



## **BROMSGROVE DISTRICT COUNCIL**

### **EXECUTIVE CABINET - SPECIAL MEETING**

WEDNESDAY, 17TH AUGUST 2005  
AT 6.00 P.M.

COMMITTEE ROOM, THE COUNCIL HOUSE, BURCOT LANE, BROMSGROVE

MEMBERS: Councillors D. C. Norton (Executive Leader), Mrs. M. M. T. Taylor (Deputy Executive Leader), B. L. Fuller C.B.E. Q.F.S.M., Mrs. J. M. L. A. Griffiths, R. Hollingworth and P. J. Whittaker

### **AGENDA**

Council Agendas and Minutes are available on our website at [www.bromsgrove.gov.uk/meetings](http://www.bromsgrove.gov.uk/meetings)

1. To receive apologies for absence and notification of substitutes
2. Declarations of Interest
3. To confirm the Minutes of Meetings of the Executive Cabinet held on 20th July 2005 and 27th July 2005
4. Public Questions
5. Regulation of Investigatory Powers Act Policy
6. To consider any other business, details of which have been notified to the Head of Administrative Services prior to the commencement of the Meeting and which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next Meeting
7. To consider, and if considered appropriate, to pass the following resolution to exclude the public from the Meeting during the consideration of item(s) of business containing exempt information:-

"RESOLVED: that under Section 100A(4) of the Local Government Act 1972, the public be excluded from the Meeting during the consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part I of Schedule 12A to the Act, the relevant paragraph of that part being as set out below:-

<u>Item No.</u>	<u>Paragraph(s)</u>
8	1

8. Management Restructuring

S. NIXON  
Chief Executive

The Council House  
Burcot Lane  
BROMSGROVE  
Worcestershire  
B60 1AA

22nd July 2005

# **BROMSGROVE DISTRICT COUNCIL**

## **MEETING OF THE EXECUTIVE CABINET**

Wednesday, 20th July 2005 at 6.00 p.m.

PRESENT: Councillors D. C. Norton (Executive Leader), Mrs. M. M. T. Taylor (Deputy Executive Leader), Mrs. J. M. L. A. Griffiths, R. Hollingworth and P. J. Whittaker.

Observers: Councillors M. H. Gill, P. M. McDonald, N. Psirides J.P. and S. P. Shannon.

### 40/05 **APOLOGIES**

An apology for absence was received from Councillor B. L. Fuller C.B.E. Q.F.S.M.

### 41/05 **MINUTES**

The Minutes of the Meeting of the Executive Cabinet held on 22nd June 2005 were submitted.

**RESOLVED:** that the Minutes of the Meeting be approved and confirmed as a correct record.

### 42/05 **MEMBER DEVELOPMENT WORKING GROUP**

The Minutes of the Member Development Working Group held on 28th June and 18th July 2005 were submitted.

**RESOLVED:**

- (a) that the Member Development Strategy be approved subject to the comments set out in Minute No. 16/05;
- (b) that the remainder of the minutes be noted.

### 43/05 **MOTIONS REFERRED FROM COUNCIL UNDER COUNCIL PROCEDURE RULE 10**

(a) Pathway by ASDA

Councillors S. P. Shannon and P. M. McDonald spoke in support of the motion which referred to the risk of injury to pedestrians and employees of ASDA arising from the practice of using the pathway that ran alongside the entrance to ASDA for the loading and unloading of 44 tonne heavy goods vehicles, and which called upon the Council to form a cross party group to carry out an investigation into the matter.

An officer report in connection with the motion was submitted.

The Portfolio Holder for Community Services and Strategic Housing referred to the barrier which had now been erected. He also advised that the practice of loading and unloading heavy goods vehicles on the car park had now ceased and that there had been no incidents where public safety had been compromised.

**RESOLVED:**

- (a) that in view of the steps already taken, no action be taken with regard to the proposal to set up a cross party group;
- (b) that the Head of Legal Services investigate the status of the pathway and confirm the outcome in writing to Councillor Shannon.

(b) Avoncroft Museum of Buildings

Councillors N. Psirides and M. H. Gill spoke in support of the motion which called upon the Council to reinstate the annual grant to Avoncroft Museum of Buildings. It was felt this would demonstrate the continued support of this Council for the significant contribution that the Avoncroft Museum continued to make as a tourist attraction in the District.

**RESOLVED:** that the matter be reconsidered alongside other priorities as part of the budget-making process.

(c) Losses accumulated prior to Transfer of Housing Stock

Councillors P. M. McDonald and S. P. Shannon spoke in support of the motion that "this Council calls upon the ODPM to carry out a Public Enquiry in to the massive losses accumulated prior to the transfer of the Council housing stock to B.D.H.T."

The Portfolio Holder for Finance advised that the total debt at the time of the transfer amounted to £715,000 which had built up over a period of six years, of which £55,000 had accumulated over the last three years. Officers were in the process of establishing the reasons behind the accumulation.

**RESOLVED:** that the Cabinet are satisfied that measures are being put in place to prevent the recurrence of a similar accumulation and that no action be taken with regard to the proposal for a Public Enquiry.

44/05

**POLICY RELATING TO RIDES AND AMUSEMENTS IN BROMSGROVE HIGH STREET**

In response to a request from the Licensing Committee, consideration was given to the Council's policy towards granting consent for the stationing of children's rides and amusements in Bromsgrove High Street. Following discussion, it was

**RESOLVED:** that the no change be made to the policy and delegation to the Head of Administrative Services currently in place.

