



CHELTENHAM
BOROUGH COUNCIL

CHELTENHAM BOROUGH COUNCIL

REGULATION OF INVESTIGATORY POWERS ACT 2000

PROCEDURAL GUIDE

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This document is owned by:

Name	Job Title	Version
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Jane Griffiths	Assistant Chief Executive	1.1

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Forward

The purpose of this Procedural Guide ("the Guide") is to ensure that Cheltenham Borough Council ("the Council") complies with the Regulation of Investigatory Powers Act 2000 (RIPA).

The Act and this guidance make provision for and about the interception of communications, the acquisition and disclosure of data relating to communications, the carrying out of surveillance, the use of covert human intelligence sources and the acquisition of the means by which electronic data protected by encryption or passwords may be decrypted or accessed; to provide for Commissioners and a tribunal with functions and jurisdiction in relation to those matters, to entries on and interferences with property or with wireless telegraphy and to the carrying out of their functions by the Security Service, the Secret Intelligence Service and the Government Communications Headquarters; and for connected purposes.

The introduction of the Human Rights Act 1998 means that the Council by law has to respect the rights of everyone. In particular Article 8 guarantees everyone the right to respect for their private and family life, their home and correspondence. This right can only be interfered with when the interference is in accordance with the law and necessary. RIPA provides the framework for public authorities to carry out surveillance and the lawful means whereby rights can be infringed by the Council. If the correct procedures are put in place and followed by officers the Council will earn the protection of RIPA and our actions will be lawful.

Cheltenham Borough Council undertakes to use these powers in line with the law, sparingly and proportionately.

Steve Jordan
Leader
Cheltenham Borough Council

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1 INTRODUCTION

- 1.1 This policy document shall be readily available at the offices of Cheltenham Borough Council (“the Council”). A copy can be obtained from the RIPA co-ordinator, Policy and Partnerships, Municipal Offices, Promenade, Cheltenham, GL50 9SA.
It is also available on the Council's website at www.cheltenham.gov.uk and the Intranet.
- 1.2 The purpose of this document is to ensure that the Council complies with the Regulation of Investigatory Powers Act 2000 (RIPA).
- 1.3 This document provides guidance on the regulation of any covert surveillance that is carried out by council officers. This includes the use of undercover officers, informants and private investigators and other agents of the Council.
- 1.4 Any covert surveillance will have to be authorised and conducted in accordance with RIPA, the statutory codes of practice and this Guide and shall only be for one of the purposes set out in this Guide and for a purpose which the Council is legally required or empowered to investigate as part of its functions.
- 1.5 Covert surveillance will only be used by the Council where it judges such use to be proportionate to the seriousness of the crime or matter being investigated, and the history and character of the individual(s) concerned.
- 1.6 Before requesting authorisation Investigating Officers will have regard to this document and the statutory Codes of Practice issued under section 71 RIPA. The Codes of Practice are available from the RIPA co-ordinator and direct from the Office of Surveillance website at <http://www.surveillancecommissioners.gov.uk/> or the Home Office at <http://security.homeoffice.gov.uk/ripa/>.
- 1.7 Before authorising covert surveillance Authorising Officers will have regard to this Guide and the statutory Codes of Practice issued under section 71 RIPA. The Codes of Practice are available from the RIPA co-ordinator and direct from the Office of Surveillance website at <http://www.surveillancecommissioners.gov.uk/> or the Home Office at <http://security.homeoffice.gov.uk/ripa/>.
- 1.8 Authorising officers will have to consider whether it is necessary and proportionate for Investigating Officers to undertake covert surveillance and whether it is possible to obtain the evidence through other means.
- 1.9 Authorising Officers must give detailed consideration to the risk of collateral intrusion i.e. the risk of intruding into the privacy of others while watching someone else. Steps will have to be taken to minimise this risk.
- 1.10 There should be no situation where an officer engages in covert surveillance without obtaining authorisation in accordance with the procedures set out in this document, the statutory Codes of Practice and from RIPA.
- 1.11 Any queries concerning the content of the document should be addressed to the RIPA co-ordinator.

