



Regulation of Investigatory Powers Policy

March 2023

Basildon Borough Council

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1. Introduction

Basildon Borough Council (“the Council”) is permitted, and required, to carry out investigations in relation to its duties. Such investigations may require surveillance or information gathering and this is often undertaken overtly, meaning the person being investigated is fully aware of the situation. This type of surveillance is not the subject of this Policy and does not require authorisation under the Regulation of Investigatory Powers Act (RIPA). In some circumstances, it is necessary to undertake surveillance or information gathering in a covert manner, meaning the individual is not made aware of such activity. The purpose of this Policy is to ensure that there is a consistent approach by the Council and officers to the undertaking and authorisation of such surveillance activity.

The Regulation of Investigatory Powers Act 2000¹ (RIPA) has far reaching implications for many areas of work carried out by the Council. This document sets out the principles to be taken into consideration when authorising and/or seeking to carry out covert surveillance activity. This Policy is to be used by all Council service areas and officers undertaking investigation and using the techniques of surveillance and/or the use of Covert Human Intelligence Sources (CHIS’s).

Since this Policy was first adopted, changes have been made to ensure compliance both with the recommendations of Internal Audit review and of inspections by the investigatory Powers Commissioner’s Office (IPCO) (formerly the Office of the Surveillance Commissioner). The Council’s RIPA Working Group monitors the use of covert techniques and any changes in legislation, good practice and Codes of Practice and will arrange for the Policy to be updated accordingly. The RIPA Working Group, its associated activities and policy reviews are in turn subject to routine overview from the Information Governance Working Group.

The Codes of Practice² assist public authorities to assess and understand whether, and in what circumstances, it is appropriate to use covert techniques. The Codes of Practice also provide guidance on what procedures need to be followed in each case. The current Codes of Practice are:

- I. Interception of communications
- II. Equipment Interference
- III. Acquisition, Disclosure and Retention of Communications Data
- IV. Covert Surveillance
- V. Covert Human Intelligence Sources
- VI. Investigation of Protected Electronic Information.

¹ [Regulation of Investigatory Powers Act 2000.](#)

² [Home Office, 2019. Investigatory Powers Act 2016 – codes of practice.](#)

Following decisions made by the Audit and Risk Committee and Cabinet in 2010, a role was established for elected Members to scrutinise the Council's compliance with RIPA and relevant codes of practice.

2. Policy Statement

The Regulation of Investigatory Powers Act 2000 (RIPA) regulates the way in which the Council conducts surveillance for the purposes of law enforcement. In particular, it details the checks and balances in place to ensure that any use of covert techniques is lawful, necessary, and proportionate. The fundamental requirement of RIPA is that when the Council considers undertaking directed surveillance or using a covert human intelligence source, it must only do so if:

- a) The activity has been authorised by an officer with appropriate powers; and,
- b) The relevant criteria are satisfied and that in relation to directed surveillance the alleged offences carry a minimum sentence of six months imprisonment, and that confirmation of approval has been given by a Magistrate.

3. Context

3.1 National Context

The key driver of this Policy is to ensure that the Council is fully compliant with RIPA. In addition, Article 8 of the European Convention on Human Rights Convention 1950 (ECHR)³ advocates the right to privacy. To comply with this human right, surveillance, which potentially infringes the right to privacy, can only be done if it is carried out "in accordance with the law". The legal framework to authorise surveillance is provided through RIPA and its associated Codes of Practice⁴.

In conducting covert investigations, it is necessary to draw a balance between the rights of the individuals under investigation and the public interest. To achieve this, the Council will comply with all relevant legislation and guidance, including but not limited to the Human Rights Act 1998⁵ (HRA), RIPA, RIPA (Directed surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012,⁶ the Protection of Freedoms Act 2012,⁷ relevant supporting Codes of Practice provided by the Home Office including the updated 2018 Covert Surveillance and

³ [European Convention on Human Rights 1950.](#)

⁴

⁵ [Human Rights Act 1998.](#)

⁶ [The Regulation of Investigatory Powers \(Directed Surveillance and Covert Human Intelligence Sources\) \(Amendment\) Order 2012.](#)

⁷ [Protection of Freedoms Act 2012.](#)

Property Interference Code of Practice⁸ and the Covert Human Intelligence Service Code of Practice (CHIS Code)⁹. Throughout this Policy, the Acts listed above will be referred to as “the Acts”.