45/05

**REDUNDANCY AND REDEPLOYMENT POLICY**

As part of a review of a number of the Council's Personnel policies, Members considered a revised Redeployment and Redundancy Policy. The Protection of Pay element had been reviewed and revised by the Cabinet earlier in the year. Following discussion, it was

**RESOLVED:** that the revised Redeployment and Redundancy Policy as set out in the Appendix to the report be approved.

46/05

**SECTION 106 MONIES**

The Cabinet considered a report on applications and projects for the use of Section 106 monies in connection with parks, open spaces, play areas and recreation areas. In total this would represent an investment of approximately £650,000 in new or refurbished open spaces and recreational facilities across the District which would rise to over £1.2 million when existing commitments were taken into account. Following discussion, it was

**RESOLVED:**

(a) that the applications/projects for the use of Section 106 monies as set out in Appendix "1" be approved, subject to the references to Barnt Green being changed to Linthurst as appropriate;

- (b) that, subject to discussions with the Catshill 20:20 Committee, approval be given to the use of Section 106 monies as partnership funding in relation to the application that has been made by Catshill 20:20, with no requirement for match funding;
- (c) that no retrospective applications for funding be considered;
- (d) that the Director of Leisure Services be authorised, in consultation with the Portfolio Holders for Finance and Leisure and relevant Ward Councillors, to progress the approved applications/projects to a conclusion and to agree the level of any contributions to be made by applicants;
- (e) that the Director of Leisure Services be authorised, in consultation with the Head of Legal Services, to agree with third party organisations as may be necessary, appropriate Conditions of Grant including those set out in Appendix "2" of the report;

**RECOMMENDED:** that the agreed applications and projects be included in the Revised Capital Programme for 2005/06 and the Capital Programme for 2006/07 as appropriate.

47/05

**CUSTOMER SERVICE CENTRE PROGRESS REPORT AND CUSTOMER SERVICES BUSINESS PLAN**

The Cabinet considered a report on the progress of the Customer Service Centre which set out proposals to address the current staffing situation which was having an adverse impact on service delivery, together with the proposed Customer Services Centre Business Plan. Following discussion, it was

**RESOLVED:**

- (a) that the progress with regard to the Customer Service Centre since it opened on 1st March 2005 be noted;
- (b) that three additional full time equivalent posts be created with immediate effect at a cost of £32,000 (£67,000 in a full year);
- (c) that the estimated increased costs of £32,000 for 2005/06 be met from the amount set aside for contingencies;
- (d) that the estimated increased costs of £67,000 for future years be incorporated within the revised medium term financial plan;
- (e) that the Customer Services Business Plan for 2005/06 be approved.

48/05

**HUNTERS HILL SCHOOL**

(The Chairman agreed to the consideration of this item as a matter of urgency as a decision was required thereon before the next ordinary meeting of the Executive Cabinet).

The Director of Leisure Services reported that Hunters Hill School in Blackwell had successfully obtained New Opportunities Funding towards the provision of new indoor sports facilities. However, the School was having difficulty securing the necessary partnership funding and had a shortfall of £129,500. The Cabinet was asked to consider the opportunity of investing the necessary funding, which would be tied to a 'Community Use Agreement' to ensure wide community access to the new sports facilities and to the School's Outdoor Education Centre which was the only facility of this nature in the District. This would not only benefit Blackwell but the whole of the District. Initial discussions had indicated that the School was willing to enter into such an agreement. The Council's support for the project would also contribute towards the objectives within the Corporate Plan.

If the Council was minded to support the project there were two funding options available, namely a capital grant or the provision of a loan repayable on terms to be agreed. A grant was the preferred option.

The decision was urgent as the School needed to raise the partnership funding by the end of July 2005.

Following consideration of the matter, it was

**RECOMMENDED:**

- (a) that the investment opportunity presented by Hunters Hill School be approved in principle;
- (b) that the Head of Leisure Services in conjunction with the Head of Financial Services and Head of Legal Services and in consultation with the Portfolio Holders for Leisure and Finance and the Ward Councillor be authorised to progress the project to a conclusion;
- (c) that the project be included in the revised Capital Programme for 2005/06/07

The Meeting closed at 7.15 p.m.

Chairman

# **BROMSGROVE DISTRICT COUNCIL**

## **SPECIAL MEETING OF THE EXECUTIVE CABINET**

Wednesday, 27th July 2005 at 5.00 p.m.

PRESENT: Councillors D. C. Norton (Executive Leader), Mrs. M. M. T. Taylor (Deputy Executive Leader), Mrs. J. M. L. A. Griffiths, R. Hollingworth and P. J. Whittaker.

Observers: Councillors Mrs. K. M. Gall, P. M. McDonald and N. Psirides J.P.

### 49/05 **APOLOGIES**

An apology for absence was received from Councillor B. L. Fuller C.B.E., Q.F.S.M.

### 50/05 **STATEMENT OF ACCOUNTS 2004/05**

The Cabinet considered a report on the Statement of Accounts for 2004/05. In doing so, account was taken of a relatively minor variation in the amount to be transferred from the Collection Fund to the General Fund. Following discussion, it was

#### **RECOMMENDED:**

- (a) that, in accordance with the Accounts and Audit Regulations 2003, the unaudited Statement of Accounts for the year ended 31st March 2005 be approved;
- (b) that resolution 7 set out in Appendix "A" to Council Minute No. 52/04 be amended to read "That the Corporate Director (Resources) be authorised to make transfers under Section 97 of the Local Government Finance Act 1988 from the Collection Fund to the General Fund the sum of £5,627,015 being the Council's own demand on the Collection Fund including Parish Precepts of £425,793."