2 THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

2.1 The background to RIPA

RIPA provides a legal framework for the control and regulation of surveillance and information techniques which public authorities undertake as part of their duties. As was highlighted in the introduction to the Guide the need for such control arose as a result of the Human Rights Act 1998. Article 8 of the European Convention on Human Rights states that: -

- 1) *Everyone has the right of respect for his private and family life, his home and his correspondence.*
- 2) *There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is 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 health and morals or for the protection of the rights and freedoms of others.*

The right under Article 8 is a qualified right and authorities can interfere with this right for the reasons given in paragraph 2 of Article 8. RIPA provides the legal framework for lawful interference.

2.2 The scope of this Guide

This Guide intends to cover the surveillance and information gathering techniques which are most likely to be carried out by the Council.

Neither RIPA nor this Guide covers the use of any overt surveillance, general observation that forms part of the normal day to day duties of officers, the use of equipment to merely reinforce normal sensory perception such as binoculars or circumstances where members of the public who volunteer information to the Council.

RIPA does not normally cover the use of overt CCTV surveillance systems since members of the public are aware that such systems are in place.

There may however be times when the Council uses the CCTV for a specific investigation or operation. This Guide does not cover in detail the use of surveillance via the Town Centre CCTV system. In such cases authorisation for directed surveillance may be required. If the CCTV is to be used for surveillance, Investigating Officers should consult and adhere to the provisions of the Cheltenham Town Centre Closed Circuit Television Operating Procedures and the Cheltenham Town Centre Closed Circuit Television Codes of Practice jointly set up by Cheltenham Borough Council and Gloucestershire Constabulary.

If an Investigating Officer envisages using any other CCTV system they should contact the RIPA co-ordinator concerning any clarification on the administrative process or seek legal advice from OneLegal before they conduct any surveillance.

RIPA deals with a wide variety of surveillance types. Some of the other techniques that are covered by RIPA but will not or cannot be used by local authorities are listed below, these include: -

1. The interception of any communication such as postal, telephone or electronic communications without both the sender and receiver's permission;
2. The acquisition and disclosure of information to who has sent or received any postal, telephone or electronic communication; and
3. The covert use of surveillance equipment within any premises or vehicle, including business premises and vehicles with the intention of covertly gathering information about the occupant/s of such premises or vehicles

If you intend to carry out any of the activities listed above you should seek further guidance from the RIPA co-ordinator concerning the administrative process or seek legal advice from OneLegal before you undertake any of these activities. The types of investigation that cannot be undertaken are set out in chapter 3.

The interference of telecommunications sent and received by Council staff is considered in chapter 7.

2.3 Consequences of not following RIPA

Section 27 of RIPA provides that surveillance shall be lawful for all purposes if authorised and conducted in accordance with an authorisation granted under RIPA.

Lawful surveillance is exempted from civil liability.

Although not obtaining authorisation does not make the authorisation unlawful per se, it does have some consequences: -

- i. Evidence that is gathered may be inadmissible in court;
- ii. The subjects of surveillance can bring their own proceedings or defeat proceedings brought by the Council against them on human rights grounds i.e. we have infringed their rights under Article 8;
- iii. If a challenge under Article 8 is successful the Council could face a claim for financial compensation;
- iv. A complaint could be made to the Office of Surveillance Commissioners; and
- v. The government has also introduced a system of tribunal. Any person who believes that their rights have been breached can have their complaint dealt with by way of a tribunal.

2.4 The Surveillance Commissioner

The government has appointed a Surveillance Commissioner to review the way in which public authorities implement the requirements of RIPA. The Commissioner has a wide range of powers of access and investigation. The Council will receive periodic visits from the Office of the Surveillance Commissioners. They will check to see if the Council is complying with RIPA.