3.2 Local Context

Basildon Council has a statutory responsibility through the powers available in RIPA. The Council is committed to carrying out its statutory duties in relation to its investigation and enforcement activities in a lawful manner while promoting the Corporate Plan 2022-26 promises. The Council recognises the importance of ensuring necessary and proportionate action is taken where offences may be being committed, but that this action also needs to consider the rights of an individual and the protections afforded through legislation such as the HRA . This Policy particularly relates to directed surveillance, the use of a Covert Human Intelligence Source (CHIS) or acquisition of communication data. Through this Policy, Basildon Council must also reflect any changes in the legislative framework and the appropriate delegation of authorised persons.

3.3 Serious Crime Test

Local authorities can only authorise directed surveillance to prevent or detect crime where the criminal offence which is sought to be prevented or detected is punishable, whether on summary conviction or on indictment, by a maximum term of at least 6 months imprisonment, or would constitute an offence relating to the underage sale of alcohol or tobacco.

A local authority cannot authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence punishable whether on summary conviction or indictment, by a maximum term of at least 6 months imprisonment. In each case, the issues below must be considered:

- Ensure compliance with the data protection requirements and any other relevant codes of practice.
- Ensure that any confidential material obtained during the course of the surveillance is securely maintained. Confidential material includes matters subject to legal privilege, confidential personal information, and confidential journalistic material.

These terms are explained further in the Surveillance Code at paragraphs 4.27-4.31. Essentially there should be special consideration of this situation.

- Consider the impact of collateral intrusion relating to persons other than the subject of the surveillance. (See explanation at point 5.8 below).

⁸ Home Office, 2018. [Covert surveillance and property interference code of practice.](#)

⁹ Home Office, 2018. [Covert human intelligence sources code of practice.](#)

- Assess whether the action is proportionate to what the surveillance seeks to achieve. In other words, is the objective important enough to justify the interference with a person's liberty & privacy?

Examples of offences which meet the 'serious crime test' include:

- Benefit Fraud (Section 111A of the Social Security Administration Act 1992 and the Fraud Act 2006);
- Fly tipping;
- Some Planning offences (e.g., making false statements to obtain a Certificate of Lawful Development).

Investigating Officers must always check the applicable legislation to ensure that any proposed directed surveillance complies with the serious crime test.

The following offences are examples of offences that are not covered by the serious crime test:

- Littering;
- Dog fouling;
- Fly posting;
- Most planning offences, involving stop notices, enforcement notices, untidy site notices, planning contravention notices, breach of condition notices and tree preservation orders.

Once an authorisation for directed surveillance or a CHIS has been granted in accordance with the Council's scheme of delegation, approval will need to be obtained from a Justice of the Peace (JP). The judicial application/order form for a JP will need to be completed and an appointment arranged with the Magistrates' Court to arrange a hearing. On attendance at court the officer will need to have with them a counter signed RIPA authorisation/notice form, the judicial application/order form, and any other relevant reference or supporting material.

If a JP refuses to approve the grant or renewal and quash the authorisation or notice, then the local authority must be given at least 2 working days in which to make representations before the authorisation is quashed.

4. Consequences of Failure to Comply with RIPA

Authorisation provides a lawful authority to carry out covert surveillance provided it is authorised in accordance with the Acts and relevant Codes of Practice. However, a decision not to obtain authorisation does not automatically render the surveillance unlawful. The Acts and Codes of Practice are admissible in evidence and so whether authorisation was correctly obtained will be taken into account in any court proceedings about admissibility of evidence and/or human rights challenges.

If the Council fails to comply with RIPA, it could be ordered to pay compensation either by a court or the ombudsman. An innocent party to collateral intrusion could be entitled to a considerable amount of compensation. It is also possible that evidence could be ruled inadmissible, although in general, case law indicates that this is less likely.

This Policy recommends that authorisations are always obtained in accordance with RIPA, where appropriate assessments have been carried out in accordance with this Policy and the RIPA Codes of Practice.