### 51/05 **HUNTERS HILL SCHOOL**

The Chairman agreed to the consideration of this item as a matter of urgency as the Cabinet's recommendations needed to be considered at the Special Meeting of the Council on 27th July 2005. The matter had previously been considered by the Cabinet at its meeting held on 20th July 2005 (Minute No. 48/05 refers). It was

#### **RECOMMENDED:**

- (a) that the investment opportunity presented by Hunters Hill School be approved in principle;
- (b) that the Director of Leisure Services in conjunction with the Head of Financial Services and Head of Legal Services and in consultation with the Portfolio Holders for Leisure and Finance and the Ward Councillor be authorised to progress the project to a conclusion;
- (c) that the project be included in the revised Capital Programme for 2005/06/07

### 52/05 **SECTION 106 MONIES**

The Chairman agreed to the consideration of this item as a matter of urgency as the Cabinet's recommendations needed to be considered at the Special Meeting of the Council on 27th July 2005.

At its meeting held on 20th July 2005, the Cabinet had considered a report on applications and projects for the use of Section 106 monies in connection with parks, open spaces, play areas and recreation areas. The Cabinet had approved the applications/projects for the use of Section 106 monies under its delegated powers (Minute No. 46/05 refers). The Cabinet's recommendation on the matter regarding revisions to the Capital Programme would be considered by the Council at its next ordinary meeting on 6th September 2005. However, three of the projects were urgent as works needed to be undertaken prior to the forthcoming football season. It was therefore

**RECOMMENDED:** that the following agreed applications as detailed in Appendix "1" to the report be included in the Revised Capital Programme for 2005/06:

- Completion of Sports Building at Rowney Green
- Drainage improvements to pitch in Beoley
- Pitch drainage works at Romsley

53/05

**LOCAL GOVERNMENT ACT 1972**

**RESOLVED:** that, under Section 100A(4) of the Local Government Act 1972, the public be excluded from the Meeting during the consideration of the items of business the subject of the following Minutes on the grounds that they involve the likely disclosure of "Exempt Information" as defined in Part I of Schedule 12A to the Act, the relevant paragraph of that part being as set out below:-

<u>Minute No.</u>	<u>Paragraph(s)</u>
54/05	5
55/05	9
56/05	1

54/05

**APPLICATION FOR REDUCTION OF COUNCIL TAX UNDER SECTION 13A OF THE LOCAL GOVERNMENT FINANCE ACT 1992**

Following consideration of the report, it was

**RESOLVED:**

- (a) that approval be given to the reduction of Council Tax for the case in question as set out in Appendix "A" to the report;
- (b) that the determination will allow for the dwelling in question to be treated as an exempt dwelling for Council Tax for any period during which it is uninhabitable due to the chemical pollution up to a maximum period of six months;
- (c) that following the exemption period, if the dwelling remains uninhabitable, the level of any Council Tax payable be reviewed on a monthly basis.

55/05

**BROMSGROVE ROVERS FOOTBALL CLUB**

Following consideration of the report, it was

**RESOLVED:** that approval be given to the grant of a fourteen year lease to Bromsgrove Rovers Football Club Limited of premises at the Victoria Ground, Bromsgrove and to the provision of grant aid linked to the rental payable.

56/05

**REDUNDANCY OF THE HEAD OF ADMINISTRATIVE SERVICES**

This item was withdrawn.

The Meeting closed at 5.30 p.m.

Chairman



**BROMSGROVE DISTRICT COUNCIL**

**EXECUTIVE CABINET**

**17TH AUGUST 2005**

**Regulation of Investigatory Powers Act Policy**

Responsible Portfolio Holder	Councillor R Hollingworth
Responsible Head of Service	Mr A R Burton

**1. SUMMARY**

- 1.1 A report introducing the Regulation of Investigatory Powers Act 2000 and to seek approval of the Council' s policy document.

**2. RECOMMENDATION**

- 2.1 That the policy be approved.

**3. BACKGROUND**

- 3.1 In 2004 the Regulation of Investigatory Powers Act 2000 came into force. It controls the use of what is called “directed surveillance”, which the Council occasionally uses as part of an investigation in a matter which might result in court proceedings, or proceedings before some other form of tribunal. One example would be the use of hidden cameras to observe neighbour nuisance. Directed Surveillance can only be used for the purpose of preventing or detecting crime, or preventing disorder. Any form of surveillance which is conducted in an open manner - eg CCTV cameras, or where the subject is informed that surveillance will take place - is not covered by the Act.
- 3.2 The Act also applies where the Council would wish to use what is called a “Covert Human Intelligence Source” commonly abbreviated to CHIS. CHIS relates to the process where by a relationship is established by one person with another person for the covert purpose of obtaining information. The table at paragraph 4.2 of the policy provides a number of examples of different types of surveillance, by way of clarification. Section 3 of the attached policy contains further details and definitions which may assist Members.
- 3.3 The Act requires that before any steps can be taken to use directed surveillance or a CHIS, a formal written authorization must be sought by the case-officer handling the matter, and granted by a different officer. There are various further procedural requirements concerning review and cancellation of authorizations, and records to be kept.

- 3.4** The Council's compliance with RIPA is subject to occasional inspection by the Office for the Surveillance Commissioners. In liaison with their office, the attached policy was drawn up following research into "best practice" examples from other Local Authorities. The OSC may conduct spot-checks usually at short notice to check the level of the Council's compliance, and we are requested to file annual statistical information with the OSC regarding the number of authorizations granted, the numbers of CHIS in use, etc.
- 3.5** Staff training sessions have been held for officers who may commonly require to undertake surveillance as part of their duties, or to grant authorizations, and more such sessions are to be held.

**4. Financial Implications**

- 4.1** There are no direct financial costs or budgetary implications.