It is important that we can show that we all comply with this Guide and comply with the provisions of RIPA.

3 COVERT SURVEILLANCE

There are three categories of covert surveillance: -

1. Directed Surveillance;
2. Covert Human Intelligence Sources; and
3. Intrusive surveillance.

3.1 Directed Surveillance (DS)

The majority of covert surveillance that will be undertaken by the Council will fall under the heading of Directed Surveillance (DS).

DS is defined as surveillance which is covert, but not intrusive, and is undertaken: -

- a) For the purpose of a specific investigation or operation
- b) In such a manner as it is likely to result in obtaining private information about a person (whether or not that person is the target of the investigation or operation) and
- c) In a planned manner and not by way of an immediate response whereby it would not be reasonably practicable to obtain an authorisation prior to the surveillance being carried out.

It is irrelevant where the subject of the DS is being observed.

If you intend to instruct an agent to carry out the DS the agent must complete and sign the form marked "agent's agreement form" contained in Appendix C. The agent will be subject to RIPA in the same way as any employee of the Council would be.

The flow chart in Appendix D gives guidance on when authorisation might be needed.

3.2 Covert Human Intelligence Sources (CHIS)

This involves the establishment or maintenance of a personal or other relationship with a person for the covert purpose of obtaining or disclosing private information. A CHIS is a person who: -

- a) s/he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph b) or c);
- b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

A relationship is established or maintained for a covert purpose if and only if it is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

A relationship is used covertly, and information obtained is disclosed covertly, if and only if the relationship is used or the information is disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

Special consideration must be given to the use of vulnerable individuals for CHIS. A 'vulnerable individual' is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation. Any individual of this description should only be authorised to act as a source in the most exceptional circumstances.

Before you undertake any surveillance involving a vulnerable individual you **must** consult the RIPA co-ordinator concerning any clarification on the administrative process or seek legal advice from OneLegal. Also in these cases, a Chief Officer must authorise the use of a vulnerable individual as a CHIS.

Special safeguards also apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. On no occasion should the use or conduct of a source under 16 years of age be authorised to give information against his parents or any person who has parental responsibility for him.

In other cases, authorisations should not be granted unless the special provisions contained within The Regulation of Investigatory Powers (Juveniles) Order 2000; SI No. 2793 are satisfied. Authorisations for juvenile sources should be granted by Chief Officers. Before you undertake any surveillance involving a juvenile you **must** consult the RIPA co-ordinator concerning any clarification on the administrative process or seek legal advice from OneLegal.

If you intend to instruct an agent to carry out the CHIS the agent must complete and sign the form marked "agent's agreement form" contained in Appendix C. The agent will be subject to RIPA in the same way as any employee of the Council would be.

The flow chart in Appendix D gives guidance on when authorisation might be needed.

3.3 Intrusive surveillance

Intrusive surveillance is defined as covert surveillance that: -

- a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
- b) involves the presence of any individual on the premises or in the vehicle or is carried out by means of a surveillance device.

If the device is not located on the premises or in the vehicle, it is not intrusive surveillance unless the device consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

LOCAL AUTHORITIES ARE NOT AUTHORISED TO CONDUCT INTRUSIVE SURVEILLANCE

If you are considering conducting surveillance and the surveillance might fall within the scope of intrusive surveillance you **must** contact the RIPA co-ordinator concerning any clarification on the administrative process or seek legal advice from OneLegal before you undertake any surveillance.

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4 PROCEDURE FOR OBTAINING AUTHORISATIONS

4.1 The Senior Authorising officer :-

Role:

The Chief Executive Officer is the Senior Authorising officer and can

grant intrusive surveillance authorisations under the 2000 Act or to apply to the Secretary of State for such warrants.

authorise, review and cancel directed surveillance of legal consultations falling within the 2010 Order

- i review the integrity of the process in place within the local authority for the management of CHIS;
- ii compliance with Part II of the Act and with the Codes;
- iii oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- iv engagement with the Office of the Surveillance Commissioner (OSC) inspectors when they conduct their inspections, where applicable; and
- v where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner.
- vi ensuring that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the OSC and where an inspection report highlights concerns about the standards of authorising officers, this individual will be responsible for ensuring the concerns are addressed.