An additional, and equally important reason to obtain authorisation is that surveillance carried out in accordance with an authorisation will be rendered “lawful for all purposes”. This means that evidence obtained as a result of the surveillance will not be subject to questions around its admissibility if it is used in court as part of a prosecution. This provides an important additional protection to an individual under Article 6 of HRA in terms of protecting the rights of an individual to a fair trial.

In simple terms, where surveillance is planned with the intention of that person being unaware that the surveillance is, or may be, taking place, a written authorisation in accordance with this Policy must be obtained.

5. Responsible Officer

The Senior Responsible Officer is responsible for:

- The integrity of the processes in place within the authority to authorise directed surveillance, and the management of CHIS;
- Compliance with Part II of RIPA and with the revised Codes of Practice;
- The oversight of the reporting of errors to the Investigatory Powers Commissioner together with the identification of the causes of errors and the implementation of processes to minimise the repetition of errors;
- Engagement with the Commissioner and inspectors when they conduct their inspections; and, where necessary, oversight of the implementation of post-inspection action plans recommended or approved by a Judicial Commissioner; and,
- Ensuring that Authorising Officers are of an appropriate standard, addressing any recommendations and concerns in the inspection reports prepared by the Investigatory Powers Commissioner.

The Senior Responsible Officer will be a member of the Senior Leadership Team and will have the status of an Authorising Officer. Within Basildon Council, the Senior Responsible Officer is the Deputy Chief Executive. The Senior Responsible Officer chairs the Council’s RIPA Working Group.

Data Controllers should be aware of the Record Keeping, Safeguarding, Handling, Dissemination, Copying, Storage and Destruction sections in the CHIS Code for dealing with private information. All of this is available in Chapter 8 of the CHIS code, and its ideals are broadly captured within the Council’s Information Management Policy 2021-24 which

incorporates the Data Protection Act 2018 and the key principles outlined by the Information Commissioners Office. The Investigatory Powers Commissioner has the remit of providing comprehensive oversight of the use of the powers under RIPA and adherence to the practices and processes described in the RIPA Codes of Practice.

5.1 Authorising Officers

In accordance with Basildon Council's Constitution, authorisations to carry out surveillance under RIPA may be granted by the Authorised Officers designated for that purpose and those who are identified within the Council's approved RIPA policy as follows:

- a) The following named posts to authorise Directed surveillance, Covert Human Intelligence Sources applications and the accessing of communications data in accordance with RIPA (save for applications for Juvenile Covert Human Intelligence Sources): The Deputy Chief Executive, Head of Revenues, Benefits and Customer Services, Revenues and Benefits Manager, and the Head of Environmental Health.

AND

- b) The Chief Executive (or a Director) only, may authorise Juvenile Covert Human Intelligence Source applications.

It is important to note that it is the post, and *not* the current post holder, that is the Authorising Officer. If the holder of a post moves to a post that has not been designated as an Authorising Officer, they will no longer be able to give authorisation.

6. Types of Surveillance

Surveillance is:

- 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.

There are different types of surveillance which, depending on their nature, are either permitted or not permitted and require different degrees of authorisation monitoring under RIPA. Where surveillance is planned with the intention of that person being unaware that the surveillance is, or may be, taking place, a written authorisation in accordance with this Policy must be obtained.

It is important to be aware that, in deciding whether or not surveillance is covert, or overt, it is the intention of the Officer carrying out the surveillance, and not the perception of the person being observed, that is the deciding factor. Therefore, **if there is any intention to be covert, an authorisation must be obtained from an Authorising Officer.**

Types of activity covered in this Policy are:

- **Directed surveillance:**
 - Online Covert Activity
 - Aerial covert surveillance
 - Collateral intrusion
 - Collaborative working
 - The Serious Crime Test
 - Emergency situations

- **Covert Human Intelligence Source (CHIS):**
 - Online Covert Activity
 - Juvenile CHIS

6.1 Directed Surveillance

Directed surveillance is defined as surveillance that is covert but not intrusive, and undertaken:

- for the purposes of a **specific investigation or operation**;
- in such a manner as it is likely to obtain **private information about a person** (whether or not one specifically identified for the purposes of the investigation or operation);
- 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 under this part to be sought for the carrying out of the surveillance.