**5. Legal Implications**

- 5.1** It is important that correct procedures under RIPA are followed. Failure to do so may lead to the dismissal of court cases which were based on evidence obtained under unauthorized surveillance, and potentially claims under Human Rights legislation based on infringement of a person's rights under Article 8 of the Human Rights Act 1998 - there have been no instances of either - together of course with reputational harm to the Council.

**6. Other Sub Headings**

Personnel Implications	None
Policy considerations	None
Equality considerations	None
Governance/Performance Management Considerations	None
Community Safety Considerations	None
Risk Management Considerations	None
Environmental Considerations	None

**Background Papers**

None

**Contact officer**

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Tel:             (01527) 881426

# **Bromsgrove District Council**

## **Regulation of Investigatory Powers Act 2000**

### **Corporate Policy**

#### **Directed Surveillance and the use of Covert Human Intelligence Sources**

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- Is the surveillance likely to obtain private information about a person?
- Is the surveillance intrusive?
- Is the surveillance an immediate response to events or circumstances so that it is not practicable to obtain authorisation?
- Is the surveillance for a purpose other than those specified in RIPA?
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# **1. INTRODUCTION**

- 1.1 The purpose of this policy is to explain the scope of Regulation of Investigatory Powers Act 2000 and the circumstances where it applies to the Council. It provides guidance on the authorisation procedures to be followed in the event that you need to undertake surveillance, setting it into context so that its importance may be appreciated.
  
- 1.2 In preparing this policy the Council has followed the Codes of Practice produced by the Home Office. It has also gained significantly from the advice and support provided by Lord Colville of Culross, Assistant Commissioner with the Office of Surveillance Commissioners, who visited the Council in January 2004 to discuss the implementation of RIPA and the Council's then draft policy. Credit is also due to Birmingham City Council whose own published RIPA policy has proved invaluable in this area.
  
- 1.3 The subject covered by this policy is complicated but of major importance. It is likely that you may have questions which will not be answered explicitly by the content of this document and these should be referred to the Head of Legal Services for assistance.

A R Burton, LLB  
Head of Legal Services  
Bromsgrove District Council  
March 2004

## **2. PUTTING RIPA INTO CONTEXT**

### 2.1 What are the origins of RIPA?

2.1.1. The Human Rights Act 1998 brought into UK law many of the provisions of the 1950 European Convention on Human Rights and Fundamental Freedoms. Article 8 requires the Council to have respect for people`s private and family lives, their homes, and their correspondence. These subjects can be referred to as “Article 8 rights”.

2.1.2. These are not absolute rights and are qualified by the ability of the Council to interfere with a person`s Article 8 rights if:-

- Such interference is in accordance with the law
- Is necessary
- And is proportionate

These three points are clarified further in the next paragraphs.

2.1.3 When we talk of interference being “in accordance with the law”, this means that any such interference is undertaken in accordance with the mechanism set down by the Regulation of Investigatory Powers Act (RIPA for short). This mechanism relates to how covert surveillance is authorised, and how Covert Human Intelligence Sources are authorised and used.

2.1.4 The second hurdle which must be overcome is that the interference with Article 8 rights must be “necessary”. What this means is defined in clause 5.1.1 of this policy (see page 14).

2.1.5 Finally, it must be shown that the interference with a person`s Article 8 rights is proportionate – this is a difficult concept to explain and further detail is contained in clause 5.1.1 (see page 14).

### 2.2 When does RIPA apply?

2.2.1 If you need to conduct surveillance as part of investigating a matter which might result in court proceedings or proceedings before some other form of tribunal, you should consider whether RIPA applies.

2.2.2 “Directed Surveillance” or the use of a “CHIS” can only be undertaken for the purpose of preventing or detecting crime or of preventing disorder. The reason for the surveillance must be shown on the authorisation forms and, in the case of CHIS, a risk assessment must be carried out and documented on the appropriate form.

## 2.3 What does RIPA do?

- *RIPA* means that you must obtain prior authorisation for the use of “Directed Surveillance”. This is defined in section 3.3 on page 8.
- *RIPA* means that you cannot undertake “Intrusive Surveillance”, defined in section 3.4 on page 9.
- *RIPA* means that you must obtain prior authorisation for the use of a “Covert Human Intelligence Source” or CHIS, and regulates how you then may use that CHIS.
- *RIPA* does not legitimise any conduct which is unlawful
- *RIPA* does not affect any other means the Council might have to obtain information – eg the Council has powers to obtain information from the DVLA, or HM Land Registry: none of that is affected by *RIPA*.

## 2.4 Who can grant a RIPA authorisation?

- Officers who are designated “Authorising Officers” may authorise the use of directed surveillance or the use of a CHIS. They will usually be your Head of Department - the idea is that the Authorising Officer must be sufficiently removed from the actual investigation so that they can be regarded as managing it without actually being involved in its day to day conduct, yet not too far removed that they do not appreciate what it is that you are trying to achieve by that investigation.
- The Authorising Officer must not take part in the surveillance or in the management of the CHIS to which the application relates. In the absence of your particular line manager or Head of Department, the Head of Legal Services may act as Authorising Officer in any matter.
- A register of Authorised Officers will be kept by the Council’s Data Protection Officer which will show Name, relevant Departmental details, contact numbers and the areas relating to which authority can be granted. Authorising Officers should ensure that the DPO is kept informed of any changes, because any changes must also be recorded in the Central Register prior to any authorisations being granted. Authorising officers can only authorise activity within their own specific area, and where more than one area is involved the authority must be delegated upwards until the management criteria can be met.
- Some kinds of authorisation can only be granted by the Chief Executive Officer: this would apply where the issue is deemed “sensitive” under the legislation, or where the surveillance is likely to produce confidential personal information - eg surveillance of the Council’s suppliers or contractors, its employees, or members of the public.
- The Council cannot undertake what is defined as “Intrusive Surveillance” ie within domestic premises or private motor vehicles.