4.2 Authorising Officers

4.2.1 The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000 No. 2417 prescribes that for local authorities the Authorising Officer shall be at least Assistant Chief Officer level or the Senior Officer responsible for the management of an investigation as distinct from the officer responsible for the conduct of an investigation.

4.2.2 The Council's constitution provides for certain officers to give authorisations.

4.2.3 Officers of a lower rank **must not** grant authorisations even in cases of urgency.

4.2.4 A designated Authorising Officer must qualify **both** by rank and by competence. Officers who wish to be designated must have been trained to an appropriate level so as to have an understanding of the Act and the requirements that must be satisfied before an authorisation can be granted.

Appendix A sets out the officers within the Council who can grant authorisations.

4.2.5 Authorisations must be given in writing by the Authorising Officer, except in urgent cases when authorisation may be given verbally. If an authorisation is given verbally the procedure outline at paragraph 4.2.5 must be followed.

4.2.6 Authorising Officers are also responsible for carrying out regular reviews of applications which they have authorised and also for the cancellation of authorisations.

4.3 Investigating Officers – What you need to do before applying for authorisation

4.3.1 Investigating Officers should think about the need to undertake DS or CHIS before they seek authorisation. Investigating Officers need to consider whether they can obtain the information by using techniques other than covert surveillance. There is nothing that prevents an Investigating Officer discussing the issue of surveillance beforehand. Any comments by a supervisor should be entered into the application for authorisation.

4.3.2 The Codes of Practice do however advise that Authorising Officers should not be directly responsible for authorising investigations or operations in which they are directly involved although it is recognised that this may sometimes be unavoidable.

4.3.3 If you intend to carry out DS or use CHIS you should complete and submit an Application for Directed Surveillance form which is marked "authds" in Appendix B or an Application for the use of CHIS to an Authorising Officer which is marked "authchis" in Appendix B.

4.3.4 Appendix D shows the steps which are required as part of the authorisation process.

4.3.5 The person seeking the authorisation should complete parts 1 and 2 of the form having regard to the guidance given in this Guide and the statutory Codes of Practice. If the situation is urgent, verbal authorisation should be obtained from the appropriate Authorising Officer. As soon as it is reasonably practicable after the verbal authorisation has been given the authorisation form should be completed, including section 16 which deals with why the situation was considered urgent. The Codes of Practice offer guidance on when an application should be considered urgent.

4.3.6 The form should then be submitted to the Authorising Officer for authorisation.

4.4 Authorising Officers – What you need to do before authorising surveillance

4.4.1 Before giving authorisation an Authorising Officer **must** be satisfied that:

the reason for the request is one of the permitted reasons under the Act and permitted under the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 i.e.

- For the purpose of the prevention and detection of crime or for the preventing of disorder; and
- the desired result of the covert surveillance cannot reasonably be achieved by other means

- the risks of collateral intrusion have been properly considered, whether the reason for the surveillance is balanced proportionately against the risk of collateral intrusion
- there must also be consideration given to the possibility of collecting confidential personal information. If there is a possibility of collecting personal information the matter should be passed to the Chief Officer for consideration

4.4.2 An Authorising Officer **must** also be satisfied the surveillance in each case is **necessary** and **proportionate**. The Authorising Officer must complete the relevant section of the form explaining why in his/her opinion the surveillance is necessary and proportionate.

