

CABINET - 2 JANUARY 2002

## **AUTHORISATION OF INVESTIGATIONS**

### **1. INTRODUCTION**

- 1.1 The purpose of this report is to inform members of the control imposed by the Regulation of Investigatory Powers Act 2000 (RIPA) on the conduct of investigations.
- 1.2 Various investigations are carried out in each of the services within the Council. Those investigations that are part of the everyday functions of law enforcement of the Council will not involve systematic surveillance of an individual and will not usually be regulated under RIPA. These may however, become investigations that subsequently involve systematic surveillance and there will be some investigations or operations that involve systematic surveillance from the start.
- 1.3 This report contains proposals for the identification of officers who will be empowered to grant the authorisations and fulfil the legal requirements of RIPA and a policy to assist the applicant officers and authorising officers in the performance of this requirement.

### **2. BACKGROUND**

- 2.1 The Human Rights Act 1998 made the right to respect for a person's private and family life a human right that is enforceable in the courts in England.
- 2.2 The Regulation of Investigatory Powers Act 2000 sets out the way in which covert surveillance may be carried out by various public bodies, notwithstanding the interference with this right that may arise. The balance is struck between the needs of the public bodies to conduct investigations and the right of the person by requiring each investigation or operation involving covert surveillance to be assessed in the context of this right. If there is a proper balance between pursuance of the public interest and the interference with the private right then the surveillance may be authorised.
- 2.3 Where systematic surveillance takes place, only those investigations authorised and carried out in accordance with RIPA will be lawful.

### **3. THE REGULATION OF INVESTIGATORY POWERS ACT 2000**

- 3.1 RIPA controls surveillance, and conduct and use of covert human intelligence sources.

- 3.2 In that Act surveillance is classified as directed or intrusive. Officers of the Council do not engage in intrusive surveillance. This would involve the presence of officers in a residence where activities are being investigated or in a private vehicle, or use of a surveillance device in such residence or vehicle and authorisation is confined to the Secretary of State and numerous police and other bodies that do not include this local authority's officers.
- 3.3 Officers of the Council do, on rare occasions, engage in the conduct and use of covert human intelligence sources. This involves what amounts to the use of an informant.
- 3.4 Officers of the Council do engage in directed surveillance. This involves covert surveillance for the purposes of a specific investigation or a specific operation where private information is likely to result.
- 3.5 RIPA also controls the interception of electronic communication. This has relevance for the Council in connection with its e-mail and internet systems. However, criminal liability is excluded if the person carrying out that interception is a person with a right to control the operation or the use of the electronic system or there is express or implied consent for it. The Council comes within this exclusion.

#### **4. LOCAL AUTHORITY FUNCTIONS**

- 4.1 The Council has powers and duties under a number of Acts such as:
  - Social Security Contributions and Benefits Act 1992
  - Theft Act 1968
  - Town and Country Planning Act 1990
  - Planning (Listed Buildings and Conservation Areas) Act 1990
  - Land Drainage Act 1991
  - Building Act 1984
  - Health and Safety at Work etc. Act 1974
  - Animal Boarding Establishments Act 1963
  - Breeding of Dogs Act 1973
  - Animal Health Act 1981
  - Food Safety Act 1990
  - Environmental Protection Act 1990
  - Local Government (Miscellaneous Provisions) Act 1982
  - Housing Act 1985
- 4.2 Some of the functions that officers carry out under these Acts that involve investigations are:
  - Housing Benefit fraud
  - Council Tax liability
  - Statutory noise nuisance
  - Breach of planning control
  - Breach of tree preservation orders
  - Possession Proceedings
  - Planning Inquiries