- Deciding when authorisation is required involves making a judgment. Section 4.2 on page 13 gives some examples and Section 5.2 on page 15 explains the authorisation process. If you are unclear about any aspect of the process, seek the advice of an Authorising Officer or the Head of Legal Services.
- However, **IF YOU ARE IN ANY DOUBT** about whether a course of action requires an authorisation, **GET IT AUTHORISED**. If you are unable to secure an authorisation it is likely that your application does not comply with the law.
- Council Officers who undertake surveillance covered by *RIPA* may wish to develop specific guidance on the applicability of *RIPA* to their particular circumstances. Such an approach is to be encouraged but the relevant Service Manager must ensure that any “local” guidance does not conflict with this corporate document.

## 2.5 What happens if *RIPA* is ignored?

- If you want to rely on evidence gathered in any surveillance operation, that evidence could be disallowed by a Court if it is found that *RIPA* applies but was not followed. Your case may then be lost and the Council could be ordered to pay costs.
- The person who was the subject of your surveillance may complain to the Ombudsman who may order the Council to pay compensation. Such occurrences, and the adverse media interest they would attract, do nothing for the good image of the Council.

## 2.6 What about cases of urgency?

- Urgent authorisations should not be necessary, but a verbal authorisation can be given if the time which would elapse before written authorisation can be granted would be likely to endanger life or jeopardise the investigation.
- It will not be a case of urgency where you have simply forgotten about the requirement for authorisation.
- Urgent authorisations must be followed by a formal written application at the earliest possible opportunity.

# **3. DEFINITIONS**

## **3.1 Surveillance:**

- Surveillance includes monitoring, observing or listening to persons, watching or following their movements, listening to their conversations and other such activities or communications
- recording anything mentioned in the previous bullet point

- the term “persons” includes any organisation and any association or combination of persons, i.e. limited companies, partnerships, co-operatives etc
- Surveillance includes using appropriate devices eg microphones, binoculars, tape recorders, etc.

### **3.2 Covert Surveillance:**

- Covert Surveillance is carried out in a manner which is calculated to ensure that person subject to surveillance is unaware that it is or may be taking place.
- If activities are open and not hidden from the persons subject to surveillance, the *RIPA* framework does not apply because that is “Overt Surveillance”. This would be so if the you behave in the same way as a member of the public eg test purchases, or go about Council business quite openly (eg a market inspector walking through markets). Equally, if you tell the subject that surveillance will be taking place, the surveillance is overt. This would happen, for example, where you warn a noisemaker that noise will be recorded if it continues. *RIPA* does not regulate Overt Surveillance.
- *RIPA* regulates two types of Covert Surveillance – these are “Directed Surveillance” and “Intrusive Surveillance”, and the use of “Covert Human Intelligence Sources”.

### **3.3 Directed surveillance:**

- Directed Surveillance is covert, not intrusive, and is undertaken:-
  - for the purposes of a specific investigation or a specific operation, and
  - in a manner where it is likely to produce private information about a person, and
  - other than as an immediate response to events or circumstances where it would not be reasonably practicable for an authorisation to be sought for surveillance.

### **3.4 Intrusive surveillance:**

- This is any Surveillance 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 is carried out by means of a surveillance device; or involves the presence of a person in the premises or the vehicle, or is carried out by a surveillance device in the premises or vehicle. Surveillance equipment mounted outside premises will not be intrusive, unless it provides information of the same type which might be expected if it *was* inside

- The Council cannot undertake Intrusive Surveillance.

### **3.5 Covert Human Intelligence Source (CHIS):**

- A person is a CHIS if they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating anything falling within the following two paragraphs, or
- the source covertly uses such a relationship to obtain information or provide access to any information to another person; or
- the source covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

### **3.6 Covert Purpose:**

- A purpose for which a personal or other relationship is set up or maintained only if the relationship is conducted in a manner calculated to ensure that one of the parties to the relationship is unaware of the purpose behind the relationship.

### **3.7 Private Information:**

- This is any information relating to a person's private or family life. For example, if surveillance is to observe someone's home to determine their comings and goings, that will gather private information, as will surveillance of someone selling counterfeit goods as the surveillance may reveal the earnings made from the sales.

### **3.8 Residential Premises:**

- Whichever parts of any premises are occupied or used by any person (however temporarily) for residential purposes or otherwise as living accommodation (including hotel or prison accommodation), but excluding common areas.

### **3.9 Private Vehicle:**

- Any vehicle used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it (unless that right derives only from him having paid or undertaken to pay for the use of the vehicle and its driver for a particular journey, ex taxis).

### 3.10 Collateral Intrusion:

- Collateral intrusion occurs when you are undertaking surveillance of one person, but that surveillance inevitably intrudes or interference with the privacy of other persons who are not themselves the subject of the surveillance. For example, if you hide a video camera in a tree to record tipping taking place in a lay-by, but that camera can also see people parking cars in that lay-by to have a picnic: the fact that the camera will also record the picnickers is collateral intrusion.
- You should be mindful of the possibility of collateral intrusion when deciding whether to grant an authorisation. The possibility does not mean that the authorisation should not be granted, but you should weigh up the importance of the surveillance target on the one hand and the risk of collateral intrusion on the other hand.

## **4. Does RIPA apply to my situation?**

To establish whether your circumstances are covered by *RIPA*, and what you should do about it if they are, ask yourself the following questions. You may find that the answer to one question will resolve the issue in its entirety but you are advised to consider all questions in any case. Bear in mind however that if you are in any doubt you are well advised to seek authorisation for the activity.