5 DURATION, REVIEW, RENEWAL AND CANCELLATION OF AUTHORISATIONS

5.1 Duration

5.1.1 DS authorisations will cease to have effect after three months from the date of approval.

5.1.2 CHIS authorisations will cease to have effect after twelve months from the date of approval.

5.1.3 Investigating Officers should indicate within the application the period of time that they estimate is required to carry the surveillance, this will be proportionate to the objectives of the investigation and give due consideration to collateral intrusion

5.1.4 Urgent verbal authorisations will only be effective for up to 72 hours, from the time that the authorisation was granted, unless the authorisation is subsequently endorsed by a written authorisation.

5.1.5 For CHIS authorisations that involve the use of juveniles the duration of such an authorisation is one month instead of twelve months.

5.1.6 It is the responsibility of the Investigating Officer to make sure that the authorisation is still valid when they undertake surveillance.

5.2 Review

5.2.1 An Investigating Officer must carry out a regular review of authorisations. If an authorisation is no longer required it **must** be cancelled.

5.2.2 The results of any review must be included on the review form (see forms "revds" and "revchis" in Appendix B).

5.2.3 The Authorising Officer also has a duty to review authorisations that have been granted when it is necessary or practicable to do so. Particular attention should be given to authorisations involving collateral intrusion or confidential material.

5.2.4 The Authorising Officer should keep a copy of the review form and a copy should be given to the Investigating Officer. A copy of the review form must also be sent to the RIPA co-ordinator.

5.3 Renewals

- 5.3.1 An Investigating Officer can ask for and an Authorising Officer can grant a renewal of an authorisation before it would cease to have effect.
- 5.3.2 An application for a renewal must not be made more than seven days before the authorisation is due to expire.
- 5.3.3 A renewal can last for up to three months, effective from the date that the previous authorisation would have ceased to have effect.
- 5.3.4 An Authorising Officer can grant more than one renewal as long as the request for authorisation still meets the requirements for authorisation. An Authorising Officer must still consider all of the issues that are required for a first application before a renewal can be granted.
- 5.3.5 If the reason for requiring authorisation has changed from its original purpose it will not be appropriate to treat the application as a renewal. The original authorisation should be cancelled and a new authorisation should be granted.
- 5.3.6 An application for a renewal must be completed on the appropriate form. For DS please use the form marked "rends" in Appendix B and for CHIS please use the form marked "renchis" in Appendix B.
- 5.3.7 The Authorising Officer should keep a copy of the renewal and a copy should be given to the Investigating Officer. A copy of the renewal form must also be sent to the RIPA co-ordinator.

5.4 Cancellations

- 5.4.1 If the reason for requiring the authorisation no longer exists, the authorisation **must** be cancelled. This applies to both original applications and renewals.
- 5.4.2 Authorisations **must** also be cancelled if the surveillance has been carried out and the original aim has been achieved.
- 5.4.3 An authorisation can be cancelled by using form marked "cands" in Appendix B for DS and the form marked "canchis" in Appendix B for CHIS. An Investigating Officer should complete the details required on the first page, sections 1 and 2 of the cancellation form. The form should then be submitted to the Authorising Officer who will complete sections 3, 4 and 5.
- 5.4.4 It is the responsibility of the Investigating Officer to monitor their authorisations and cancel them where appropriate.
- 5.4.5 The Authorising Officer should keep a copy of the cancellation form and a copy should be given to the Investigating Officer. A copy of the cancellation form must also be sent to the RIPA co-ordinator.

5.5 Review of Policy and Procedure

- i The Economy and Business Improvement Overview & Scrutiny Committee will receive reports immediately following the use of RIPA

- ii The Corporate Governance Group will review the use of the RIPA and report to Economy and Business Improvement Overview & Scrutiny Committee on an annual basis

6 THE RIPA CO-ORDINATOR

6.1 Role

All applications for authorisations and renewals should including those that have been refused must be copied and passed to the RIPA co-ordinator.

Copies of all cancellations must also be passed to the RIPA co-ordinator.