- Licensing
- Disciplinary matters

4.3 Some examples may be useful of where surveillance may or may not be required as part of an investigation:

- Information is received indicating that a housing benefit claimant has income from employment that has not been declared, or has more income in the household than declared because he has a partner. Initial enquiries are inconclusive and the fraudulent claim is investigated and evidence sought using covert surveillance of the claimant at his suspected place of work or at his home. This covert surveillance would require authorisation under RIPA.
- The perpetrator has constructed a building without planning permission. A neighbour notifies the Council. A Planning Enforcement Officer visits the site. He sees for himself the building for which there is no planning permission. The building is there for all to see. The usual evidence gathering procedure has applied without the need for covert surveillance. No authorisation under RIPA is required.
- An enforcement notice has been issued and served relating to a caravan stationed on agricultural land for the purpose of securing cessation of the use of the caravan for human habitation. A neighbour notifies the Council that the caravan is still being used for human habitation. The Planning Enforcement Officer proposes to watch the movements of the occupier of the caravan through systematic surveillance to establish human habitation over a sufficient period of time to be regarded as residential use. Authorisation under RIPA is required.
- Complaints have been made that a tenant of the Council is harassing his neighbour. A Housing Officer writes to the tenant to inform him of the complaint and to state that it will be investigated. The Housing Officer asks the neighbour to keep a record of the offending behaviour. This is covert surveillance and authorisation under RIPA is required.
- A complaint is made about noise nuisance. An Environmental Health Officer writes to the perpetrator warning him that the officer will monitor the noise coming from the premises. The monitoring is undertaken in the street for all to see. No authorisation under RIPA is required. No nuisance is found to exist and the complainant is informed. The complainant informs the officer that the noise went up as soon as the officer left. Covert surveillance appears to be appropriate and authorisation under RIPA is required.

4.4 Approximately 12 authorisations for covert surveillance have already been granted.

## 5. PROCEDURE

- 5.1 Whether or not the directed surveillance or the conduct and use of covert human intelligence sources will be lawful depends on the circumstances of each individual operation or matter under investigation.
- 5.2 A uniform procedure will ensure that the Council's functions are carried out with a minimum risk of undue interference with human rights so that they are lawful and will assist the Council in defending any challenge that may be made because of any surveillance undertaken.
- 5.3 The circumstances must exist for a valid authorisation at the outset
- 5.4 Standard application forms for directed surveillance and for the use or conduct of a covert human intelligence source are available from the Home Office.
- 5.5 An investigating officer who applies for authorisation must be carrying out an investigation or operation that is in accordance with the law.
- 5.6 The application must include information that demonstrates that the surveillance is necessary within prescribed grounds. The grounds on which the Council will most likely wish to rely will be:
  - for the purpose of preventing or detecting crime,
  - for the purpose of protecting public health, and
  - for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department.
- 5.7 The directed surveillance or the use or conduct of a covert human intelligence source must be proportionate to what is sought to be achieved by it.
- 5.8 In the case of a covert human intelligence source, there are additional management requirements for ensuring the source's security and welfare.
- 5.9 The activity authorised may be lawful if it has been authorised. It must also be conducted in accordance with the authorisation given if it is to be lawful.
- 5.10 An authorisation that was initially lawful may become unlawful if circumstances change.
- 5.11 The Home Office has also issued standard forms for renewal of the authorisations.
- 5.12 Recording the surveillance that has been authorised and monitoring the produce of the surveillance are essential ingredients to ensure that the activity was and continues to be lawful and that the authorisation or renewal of it was demonstrably appropriate. The cancellation forms issued by the Home Office require the value of the activity to be set out.

5.13 The Council's functions and the Acts under which they are carried out are wide ranging and show that the need for training is equally broad. The application of RIPA to each one of those investigations carried out using covert means will require justification which relies on an ability to draw what may be a fine line between private rights and the public interest. Training is essential for officers in all services to consolidate what is already known and ensure that the investigation or operation is conducted in accordance with any authorisation granted. In this respect, the Legal Service and Audit teams will shortly be arranging training session. It is crucial that officers who will make these applications and officers who will be authorising officers attend this training to gain a level of understanding that will prevent inadvertent breaches of human rights, and the serious consequences that would flow from this.