**Q1:** Is the Surveillance Covert?

If not, *RIPA* does not apply.

**Q2:** Is the surveillance for the purposes of a specific investigation or a specific operation connected to the prevention or detection of crime or prevention of disorder?

If the surveillance is directed at a known individual or group, *RIPA* applies. In other situations, such as CCTV cameras readily visible to anyone in the area, their use is not governed by *RIPA* but is covered by the Data Protection Act 1998. However, if the cameras are used as part of an operation to observe a known individual or group or as part of a specific investigation it is very likely that *RIPA* will apply and an appropriate authorisation will be required.

**Q3:** Is the surveillance likely to obtain private information about a person?

If yes, *RIPA* may apply.

**Q4:** Is the Surveillance intrusive?

Directed surveillance can become intrusive surveillance if it is carried out involving anything occurring on residential premises or any private vehicle, and involves the presence

of someone on the premises or in the vehicle or is carried out by means of a (high quality) surveillance device. This could involve external CCTV recording images of the interior of domestic premises.

If the device is not on the premises or in the vehicle, it is only intrusive surveillance if the device consistently produces information of the same quality as if it were.

Commercial premises and vehicles are therefore excluded from the definition of intrusive surveillance.

**If you conclude that the surveillance is intrusive you may not undertake it. The Council is not allowed to carry out intrusive surveillance.**

**Q5:** Is the surveillance an immediate response to events or circumstances where it is not reasonably practicable to get authorisation?

The Home Office guidance indicates that this is to take account of an immediate response to something happening during the course of an observer's work, which is unforeseeable. If this occurs, the surveillance will not require prior authorisation.

However, if as a result of an immediate response a specific investigation takes place at a later date, *RIPA* will apply to that later investigation.

**Q6:** Is the surveillance for a purpose other than those specified in *RIPA* – such as monitoring of staff or telephone usage?

This form of surveillance is outside *RIPA* but does come under Data Protection Act 1998, and can only be carried out if the subject is aware that such surveillance may be carried out. It is possible for example to monitor the length of phone calls, the recipients, as well as time of day, but on no account can calls be tapped or listened into without the knowledge, on each occasion, of the subject and the recipient of the call. It is prudent on each occasion monitoring takes place to maintain a record of the monitoring, the reasons for it, and those who were subject to the monitoring. You may wish to apply the same tests that *RIPA* applies in any event, as this is a good way of ensuring that such monitoring is necessary and that any interference with the subjects rights are proportionate. If in doubt, ask.

If it is suspected that staff may be involved in activity which amounts to a criminal offence, a *RIPA* authorisation should be obtained.

**Q7: Does the surveillance involve the use of a “source”?**

If an individual is being used to establish a relationship with another person to obtain information, then a *RIPA* authorisation is likely to be needed.

**Q8: Does the use of a CCTV camera require RIPA authorisation?**

The general use of cameras displayed quite clearly in public places does not normally require a *RIPA* authorisation. However, if the camera is being used for a specific purpose, ie to keep a prolonged observation on a particular person , then a *RIPA* authorisation will be required for that specific purpose.

4.2 Some examples of different types of surveillance.

Type of Surveillance	Examples
“Overt”	<ul style="list-style-type: none"><li>- Parks Warden on patrol</li><li>- Signposted Town Centre CCTV cameras in normal use</li><li>- Recording noise from outside premises after the occupier has been warned that this will occur if the noise continues</li><li>- Test Purchases where the officer behaves the same as a normal member of the public</li></ul>
“Covert” but RIPA authorisation not required	<ul style="list-style-type: none"><li>- CCTV cameras providing traffic, crime, or public safety information</li><li>- asking people to keep a diary or log-sheet when they complain about anti-social behaviour</li><li>- whilst you are out on the District, spotting something suspicious and staying on the spot to observe it</li></ul>
“Directed” – must have a RIPA Authorisation	<ul style="list-style-type: none"><li>- Following a person over a period of time to see whether they are working whilst claiming benefit or off work on long-term sick-leave</li><li>- Test purchases where the officer has a hidden camera to record information about what is going on inside the shop</li></ul>
“CHIS” – must have a RIPA Authorisation	<ul style="list-style-type: none"><li>- Developing a relationship with a shop-keeper to obtain information about his suppliers of an illegal product</li></ul>

<p>“Intrusive”</p> <p><b>THIS CANNOT BE DONE</b></p>	<p>- Planting a listening device (ie a bug) in a person`s home or in their private vehicle (unless the person is warned that this is taking place)</p>
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## **5. Authorisations, Reviews, Renewals, Cancellations**

### **5.1 The Conditions for Authorisation**

#### **5.1.1 Directed Surveillance**

- Before authorisation can be granted for the carrying out of directed surveillance, the Authorising Officer must believe that it is necessary: can you achieve the same end result without the surveillance? (This is the concept of necessity)
- The authorised surveillance must be proportionate to what is sought to be achieved by carrying it out - ie do not go overboard. (The concept of proportionality)
- The surveillance is at the most appropriate level to achieve the objectives of the investigation. If similar objectives could be achieved by methods other than covert surveillance, do so. (The concept of subsidiarity).
- A *RIPA* authorisation will only be given if the investigation relates to the preventing or detecting crime or of preventing disorder;
- The onus is on the Authorising Officer to ensure that the surveillance meets the tests of necessity, proportionality and subsidiarity described above.
- Complete an application form - available on the Intranet on from the Data Protection Officer – and discuss it with your Authorising Officer. It is also sensible to make any authorisation sufficiently wide to cover all the means required as well as being able to provide effective monitoring of what is done against that is authorised.
- If the authorisation is granted, send the original form to the Data Protection Officer immediately and retain a photocopy on your case file.