If observations are made as part of the normal duties of the person or officer involved, which may be termed as ‘general observations’ i.e., a Planning Officer noticing something whilst travelling around the town, this is not directed surveillance requiring authorisation. They may consider that as a result of their observation, surveillance action is required. If this surveillance is carried out covertly (i.e., without the person being observed knowing it is or may be taking place) then it is likely to be construed as directed surveillance and would require authorisation under the Acts. If the person subject to surveillance is advised that observations are to be carried out, then this is not surveillance that is being done covertly and would fall outside the definition of directed surveillance.

Directed surveillance does not include any type of covert surveillance carried out in residential properties or in private vehicles. This is intrusive surveillance that local authorities **cannot** authorise. Section 3.7 of the 2018 Covert Surveillance and Property Interference: Revised Code of Practice highlights specific situations that will require directed surveillance authorisation. These situations relate to the use of surveillance devices for private properties and vehicle locations, as well as the interception of communications in the course of transmission by means of a public postal service or telecommunication system. Section 3.27 of the Code of Practice provides specific advice on the use of surveillance in relation to private vehicles leased to a public authority.

6.2 Online Covert Activity

The use of the internet may be required to gather information prior to, and or, during an operation, which may amount to directed surveillance. Whenever the Council intends to use the internet as part of an investigation, they must first consider whether the proposed activity is likely to interfere with a person's ECHR Article 8 rights, including the effect of any collateral intrusion. Any activity likely to interfere with an individual's Article 8 rights should only be used when necessary and proportionate to meet the objectives of a specific case. Where it is considered that it is likely to be necessary, an authorisation (combined or separate) must be sought. Where an investigator may need to communicate covertly online, for example contacting individuals using social media websites, a CHIS authorisation should be considered.

Much of the information on the internet can be accessed without the need for RIPA authorisation; use of the internet prior to an investigation should not normally engage privacy considerations. If the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded and may engage privacy considerations, RIPA authorisations may need to be considered. Section 3.10 to 3.17 of the 2018 Covert Surveillance and Property Interference: Revised Code of Practice provides additional guidance and examples as to when such authorisations may be appropriate. It is important that all relevant staff understand the complexities of carrying out internet research and understand the guidance provided in the CHIS code. General observation duties of the Council do not require authorisation under RIPA, e.g., monitoring of publicly accessible areas of the internet in circumstances where it is not part of a specific investigation or operation. Specific examples are provided for further guidance at Section 4.29-4.35 of the CHIS Code.

6.3 Aerial Covert Surveillance

Where surveillance using airborne crafts or devices, for example helicopters or unmanned aircraft (colloquially known as 'drones'), is planned, the same considerations outlined previously should be made to determine whether a surveillance authorisation is appropriate. In considering whether the surveillance should be regarded as covert, account should be taken of the reduced visibility of a craft or device.

6.4 Intrusive Surveillance (local authorities cannot authorise intrusive surveillance)

Intrusive surveillance is defined as covert surveillance that:

- is carried out in relation to anything taking place on any **residential premises or in any private vehicle** (this is distinct to vehicles owned or leased by public authorities as further explained in Section 7.49 of the Covert Surveillance and Property Interference Code); and,
- involves the **presence** of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

If surveillance activity falls within the definition of intrusive surveillance, this falls outside the scope of activity which can be authorised and carried out by a local authority. It is reserved for a small number of law enforcement agencies and the intelligence services. It will also make authorisations in respect of such surveillance subject to prior approval by either an independent Judicial Commissioner (for law enforcement agencies) or the Secretary of State (for the

intelligence services). The definition of surveillance as intrusive relates to the location of the surveillance, and not any other consideration of the nature of the information that is expected to be obtained, as it is assumed that intrusive surveillance will always be likely to result in the obtaining of private information.