## 6. AUTHORISATION

- 6.1 Officers must be identified who may authorise the surveillance or the conduct or the use of a covert human intelligence source.
- 6.2 Regulations have been made setting out the positions of the officers within the Council who may give such authorisation. These are an Assistant Chief Officer or the officer responsible for the management of an investigation.
- 6.3 Officers holding higher positions are permitted to grant authorisations.
- 6.4 The functions to be authorised are
- (1) authorisation of an application for authority either to carry out directed surveillance or for the conduct or the use of a covert human intelligence source;
  - (2) authorisation for a renewal of such authority;
  - (3) authorisation of the cancellation of such authority;
  - (4) destruction of any wholly unrelated material that may arise from the directed surveillance or from the conduct or the use of a covert human intelligence source; and
  - (5) monitoring of the produce of the surveillance or from the conduct or the use of a covert human intelligence source.
- 6.5 The proposed authorisations are set out in **Appendix 1**. The services are listed in column 1 of Appendix 1. The officers to be authorised are the officers in that service holding the positions listed in column 2 of Appendix 1, and the functions that it is proposed that the officers may carry out are the function referred to by the number in column 3 of Appendix 1.

## **7. POLICY**

7.1 A policy and procedure has been devised for ensuring uniform compliance with RIPA by all of the services of the Council. This policy is set out at **Appendix 2**.

## **8. FINANCIAL IMPLICATIONS**

8.1 The training that is necessary to extend the expertise already available within parts of the Council to other services will carry a financial implication. It is envisaged that this in house training will be provided within budget to the other services.

## **9. ENVIRONMENTAL IMPLICATIONS**

9.1 If the procedure for the authorisation of surveillance undertaken by officers on behalf of the Council or for the conduct or the use of a covert human intelligence source is not followed this will have an impact upon the ability of the Council to properly perform its functions.

## **10. CRIME AND DISORDER IMPLICATIONS**

10.1 A failure to follow a procedure for authorisation under RIPA would render the activity unlawful with legal and financial consequences for the Council.

## **11. RECOMMENDATIONS**

### **11.1 It is recommended:-**

11.1.1 That delegated powers be granted to the officers set out in Appendix 1 to authorize the carrying out of surveillance or the conduct or the use of a covert human intelligence source and other functions to the extent stated in Appendix 1.

11.1.2 That the policy specified within Appendix 2 be adopted.

### **For Further Information:**

Mike McFarlane  
Senior Investigations Officer  
Tel: (023) 8028 5790  
Email: mike.mcfarlane@nfdc.gov.uk

Sheila Wilson  
Solicitor  
Tel: (023) 8028 5440  
Email: sheila.wilson@nfdc.gov.uk

### **Background Papers:**

Published Documents

## APPENDIX 1

### REGULATION OF INVESTIGATORY POWERS ACT 2000

#### FUNCTIONS THAT MAY BE UNDERTAKEN BY THE AUTHORISED OFFICERS:

1. Authorise an **application** for authority to carry out directed surveillance or for the conduct or the use of a covert human intelligence source
2. Authorise **renewal** of an application for authority to carry out directed surveillance or for the conduct or the use of a covert human intelligence source
3. Authorise **cancellation** of an application for authority to carry out directed surveillance or for the conduct or the use of a covert human intelligence source
4. Authorise **destruction** of wholly unrelated material arising from surveillance or from the conduct or the use of a covert human intelligence source
5. **Monitor** the produce of the surveillance or from the conduct or the use of a covert human intelligence source
6. Authorise an application where the likely consequence of directed surveillance would be intrusion on another person other than the target (**collateral intrusion**) and this **at specially sensitive premises** (used by lawyers or for any form of medical or professional counselling or therapy)
7. Authorise an application where the likely consequence of the directed surveillance would be for the applicant officer to acquire knowledge of **confidential material**.