#### **5.1.2 Use of Covert Human Intelligence Sources**

- A CHIS is someone who establishes or maintains a personal or other relationship for the covert purpose of helping the covert use of that relationship to obtain information. This is not the same as circumstances where a member of the public volunteers information to the Council as part of their civic duties.
- A CHIS authorisation is required if you want to establish or maintain a personal or other relationship with a person, for the covert purpose of obtaining and passing on information

- The Council does not normally seek to cultivate, or develop a relationship with a potential external or professional source, although this action is not precluded if it meets the *RIPA* conditions. It is possible that a Council employee may be used as a CHIS, and nothing in *RIPA* prevents this.
- One Department may carry out surveillance on behalf of another, but the directing Department manages the authorisations etc as though they were completing the surveillance themselves. It is suggested that both Departments should ensure that there is a correct authorisation before proceeding. Do not assume that the other Department will have obtained it.
- The Authorising Officer must consider the safety and welfare of an employee acting as a CHIS, and the foreseeable consequences to others of the tasks they are asked to carry out. A risk assessment should be carried out before authorisation is given and a copy sent to the Data Protection Officer with the authorising form. The safety and welfare of the employee, even after cancellation of the authorisation, should be considered from the very outset.
- The use of a CHIS aged under 18 can only be authorised by the Chief Executive Officer, and special rules contained in the Regulation of Investigatory Powers (Juveniles) Order 2000 apply. This is outside the scope of this Policy and you are advised to seek specific legal advice as early as possible
- Before authorising the use of a CHIS, the authorising officer must ensure that, as far as is possible, measures are taken to avoid unnecessary intrusion into the lives of those not directly connected with the operation.
- Particular care should be taken in circumstances where people would expect a high degree of privacy or where, as a consequence of the authorisation, confidential material is likely to be obtained.

## **5.2 Grant of Authorisations**

- All applications for authorisation must be in writing using the standard forms which are available from the Intranet site and the Data Protection Officer, but officers must ensure that the circumstances of each case are accurately recorded on the application form.
- If it is intended to undertake both directed surveillance and the use of a CHIS on the same surveillance target, a single *RIPA* form may be used to combine the two.
- Authorising Officers must satisfy themselves, that the authorisation is necessary, the surveillance is proportionate to what it seeks to achieve, and the level of the surveillance is appropriate. They should not rubber-stamp a request, but should discuss the information in the application and their knowledge of the service,
- Particular consideration should be given to intrusion on, or interference with, the privacy of persons other than the subject(s) of the application. This is known as “collateral intrusion”. Such collateral intrusion or interference would be a matter of greater concern in cases where



there are special sensitivities, for example in cases of premises used by lawyers or for any form of medical or professional counselling or therapy.

- An application for an authorisation must include an assessment of the risk of any collateral intrusion or interference. The Authorising Officer will take this into account, particularly when considering the proportionality of the directed surveillance or the use of a CHIS.
- Authorising Officers are responsible for ensuring that authorisations undergo timely reviews at periods not exceeding 7 days (unless a longer period has been previously agreed with the Data Protection Officer) and are cancelled promptly after surveillance activity is no longer necessary.
- It is advisable that the review date be agreed at the time of the original request for authorisation, and recorded on the authorisation form.
- In cases of joint working, for example with other agencies on the same operation, authority for surveillance must be obtained from the Council's Authorising Officers. One body cannot authorise actions to be taken by a different body.

## **5.3 Conduct of Surveillance**

### **5.3.1 Unexpected interference with third parties**

- When you are carrying out covert directed surveillance, you should inform the Authorising Officer if the investigation unexpectedly interferes with the privacy of individuals who are not the original subjects of the investigation or covered by the authorisation in some other way. In some cases the original authorisation may not be sufficient and consideration should be given to whether a separate authorisation is required.

### **5.3.1 Conduct of Surveillance – local sensitivities**

- Authorising Officers should be aware of particular sensitivities in the local community where the directed surveillance is taking place, or of similar activities being undertaken by other public authorities which could impact on the deployment of surveillance.

### **5.3.2 Conduct of Surveillance – privacy**

- Rigorous consideration should be applied where the subject of the surveillance might reasonably expect a high degree of privacy, for instance at his/her home, or where there are special sensitivities. Care must be exercised particularly in relation to residential premises to avoid carrying out any surveillance which may be deemed to fall under the definition of Intrusive Surveillance, because a local authority has no power to undertake intrusive surveillance.

### **5.3.3 Conduct of Surveillance – spiritual counselling**

- No operations should be undertaken in circumstances where investigators believe that surveillance will lead to them intrude on spiritual counselling between a Minister and a member of his/her faith. In this respect, spiritual counselling is defined as conversations with a Minister of Religion acting in his/her official capacity where the person being counselled is seeking or the Minister is imparting forgiveness, or absolution of conscience.

### **5.3.4 Conduct of Surveillance – Confidential Material**

- *RIPA* does not provide any special protection for confidential material. You should bear in mind that such material is particularly sensitive and is subject to additional safeguards under this policy. In cases where the likely consequence of the conduct of a source would be for any person to acquire knowledge of confidential material, the deployment of the source should be subject to special authorisation by the Chief Executive Officer.
- In general, any application for an authorisation which is likely to result in the acquisition of confidential material should include an assessment of how likely it is that confidential material will in fact be acquired. Special care should be taken where the target of the investigation is likely to be involved in handling confidential material. Such applications should only be considered in exceptional and compelling circumstances with full regard to the proportionality issues this raises.
- The following general principles apply to confidential material acquired under authorisations:
  - i) Those handling material from such operations should be alert to anything which may fall within the definition of confidential material. Where there is doubt as to whether the material is confidential, advice should be sought from the Head of Legal Services before further dissemination takes place;
  - ii) Confidential material should not be retained or copied unless it is necessary for a specified purpose;
  - iii) Confidential material should be disseminated only where an appropriate officer (having sought advice from the Head of Legal Services) is satisfied that it is necessary for a specific purpose;
  - iv) The retention or dissemination of such information should be accompanied by a clear warning of its confidential nature. It should be safeguarded by taking reasonable steps to ensure that there is no possibility of it becoming available, or its content being known, to any person whose possession of it might prejudice any criminal or civil proceedings related to the information.
  - v) Confidential material should be destroyed as soon as it is no longer necessary to retain it for a specified purpose.