Intrusive surveillance does not include the use of overt CCTV cameras positioned in their normal position where the public are aware that the systems are in use for their own protections and to prevent crime. The use of overt CCTV cameras by the Council does not normally require an authorisation under the RIPA. However, members of the public should be made aware that such systems are in use by way of signage etc. and consideration will still need to be given to Human Rights and Data Protection Acts (Sections 3.36 to 3.39 of the Covert Surveillance and Property Interference Code of Practice provides further explanation).

Furthermore, this does not include surveillance carried out by a device designed or adapted principally for the purpose of providing information about the location of a vehicle i.e., a tracking device. This is classed as directed surveillance and would require authorisation for this in the usual way.

It must be remembered that local authorities cannot authorise intrusive surveillance. Section 3.31 of the Covert Surveillance and Property Interference Code of Practice explains activities not falling within the definition of covert surveillance.

6.5 Communications Data

Local authorities are required to fulfil two additional requirements when acquiring communications data, namely:

- the request must be made through a Single Point of Contact (SPoC) at the National Anti-Fraud Network (NAFN);
- the request must receive prior approval from the Office for Communications Data Authorisations (OCDA).

Basildon Council is a member of NAFN and so has access to a SpOC. Applicants within the Council are required to consult a NAFN SpOC throughout the authorisation process, including before referring the case to a designated person within the authority for approval. The SpOC will provide advice to applicants and designated persons, ensuring that the local authority acts in an informed and lawful manner.

6.6 Authorisation Process

Prior to obtaining judicial approval for an authorisation or renewal, all surveillance should be authorised by a prescribed person pursuant to Section 30 of RIPA and the Regulation of Investigatory Powers (Directed surveillance and Covert Human Intelligence Sources) Order 2003, using the appropriate forms, which are:

- a) **The Application** for the use of directed surveillance,¹⁰ that requests specific information enabling the Authorising Officer to consider the request. The proposals should be compatible with the objectives of the surveillance. A written authorisation granted by an Authorising Officer will cease to have effect (unless renewed or cancelled) at the end of a period of three months beginning with the day when the authorisation was granted by the JP. When completing an application for a warrant or authorisation, the local authority must ensure that the case for the warrant or authorisation is presented in the application in a fair and balanced way. In particular, all reasonable efforts should be made to take into account information which weakens the case for the warrant or authorisation.
- b) **The Review** of the use of directed surveillance.¹¹ In each case, Authorising Officers must consider the need for a review at the appropriate time according to the objective of the surveillance. Both the Authorising Officer and the Investigating Officer should enter this review into an appropriate diary or calendar system. It is good practice for Authorising Officers in any event to review authorisations on a monthly basis unless they consider that they should take place more or less frequently (if so, it is suggested that the reasons should be recorded). More frequent reviews may be required where the activity involves a high level of intrusion into private life, or significant collateral intrusion, or where particularly sensitive information might be obtained.

Reviews for Directed surveillance must record:

- Any significant changes to the information in the previous authorisation;
- Why it is necessary to continue with the surveillance;
- The content and value to the investigation or operation of the information so far obtained by the surveillance;
- An estimate of the length of time the surveillance will continue to be necessary; and,
- The results of any review should be retained for at least three years, but best practice does indicate that it would be desirable for these records to be kept for five years. Therefore, the Council will keep these reviews for five years.

During a review, an Officer may cancel aspects of the authorisation or warrant, for example to cease directed surveillance against one of a number of named subjects or to discontinue the use of a particular tactic.

- c) **The renewal form** for directed surveillance¹² is for use when it is considered necessary for the authorisation to continue. It is vital that, if a renewal is required, the completed form is submitted to an Authorising Officer in sufficient time to allow it to be considered and to be approved by a JP **prior** to the expiry of the existing authorisation.

¹⁰ Home Office, 2007. [Application for use of directed surveillance.](#)

¹¹ Home Office, 2007. [Review of use of directed surveillance.](#)

¹² Home Office, 2007. [Renewal form for directed surveillance.](#)

- d) **The cancellation** of the use of directed surveillance¹³ form is for use when the directed surveillance no longer meets the criteria for authorisation. The cancellation form will normally be authorised by the officer who last renewed or authorised the surveillance and must be completed as soon as the requirement for surveillance ceases. Even if an authorisation has reached its time limit and has ceased to have effect, it does not lapse and must still be formally cancelled. The responsibility to ensure authorisations are cancelled rests primarily with the officer in charge of the investigation who should submit the request for cancellation. However, if the Authorising Officer who authorised the directed surveillance is satisfied it no longer meets the criteria upon which it was authorised, they must cancel it and record that fact in writing, even in the absence of any request for cancellation.
- e) **Whilst there is no form for refusal**, the Authorising Officer should notify Legal Services and provide copy documentation when an application has been made, but has been refused, by either an Authorising Officer or a JP.