Column 1	Column 2	Column 3
<b>SERVICES:</b>	<b>AUTHORISED OFFICERS</b> <b>Within his or her Service:</b>	<b>FUNCTION that</b> <b>may be undertake</b> <b>by the Authorised</b> <b>Officer</b>
<b>RESOURCES</b> <b>DIRECTORATE</b>		
	Director of Resources	1 - 7
	Assistant Director (Financial Services)	1 – 7
	Assistant Director (Customer Services)	1 – 7
	Audit Manager	1 - 5
	Assistant Director of Resources (ICT) Services	1 – 7
<b>COMMUNITY</b> <b>SERVICES</b>	Director of Community Services	1 - 7
	Assistant Director (Housing Landlord Services)	1 – 7
	Assistant Director (Housing Strategic Services)	1 – 7

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>SERVICES:</b>	<b>AUTHORISED OFFICERS</b> <b>Within his or her Service:</b>	<b>FUNCTION that</b> <b>may be undertake</b> <b>by the Authorised</b> <b>Officer</b>
	Assistant Director (Environmental Health)	1 – 7
	Assistant Director of Leisure Services (Business Development)	1 – 7
	Assistant Director of Leisure Services (Services Development)	1 – 7
<b>ENVIRONMENT</b> <b>SERVICES</b>	Director of Environment Services	1 - 7
	Head of Policy, Design & Information	1 - 7
	Head of Public Services	1 – 7
	General Manager – Commercial Services	1 – 7
	Head of Development Control	1 – 7
	Principal Planning Officer (Projects & Enforcement)	1 - 5
	Valuer	1 - 5
	Head of Consultancy Services	1-7
	Principal Engineer (Highways)	1 - 7
	Principal Engineer (Land Drainage)	1 - 7
	Principal Building Control Surveyor	1-7
<b>CHIEF</b> <b>EXECUTIVES</b>	Chief Executive	1 - 7
	Head of Personnel	1 - 7
<b>ALL</b> <b>DIRECTORATES</b>	Chief Executive	1 - 7



**NEW FOREST DISTRICT COUNCIL**

**SURVEILLANCE POLICY**

**Human Rights Act 1998**

**and**

**Regulation of Investigatory Powers Act 2000**

# REGULATION OF INVESTIGATORY POWERS ACT 2000

## SURVEILLANCE POLICY

### 1. Background

- 1.1 The Human Rights Act 1998 came into force and made the fundamental rights and freedoms contained in the European Convention on Human Rights enforceable in UK Courts and Tribunals.
- 1.2 Article 8 of the Convention Rights contains the right to respect for a person's private and family life.
- 1.3 The Regulation of Investigatory Powers Act 2000 (RIPA) imposes duties on public bodies, including local authorities, when carrying out investigations that involve covert surveillance and the conduct and use of covert human intelligence sources.
- 1.4 The Article 8 right to respect for a person's private and family life is a right that may be interfered with. Such interference must be in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of the health or morals, or for the protection of the rights and freedoms of others.
- 1.5 Investigating officers of the Council engage in covert surveillance from time to time which interferes with the persons right under Article 8 of the Convention Rights to respect for the person's private and family life.
- 1.6 A policy has been prepared to set out the relevant responsibilities and to ensure that any covert surveillance or the conduct and use of covert human intelligence sources is conducted by officers in a manner that will comply with the safeguards embodied in the Human Rights Act 1998 and RIPA. Pursuance of this policy will assist the Council if it is required at any time to demonstrate that it has acted lawfully.

### 2. SOME DEFINITIONS:

- 2.1 Surveillance  
Surveillance includes
  - monitoring, observing or 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 and
  - surveillance by or with the assistance of a surveillance device.

## 2.2 Covert Surveillance

Covert surveillance is surveillance carried out in a manner calculated to ensure that subjects of it are unaware that it is or may be taking place. Covert surveillance involves the systematic surveillance of an individual. The everyday functions of law enforcement will not usually involve covert surveillance. This policy applies only to covert surveillance.

## 2.3 Directed Surveillance

Directed surveillance is covert but not intrusive and is undertaken:

- For the purposes of a specific investigation or a specific operation
- In such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation) and
- Otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

Directed surveillance is the type of surveillance with which officers of the Council may be involved.

## 2.4 Intrusive surveillance

Intrusive surveillance would involve the presence of an officer in a residence where activities are being investigated or in a private vehicle, or use of a surveillance device in such residence or vehicle.