### 5.3.5 Handling and disclosure of the products of surveillance

- The Authorising Officer should retain *RIPA* related documents for a period of 5 years. However, where it is believed that the records could be relevant to pending or future criminal proceedings, they should be retained for a suitable further period, commensurate to any subsequent review.
- Authorising Officers must ensure compliance with the appropriate data protection requirements and the relevant codes of practice in the handling and storage of material. Where material obtained by surveillance is wholly unrelated to a criminal or other investigation, or to any person who is the subject of the investigation, and there is no reason to believe it will be relevant to future civil or criminal proceedings, it should be destroyed immediately. Consideration of whether or not unrelated material should be destroyed is the responsibility of the Authorising Officer.
- Material obtained through the proper use of the *RIPA* authorisation procedures can be used for relevant Council purposes. However, the transfer of such information outside the Council, other than in pursuance of the grounds on which it was obtained, should be authorised only in the most exceptional circumstances and should always only occur following consideration of the appropriate Data Protection legislation.

## **5.4 Renewal of Authorisations**

- Any Authorising Officer may renew an existing authorisation, on the same terms, at any time before the original ceases to have effect.
- A CHIS application should not be renewed unless a thorough review has been carried out covering the use made of the source, the tasks given to them and information obtained. The Authorising Officer must consider the results of the review when deciding whether to renew or not. The review and the consideration must be documented.

## **5.5 Cancellation of Authorisations**

- Authorisations must be cancelled immediately the need for surveillance has ended and in any event within the timescales as listed below, unless they are renewed within these timescales.

<b>Form of surveillance</b>	<b>RIPA Authority Cancellation</b>
Covert Human Intelligence Source	12 months from date of authorisation
Directed Surveillance	3 months from date of authorisation
Any other surveillance	3 months from date of authorisation

## **5.6 Central Register of Authorisations**

- The Data Protection Officer will hold the original of each application, authorisation, renewal, review, and cancellation.
- Authorisations will be recorded under a system of sequential allocation numbers. This is to provide an immediate indication should any be missing from the sequence, which should be avoided at all costs.
- Departments may also maintain their own registers containing copies, and copies of documents may be retained on individual case-files.
- A quarterly return (available on Intranet) should also be sent to the Data Protection Officer.
- Failure to send the forms to the Data Protection Officer will mean that they will not be available for inspection by the Surveillance Commission and may therefore not be properly authorised.

## **6. Benefits of Obtaining RIPA Authorisation**

### **6.1 Authorisation of surveillance and human intelligence sources**

- *RIPA* states that:

“If authorisation confers entitlement to engage in a certain conduct and the conduct is in accordance with the authorisation, then it shall be “lawful for all purposes”.
- However, the opposite is not true – i.e. if you do not obtain *RIPA* authorisation it does not necessarily make any conduct unlawful, though it could amount to unlawful conduct under the terms of the Human Rights Act. It also means you cannot take advantage of any of the special *RIPA* benefits and you may have to justify infringing a person’s Human Rights. Any evidence you place before the courts may be subject to challenge in respect of the processes used to obtain the evidence (eg evidence could be excluded under s78 Police and Criminal Evidence Act 1984).
- *RIPA* states that a person shall not be subject to any civil liability in relation to any conduct of his which -
  - a) is incidental to any conduct which is lawful by virtue of an authorisation; and
  - b) is not itself conduct for which an authorisation is capable of being granted under a relevant enactment and might reasonably be expected to have been sought in the case in question.

- However, **IF YOU ARE IN ANY DOUBT GET IT AUTHORISED.** If you are unable to secure an authorisation it is likely that your application does not comply with the law.

## **7. Scrutiny and Tribunal**

- The Office of the Surveillance Commissioner was set up under *RIPA* to regulate the conduct of public bodies and to monitor their compliance with the Act. The Chief Surveillance Commissioner will keep under review the exercise and performance of *RIPA* duties by the persons on whom those duties are conferred or imposed. This includes authorising directed surveillance and the use of covert human intelligence sources.
- A tribunal has been established to consider and determine complaints made under *RIPA* if it is the appropriate forum. Persons aggrieved by conduct, eg directed surveillance, can make complaints. The forum hears application on a judicial review basis. Claims should be brought within one year unless it is just and equitable to extend that period.
- The tribunal can order the quashing or cancellation of any warrant or authorisation and can order destruction of any records or information obtained by using a warrant or authorisation, and records of information held by any public authority in relation to any person. The Tribunal may serve on the Council a Disclosure Notice requiring it to disclose or provide all documents the Tribunal requires if a Council officer has granted any authorisation under *RIPA* and Council employees have engaged in any conduct as a result of such authorisation. The Council is under a statutory duty to comply.
- The Surveillance Commissioner will periodically inspect the records and procedures of the Authority to ensure the appropriate authorisations have been given, reviewed, cancelled, and recorded properly.

# Appendix 1

# RIPA 2000 - Do you need Authorisation?

