

- 2.1 The Regulation of Investigatory Powers Act 2000 came into force in September 2000 following the introduction of Human Rights Legislation. From this date surveillance activity and the use of covert human intelligence sources must be in accordance with the RIPA Part II (surveillance and covert human intelligence sources) and the Home Office Code of Practice.
- 2.2 The purpose of RIPA is to ensure that the relevant investigatory powers are being used in accordance with the other legislation including the Human Rights Act. RIPA provides agencies with specific powers and defines how these should be used.
- 2.3 The Department for Work and Pensions have published guidance on the use of RIPA. This guidance can be found in circulars F20/2001. Codes of Practice for surveillance and use of covert human intelligence sources have also been made under s.71 of the Act and can be accessed at [www.homeoffice.gov.uk/ripa/covhis.htm](http://www.homeoffice.gov.uk/ripa/covhis.htm)
- 2.4 The overall rules and procedures that are to be followed are in sections 3 - 5. Each Department must produce their own detailed, written procedures. These will form part of this corporate policy.

**3 Surveillance**

- 3.1 RIPA basically means that any surveillance operation must be properly administered, that proper effective controls must be in place and it is the duty of senior management to authorise surveillance operations. Without this level of Authorisation the Local Authority could be in breach of the Act. This would mean any investigation involving surveillance may be inadmissible in Court.
- 3.2 Surveillance is usually a last resort that an investigator will utilise to prove or disprove an allegation. In order to use covert surveillance the objective (evidence gathering)

must be proportionate to the activity being investigated. This involves balancing the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. 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. Covert surveillance will only be undertaken where there is no reasonable and effective alternative means of achieving the desired objective. No activity shall be undertaken within the definition of intrusive surveillance. Surveillance is defined in Appendix 1.

- 3.3 All surveillance covered by the Act must be authorised. A senior member of staff, not involved in the investigation must take responsibility for authorising all surveillance operations.
- 3.4 All requests for surveillance must be completed on Council designated forms for this purpose. This includes authorisations, cancellations, and re-authorisations. All documents must be treated as strictly confidential and sections must make appropriate arrangements for their retention, security and destruction in accordance with the Data Protection Act 1998.
- 3.5 All surveillance operations must be monitored and reviewed at appropriate stages.
- 3.6 Surveillance will only be undertaken by trained or experienced employees or by employees under the direct supervision of trained or experienced employees.
- 3.7 The use and extent of covert surveillance shall not be excessive. It must be in proportion to the significance of the matter being investigated. There shall be **NO** intrusive surveillance. The Council does not have the legal powers necessary to enable such surveillance to be carried out.
- 3.8 Reasonable steps must be taken to minimise or avoid the acquisition of information that is not directly necessary for the purposes of the investigation being carried out.

#### **4 Covert Human Intelligence Sources**

- 4.1 Similarly RIPA means that the use of covert human intelligence sources must be properly administered, that proper effective controls must be in place and it is the duty of senior management to authorise the used of covert human intelligence sources. Without this level of Authorisation the Local Authority could be in breach of the Act. This would mean any evidence gained from a covert human intelligence source may be inadmissible in Court.
- 4.2 The use of a covert human intelligence source is also a last resort that an investigator will utilise to prove or disprove an allegation. In order to use a covert human intelligence source the objective (evidence gathering) must be proportionate to the activity being investigated. Covert human intelligence sources will only be used where there is no reasonable and effective alternative means of achieving the desired objective. A covert human intelligence source is defined in Appendix 1
- 4.3 The evidence gathered from covert human intelligence sources is admissible in both Civil and Criminal courts. Therefore, any breach of RIPA could mean the evidence is inadmissible in court. Any unauthorised use of a covert human intelligence source could also lead to a challenge and/or claim for compensation under Article 8 of the Human Rights Act.

- 4.4** All use of covert human intelligence sources covered by the Act must be authorised. A senior member of staff, not involved in the investigation must take responsibility for authorising the use of covert human intelligence sources.
- 4.5** All requests for the use of a covert human intelligence source must be completed on Council designated forms for this purpose. This includes authorisations, cancellations, and re-authorisations. All documents must be treated as strictly confidential and sections must make appropriate arrangements for their retention, security and destruction in accordance with the Data Protection Act 1998.
- 4.6** The use of a covert human intelligence source must be monitored and reviewed at appropriate stages.
- 4.7** Contact with covert human intelligence sources will only be with trained or experienced employees or by employees under the direct supervision of trained or experienced employees.
- 4.8** The use and extent of covert human intelligence sources shall not be excessive. It must be in proportion to the significance of the matter being investigated.
- 4.9** Reasonable steps must be taken to minimise or avoid the acquisition of information that is not directly necessary for the purposes of the investigation being carried out.

## **5 Authorisations**

- 5.1** In order for Authorisations to be granted specific criteria have to be satisfied, namely, that the person granting the authorisation believes that:
- the authorisation is necessary on specific grounds; and
- the authorised activity is proportionate to what is sought to be achieved by it.
- 5.2** The specific grounds are further defined as:
- in the interests of national security;
  - for the purpose of preventing or detecting crime or preventing disorder;
  - in the interests of the economic well-being of the United Kingdom;
  - in the interests of public safety;
  - for the purpose of protecting public health; or
  - for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department.
- 5.3** Before any operation involving the use of directed surveillance or a covert human intelligence source is commenced the Investigation Officer will discuss with the Investigation Manager all intelligence gathered to that point on the case and from this discussion a plan of action will be formulated. Initially in the case of surveillance the planning and preparation stage which will be carried out is working out vantage

points and possible entrance and exit routes before the formal request is made. If anything significant occurs during this stage then urgent oral authorisation will be sought.