Officers of the Council do not engage in intrusive surveillance and there is no power under RIPA for this Council's officers to engage in intrusive surveillance.

## 2.5 The Conduct and use of covert human intelligence sources

The conduct and use of covert human intelligence sources would amount to the use of an informant.

Officers of the Council do on rare occasions engage in the conduct and use of covert human intelligence sources.

# 3. Authorisations

3.1 Authorisation is required for the use of directed surveillance and for the conduct and use of covert human intelligence sources to be lawful.

3.2 Each officer that undertakes investigations on behalf of the Council shall seek authorisation in writing for any directed surveillance or for the conduct and use of any covert human intelligence sources.

#### 4. Standard Forms

- 4.1 Standard forms are provided to assist the officer making the application for authorisation and to assist the authorising officer.
- 4.2 The authorisation shall be sought using the standard forms as amended from time to time.
- 4.3 The authorising officers and the functions for which they are authorised are set out in **Appendix 1**.
- 4.4 The authorising officer shall satisfy himself or herself that authorisation is necessary and proportionate.
- 4.5 Authorisation is "necessary" if it is on grounds as follows:
  - (a) in the interests of national security;
  - (b) for the purpose of preventing or detecting crime or of preventing disorder;
  - (c) in the interests of the economic well-being of the United Kingdom;
  - (d) in the interests of public safety;
  - (e) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
  - (f) for any purpose (not falling within paragraphs (a) to (f) which is specified for the purposes of s28(3)(g) or s29(3)(g) of RIPA by an order made by the Secretary of State
- 4.6 Whether the directed surveillance or the conduct and use of any covert human intelligence sources is "proportionate" to what is sought to be achieved by the activity will depend on
  - (a) the reasons for it being sufficient and adequate,
  - (b) there being no other reasonable means of obtaining the information sought
  - (c) the surveillance being essential to the investigation
  - (d) the likely value of the surveillance
  - (e) the type of surveillance action proposed being the least intrusive measure and no more than is necessary and
  - (f) lasting for an appropriate period of time and no more
  - (g) the level of risk of intrusion against others (collateral intrusion)
- 4.7 The authorising officer shall consider the risk of collateral intrusion and whether a separate authorisation is required for any collateral intrusion on or interference with the privacy of persons other than the subject(s) of directed surveillance.

- 4.8 If any collateral intrusion is likely 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, the authorising officer shall be the Chief Executive or the Director or Assistant Director of the relevant service, and in Environment Services, the Head of Development Control, the Head of Public Services and the General Manager - Commercial Services.
- 4.9 If the directed surveillance or the conduct and use of any covert human intelligence sources is likely to result in the acquisition of confidential material the authorising officer, when considering the application shall assess how likely it is that confidential material will be acquired.
- 4.10 Applications in which the directed surveillance is likely to result in the acquisition of confidential material will only be considered in exceptional and compelling circumstances with full regard to the proportionality issues this raises.
- 4.11 Where the likely consequence of the directed surveillance would be for any person to acquire knowledge of confidential material, the authorising officer shall be the Chief Executive, or the Director or the Assistant Director of the relevant service and in Environment Services, the Head of Development Control, the Head of Public Services and the General Manager - Commercial Services.
- 4.12 The authorising officer shall give the fullest consideration to any cases where the subject of the surveillance might reasonably expect a high degree of privacy, for instance in his or her home.
- 4.13 The Code of Practice issued under the Act must be taken into account and is reflected in this policy.

## **5. Activities by other public authorities**

- 5.1 The application officer shall make enquiries of other public authorities whether they are carrying out similar activities if he considers that there is such a possibility in order to ensure that there is no conflict between the activities of this Council and those other public authorities.

## **6. Joint Investigations**

- 6.1 Each officer of the Council who carries out any investigation in conjunction with another public authority such as:
- the Department of Social Security
  - the Environment Agency
  - the Food Standards Agency or
  - the Health and Safety Executive

shall obtain a copy of such authorisation that exists for that public authority to carry out surveillance.