Examples of each form are annexed to this Policy for information only. In order to ensure that current forms are used, these should be obtained from the Gov.uk website. The specific situations not requiring authorisation are detailed at paragraph 3.31 of the 2022 Covert Surveillance and Property Interference Revised Code of Practice.

6.7 Collateral Intrusion

If at any stage during the surveillance, it becomes apparent that there is unexpected interference into the privacy of persons who are not the original subject of the investigation (this is called collateral intrusion) then this information and any other matters that arise of a similar sensitive nature, should be brought to the Authorising Officer's attention. This will enable the Authorising Officer to reconsider the original authorisation taking into consideration the new information. The Authorising Officer should bear in mind the proportionality of the surveillance in this situation. Particular consideration should be given in cases where religious, medical, journalistic, or legally privileged material may be involved, or where communications between a Member of Parliament and another person on constituency business may be involved.

Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the privacy of those who are not the intended subjects of the surveillance or property interference activity.

6.8 Collaborative Working

Section 4.32 of the Covert Surveillance and Property Interference Revised Code of Practice confirms that in some circumstances it may be appropriate or necessary for a public authority to work with third parties who are not themselves a local authority (such as an individual, company, or non-governmental organisation) to assist with an investigation. Where that third party is acting in partnership with, or under the direction of a local authority, then they are acting

¹³ Home Office, 2007. [Cancellation of use of directed surveillance form.](#)

as an agent of that authority. Therefore, any activities that the third party conducts which meet the RIPA definitions of directed or intrusive surveillance, or, amount to property interference for the purposes of the 1994 or 1997 Act, should be considered for authorisation under those Acts by the local authority. Similarly, a surveillance authorisation should also be considered where the local authority is aware that a third party (that is not a local authority) is independently conducting surveillance and the local authority intends to make use of any suitable material obtained for the purposes of a specific investigation being undertaken.

The Council will normally co-operate with any other agencies wishing to use the Council's premises for their own RIPA action, and who are expressly seeking assistance from the Council, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's co-operation in the agent's RIPA operation. In such cases, the Council does not require its own RIPA form as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency. However, the relevant manager will be expected to ensure that any such activity is in accordance with existing Council policies.

Any person granting or applying for an authorisation will also need to be aware of particular sensitivities in the local community where the surveillance or property interference is taking place, and of any similar activities being undertaken by other local authorities which could impact on the deployment of surveillance or property interference. It is therefore recommended that where an Authorising Officer from a local authority considers that conflicts might arise, they should consult a Senior Officer within the police force area in which the investigation or operation is to take place. Moreover, local authorities should seek to avoid duplication of authorisations as part of a single investigation or operation where possible.

6.9 Emergency Situations

If an officer finds themselves in an urgent situation which requires directed surveillance to be undertaken, then an authorisation for the directed surveillance must be granted by an Authorising Officer. Approval will then need to be obtained from a JP.

In most emergency situations where the police have the power to act, then the police are able to authorise activity under RIPA without prior judicial approval. A RIPA authority is not required in immediate response to events or situations where it is not reasonably practicable to obtain it.

The monitoring of social media accounts would not in general be considered appropriate in an emergency situation (Section 3.32 of the Covert Surveillance and Property Interference Code of Practice).

It would not be considered urgent where the need for authorisation has been neglected or is of the officer's own making. These rules must not be used where there has been a failure to obtain authority at the appropriate time.

7. Covert Human Intelligence Source (CHIS)

A person is a covert human intelligence source (CHIS) if:

- a. They establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within b) or c);
- b. They covertly use such a relationship to obtain or to provide access to any information to another person; or
- c. They covertly disclose information obtained by the use of such a relationship or as a consequence of the existence of such a relationship;
- d. The relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that one party is unaware of its purpose.