- 5.4** Authorisations are governed by a time limit. For covert surveillance this is 3 months from the date upon which they are signed. For the use of a covert human intelligence source it is 12 months from the date it is signed. Authorisations may not be post dated. No surveillance may be carried out nor may a covert human intelligence source be used pursuant to an authorisation after it has expired unless it is renewed. Verbal authorisations have a time limit of 72 hours. No covert surveillance may be carried out nor may a covert human intelligence source be used pursuant to a verbal authorisation after it has expired unless it is renewed.
- 5.5** When the surveillance has been completed or the purpose for which the covert human intelligence source was used has been fulfilled or appears unlikely to be capable of being fulfilled the authorisation must be cancelled.
- 5.6** Surveillance and the use of covert human intelligence sources must only continue for as long as necessary. If at any stage in the investigation surveillance or the use of a covert human intelligence source becomes no longer necessary the authorisation for such surveillance must be cancelled.
- 5.7** No authorisation shall be given for the use of a covert human intelligence source unless the authorising officer is satisfied that satisfactory arrangements are in place for ensuring:
- that there will at all times be a person holding an office or position within the Council with day to day responsibility for dealing with the source and for the source's security and welfare
- that there will at all times be another person holding an office or position within the Council who will have general oversight of the use made of the source
- that there will at all times be a person holding an office or position within the Council with day to day responsibility for keeping a record of the use made of the source
- that the records relating to the source contain the information set out in Appendix 2
- that records referring to the identity of the source are not made available to persons except to the extent that there is a need for such persons to have access to them
- 5.8** Authorisations may only be given by officers holding the rank of Assistant Chief Officer (or above) or an officer responsible for the management (but not conduct) of an investigation. Authorisations for surveillance which may involve the acquisition of confidential information may only be signed by the Chief Executive or a director. "Confidential information" is defined in Appendix 1

## **6. Monitoring of Authorisations**

- 6.1** A copy of each authorisation will be forward under confidential cover to the Internal Audit Manager for maintenance of a central record of all current and past authorisations and for monitoring purposes. These records must be retained in strict confidence.

- 6.2** All authorisations are open to being independently vetted and verified by the Office of Surveillance Commissioners.
- 6.3** Complaints concerning breaches of the code may be made to the Monitoring Officer of the Council.

## **7 Training**

The Council will ensure that all officers who are:

likely to engage in investigations where they may need to engage in directed surveillance or need to use covert human intelligence sources

likely to be required to give authorisations for such investigations

will be involved in maintaining the central record of authorisations and monitoring the grant of authorisations

receive appropriate training in the operation of RIPA to enable them to perform their functions in accordance with the provisions of the Act and the relevant Codes of Practice

**“Covert Surveillance”** is defined as:

Monitoring, observing, listening to persons, their movements their conversations or their other activities or communications.

Recording anything monitored, observed or listened to in the course of surveillance.

Surveillance by or with the assistance of a surveillance device.

where such activities are carried out in a manner that is calculated to ensure that persons who are the subject of the surveillance are unaware that it is or maybe taking place.

**Surveillance is further divided under the RIPA Act into two types “directed” or “intrusive”**

**“Directed Surveillance”** is defined as:

Surveillance which is covert, but not intrusive and is undertaken:

For the purpose of a specific investigation -

In such a manner as is likely to result in the obtaining of private information about the person (whether or not one specifically identified or the purpose of an investigation).

Otherwise than by way of nature of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this part to be sought for the carrying out of surveillance

**“Intrusive Surveillance”** is defined as:

Covert surveillance that:

Is carried out in relation to anything taking place on any residential premises or in any private vehicle an

Involves the presence of an individual on the premises or in the vehicle or is carried out by means of surveillance.

Surveillance is not intrusive to the extent that it:

Is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle

Surveillance which is carried out by means of a surveillance device in relation to anything taking place on residential premises or in the vehicle

Is carried out without that device being present on the premises or in the vehicle

**UNDER NO CIRCUMSTANCES MAY COUNCIL OFFICERS CARRY OUT INTRUSIVE SURVEILLANCE AS DEFINED ABOVE. THE COUNCIL DOES NOT HAVE THE LEGAL POWERS NECESSARY TO ENABLE SUCH SURVEILLANCE TO BE CARRIED OUT.**

**The Key issue in “Directed Surveillance” is the targeting of an individual with the intention of gaining private information**



**“Confidential information”** is information subject to professional legal privilege, information held in confidence relating to the physical or mental health or spiritual counselling concerning an individual (whether living or dead) who can be identified from it or journalistic material including material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

**A “covert human intelligence source”** is defined as:

a person who establishes or maintains a personal or other relationship with another person for the covert purpose of:

using such relationship to obtain information or to provide access to any information to another person or

covertly disclosing information obtained by the use of such a relationship or as a result of the existence of such a relationship

where the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of its purpose or (in the case of disclosure of information) it is disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the disclosure in question.

## Appendix 2

The following matters are matters particulars of which must be included in the records relating to each covert human intelligence source:

- (a) the identity of the source;
- (b) the identity, where known, used by the source;
- (c) any relevant investigating authority other than the Council
- (d) the means by which the source is referred to within each relevant investigating authority;
- (e) any other significant information connected with the security and welfare of the source;
- (f) any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source;
- (g) the date when, and the circumstances in which, the source was recruited;
- (h) the identities of the persons who, in relation to the source, are discharging or have discharged the functions of day to day dealings with the source, the oversight of the use of the source and the person responsible for keeping records of the use of the source;
- (i) the periods during which those persons have discharged those responsibilities;
- (j) the tasks given to the source and the demands made of him in relation to his activities as a source;
- (k) all contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
- (l) the information obtained by each relevant investigating authority by the conduct or use of the source;

- (m) any dissemination by that authority of information obtained in that way;  
and
  
- (n) in the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.