## **7. Data Protection**

- 7.1 Authorising officers shall ensure that there is compliance with the appropriate data protection requirements and the Council's policies and practices in the handling and storage of material.

## **8. Destruction of wholly unrelated material**

- 8.1 Where material is obtained by directed surveillance which is wholly unrelated to a criminal or other investigation or to any person who is the subject of the investigation, it must be destroyed immediately, but not if civil or criminal proceedings are contemplated. Where court proceedings are contemplated, all material is potentially relevant and must be retained and will be disclosed in the usual way.
- 8.2 The applicant officer shall, if appropriate, seek authority to destroy any wholly unrelated material where there will be no court proceedings.

## **9. Confidential Material**

- 9.1 Investigating officers shall be alert to anything that may be confidential material. Where there is doubt, advice must be sought from a legal adviser before further dissemination of the material takes place.
- 9.2 Confidential material shall not be retained or copied unless it is necessary for a specified purpose.
- 9.3 Confidential material shall be disseminated only where an appropriate officer (having sought advice from a legal adviser) is satisfied that it is necessary for a specific purpose.
- 9.4 The retention or dissemination of such information shall be accompanied by a clear warning of its confidential nature. Reasonable steps shall be taken to safeguard the material against it becoming available, or its contents being known, to any person whose possession of it might prejudice any criminal or civil proceedings related to the information.
- 9.5 Confidential material shall be destroyed as soon as it is no longer necessary to retain if for a specified purpose.

## **10. Training**

- 10.1 Each officer of the Council with responsibilities for the conduct of investigations, shall, before carrying out any investigation under RIPA, undertake training to ensure that investigations and operations by him will be conducted lawfully.

## **11. Monitoring**

- 11.1 The authorising officer shall, while any authorisation has effect, review the authorisation and any renewal at such interval(s) as he shall determine.
- 11.2 The Data Protection Officer shall, after the cancellation of the surveillance, review the cancellation of any authorisation or any renewal at such interval(s) as he shall determine. This review will take into account any subsequent action by the Council arising from the produce of the surveillance, which may be in the form of the issue of notices, orders, or determinations by the Council, or the bringing of criminal or civil proceedings, or any other action.
- 11.3 The Data Protection Officer shall record the review that he has undertaken and the date on which it was carried out by signing and dating the cancellation of the authorisation or any renewal
- 11.4 The Data Protection Officer shall seek advice from Legal services if necessary in connection with any aspect of his monitoring function.

## **12. Central Record**

- 12.1 Copies of the following documents that set out the powers and duties of officers in connection with such authorisations shall be kept by each service in a centrally accessible place:
- The Regulation of Investigatory Powers Act 2000
  - The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000 (SI 2000/2417)
  - The Code of Practice

## **13. Records of Authorisations**

- 13.1 Each service shall keep a written record of each of the following authorisations made by an authorisation officer for the service:
- Application for authorisation for directed surveillance or for the conduct or the use of a covert human intelligence source
  - Renewal of such authorisation
  - Cancellation of such authorisation
  - Destruction of wholly unrelated material obtained from authorised directed surveillance or from the conduct or the use of a covert human intelligence source
- 13.2 Each applicant officer shall provide a copy of any application for authorisation, renewal, or cancellation, or destruction of documents form to the Data Protection Officer, who will maintain the Council's Central record of directed surveillance or of the conduct or the use of a covert human intelligence source.
- 13.3 The written records shall be confidential and shall be kept secure.

13.4 The written records shall be retained for a minimum of five years from the ending of the authorisation and where there are pending or future criminal or other proceedings the written records shall be retained for a suitable further period.

#### **14. Disclosure**

14.1 The produce obtained during the course of an investigation that might be relevant to that or another investigation or pending or future civil or criminal proceedings shall not be destroyed, but retained and disclosed pursuant to the Criminal Procedure and Investigations Act 1996 as unused prosecution material gained in the course of an investigation, or which may be relevant to an investigation.