This does not apply to circumstances where members of the public volunteer information to the Council. However, someone may inadvertently become a CHIS as a result of covertly supplying information to the Council if they are obtaining this information in the course of, or as a result of, the existence of a personal or other relationship. A specific issue arises as to whether someone becomes a CHIS because the Council issues them with diary/monitoring sheets and asks them to tell them of any further problems (i.e., anti-social behaviour cases).

This does not require specific authorisation unless a personal relationship between the alleged perpetrator and the complainant/witness exists or is cultivated. Any authorisation must be sought on the CHIS application, and the officers able to give authorisation are the same as those designated as Authorising Officers for covert surveillance. It is important to establish whether someone is a CHIS, as a duty of care would be owed to such a person who may be at risk of reprisals if the information is acted on.

7.1 Authorisations

These work in a similar way to directed surveillance and must be authorised in writing and require authorisation from the Authorising Officer. The Council must obtain an order approving the grant or renewal of an authorisation from a JP before it can take effect. The use of vulnerable sources should only take place in exceptional circumstances. Juveniles can never be used as sources against their own parents but can be used subject to special safeguards (see 6.3 below).

Information to be given in applications for authorisation:

- Details of the purpose for which the source will be deployed.
- The grounds on which authorisation is sought (i.e. detection of crime).
- Where a specific investigation is involved details of that investigation.
- Details of what the source will be tasked to do.
- Details of the level of authority required.
- Details of potential collateral intrusion.
- Details of any confidential material that might be obtained as a consequence of the authorisation.

It is important that the Council considers an authorisation whenever the use and conduct of a CHIS is likely to engage an individual's rights under Article 8 of ECHR, whether this is through obtaining information, particularly private information, or simply through the covert manipulation of a relationship. An authorisation will be required if a relationship exists between the subject and the CHIS, even if specific information has not been sought by the Council.

When a relevant source is deployed to establish their "legend"/build up their cover profile, an authorisation must be sought under RIPA if the activity will interfere with an individual's Article 8 rights. The individual does not have to be the subject of a future investigation. Interference with any individual's Article 8 rights requires authorisation under RIPA.

7.2 Online Covert Activity

The use of the internet may be required to gather information prior to and/or during a CHIS operation, which may amount to directed surveillance. Alternatively, the CHIS may need to communicate online, for example this may involve contacting individuals using social media websites. Whenever the Council intends to use the internet as part of an investigation, they must first consider whether the proposed activity is likely to interfere with a person's Article 8 rights of ECHR, including the effect of any collateral intrusion. The Council must recognise that there may be an expectation of privacy over information which is on the internet, particularly where accessing information on social media websites. Any activity likely to interfere with an individual's Article 8 rights should only be used when necessary and proportionate to meet the objectives of a specific case. Where it is considered that information is likely to be obtained, an authorisation (combined or separate) must be sought.

7.3 Juvenile CHIS

Special safeguards also apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. As a matter of policy, the Council does not engage in the use of Juvenile Covert Human Intelligence Sources.

7.4 Errors

Wherever possible, any technical systems should incorporate functionality to minimise errors. A person holding a senior position within each local authority (which in this context is considered to be the Senior Responsible Officer with the support of Legal Services), must undertake a regular review of errors and a written record must be made of each review. This will be subject to consideration as part of the work of the RIPA Working Group. An error must be reported if it is a "relevant error". Under section 231(9) of the 2016 Act,¹⁴ a relevant error for the purpose of activity covered by this code is any error by a public authority in complying with any requirements that are imposed on it by any enactment which are subject to review by a Judicial Commissioner. Errors should be reported to the Commissioner within ten working days. Further guidance and additional detail for detecting and handling errors is available in section 8.6 to 8.18 of Covert Surveillance and Property Interference Code of Practice

¹⁴ [Investigatory Powers Act 2016](#).