The RIPA co-ordinator will: -

- i. Keep the copies of the forms for a period of at least 3 years;
- ii. Keep a register of all of the authorisations, renewals and cancellations; and
- iii. Keep a database for identifying and monitoring expiry dates and renewal dates.
- iii. Keep up to date the Data audit record for all protected documents
- iv. Provide administrative support and guidance on the processes involved
- v. not provide legal guidance or advice
- vi. Monitor the authorisations, renewals and cancellations so as to ensure consistency throughout the Council;
- vii. Monitor each department's compliance and act on any cases of non compliance;
- viii. Provide further guidance on RIPA and the provisions of this Guide; and
- viii. Review the contents of the Guide.

6.3 It is however the responsibility of the Investigating Officer and the Authorising Officer and the Senior Authorising officer to ensure that: -

- i. Authorisations are only sought and given where appropriate;
- ii. Authorisations are only sought and renewed where appropriate;
- iii. Authorisations are cancelled where appropriate; and
- iv. They act in accordance with the provisions of RIPA.

7.0 Legal advice

- i OneLegal will provide legal advice to staff making , renewing or cancellations

- ii Requests for legal advice will be in writing and copied to the RIPA co-ordinator to keep on file
- iii Responses to requests for legal advice will be in writing and copied to the RIPA coordinator to keep on file.

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APPENDIX A

Officers

The following officers are the Senior Authorising officer and the Authorising Officers for the purposes of RIPA

Senior Authorising officer

Chief Executive

Authorising Officers

Assistant Chief Executive
Strategic Directors (2)
Chief Finance Officer
Borough Solicitor and Monitoring Officer

Co-ordination/monitoring officer

Policy officer (Governance)

APPENDIX B

AUTHORISATION FORMS

The authorisation, review and cancellation forms will be the forms that are current on the home

<http://security.homeoffice.gov.uk/ripa/>

APPENDIX C

REGULATION OF INVESTIGATORY POWERS ACT 2000

CHELTENHAM BOROUGH COUNCIL

AGENT'S AGREEMENT FORM

I(insert Agent's name) of
.....(address) confirm that
in relation to

.....(name or description of the surveillance) I
agree to comply with the Regulation of Investigatory Powers Act 2000, with all statutory
provisions, statutory Codes of Practice and with Cheltenham Borough Council's Procedural
Guide when undertaking any and all surveillance authorised by Cheltenham Borough
Council under the Regulation of Investigatory Powers Act 2000. I acknowledge receipt of a
copy of the Council's Authorisation Form reference numberdated the
..... and I agree not to carry out any surveillance that is contrary this
authorisation.

Signed.....

Dated.....

APPENDIX D

Will DCS authorisation be required?

Are you carrying out the surveillance in a way that people are going to be unaware that it is being carried out?	No →	Surveillance is unlikely to be covert and therefore authorisation will not be required
Yes ↓		
Is the surveillance part of a specific investigation?	No →	Unlikely to require authorisation
Yes ↓		
Are you going to be collecting information about a person's private or family life?	No →	Unlikely to require authorisation
Yes ↓		No ↓
Will the surveillance require the presence of an individual or use a surveillance device on a person's premises or private vehicle?	Yes →	This may fall within the definition of intrusive surveillance
No ↓		
You will need to obtain authorisation for D.C.		Seek administrative advice from RIPA co-ordinator and seek legal advice from One legal

Will CHIS authorisation be required?

Are you carrying out the surveillance in a way that people are going to be unaware that it is being carried out?	No →	It is unlikely that the CHIS is covert and authorisation will be required
Yes ↓		
Are you going to establish a personal or other relationship with someone in order to obtain, provide access to, or disclose information as part of that relationship?	No →	Unlikely to require authorisation
Yes ↓		
Are you going to be using a vulnerable person or persons under 18 years old?	Yes →	Speak to the RIPA co-ordinator and seek advice from One legal before you undertake any surveillance
No ↓		
Is the person establishing a relationship with a CBC employee or agent?		
Yes ↓		
Authorisation for CHIS should be obtained and an agent's agreement form should be completed when an agent is used		