8. Information Management

Private, Confidential and Legally Privileged Information

The handling of information obtained by means of covert surveillance will be carried out in accordance with other relevant legal frameworks, as well as in accordance with the RIPA Codes of Practice, so that any interference with privacy is justified in accordance with Article 8(2) of ECHR. Compliance with these legal frameworks, including data protection controls implemented by the Council, and the requirements of the Police and Criminal Evidence Act 1984,¹⁵ will ensure that the handling of private information obtained through the use of this Policy, continues to be lawful, justified and strictly controlled, and is subject to robust and effective safeguards.

8.1 Central Records

Each local authority should maintain a central record (register) relating to all authorisations, giving details of what the authorisation was for, and the dates during which surveillance was carried out. Basildon Council's central record is kept by Legal Services for a period of at least 5 years, as is indicated in best practice.

The Council must also keep a central record of all authorisations granted for the use of CHIS. The central record is again maintained by Legal Services. The record need only contain the name, code name or unique identifying reference of the CHIS, the date the authorisation was granted, renewed, or cancelled, and an indication as to whether the activities were authorised by an officer directly involved in the operation.

9. The Role of Elected Members

Elected members of local authorities have a role to play in the review of the use of directed surveillance and CHIS. However, the Codes are clear that elected members should not be involved in making decisions in relation to specific authorisations.

Paragraph 4.47 of the Covert Surveillance and Property Interference Code of Practice and paragraph 3.46 of CHIS, state that members of a local authority should review the authority's use of RIPA and set the corporate policy at least annually, and should consider internal reports on the use of RIPA on a regular basis to ensure that it is being used consistently and within the scope of this Policy, and that this Policy remains fit for purpose. An annual report (during each municipal year) will be submitted to the Audit and Risk Committee describing the Council's use of RIPA powers over the previous year and highlighting any proposed amendments to this Policy and seek approval of those changes.

¹⁵ [Police and Criminal Evidence Act 1984.](#)

10. Corporate Knowledge

Corporate Ambitions	Levels of Impact			
	High	Medium	Low	None
We want Basildon to be home to healthy and active local communities able to support themselves and each other.		<u>X</u>		
We want Basildon to offer a high quality of life for all residents through attractive, liveable, accessible and safe neighbourhoods and towns along with the provision of enduring facilities, green spaces and town centres that meet the needs of the community.			<u>X</u>	
We want Basildon to have a thriving, dynamic and diverse economy where all our communities benefit from increased opportunity and our workforce has the right skills for our local economy and beyond.			<u>X</u>	

Outcome and Priorities

Outcome	Priority
To effectively use RIPA powers to undertake a range of enforcement functions to keep the public safe and bring criminals to justice, whilst protecting individuals' rights to privacy.	To secure compliance with the legislative provisions that govern the use of covert surveillance and the management of covert human intelligence sources. These will relate to specific areas within each outcome.

11. Links to other Corporate Policies or Partner documents

- [Corporate Plan 2022-26](#)
- Corporate Enforcement Policy 2022-25
- [CCTV Surveillance Policy 2021-26](#)

- [Information Management Policy 2021-24](#)

11.1 National Legislation

- [Police and Criminal Evidence Act 1984.](#)
- [Human Rights Act 1998.](#)
- [Regulation of Investigatory Powers Act 2000.](#)
- [Protection of Freedoms Act 2012.](#)
- [Investigatory Powers Act 2016.](#)
- Equality Act 2010

11.2 International Legislation

- [European Convention on Human Rights 1950.](#)

12. Appendices

APPENDIX 1

Glossary of Terms

Private Information - in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. The definition of private information has been given a wide interpretation by the Courts and will include business information in appropriate circumstances. Where private information is gained as a result of covert surveillance in circumstances where a person would have a reasonable expectation of privacy then a directed surveillance authorisation may be considered appropriate.

Non-private Information - may include publicly available information such as books, newspapers, journals, TV and radio broadcasts, newswires, web sites, mapping imagery, academic articles, conference proceedings, business reports, and more. Such information may also include commercially available data where a fee may be charged, and any data which is available on request or made available at a meeting to a member of the public. Non-private data will also include the attributes of inanimate objects (such as the class to which a cargo ship belongs for example).

Confidential information - includes, though is not limited to confidential personal information, confidential constituent information and journalistic material.

Confidential personal information is information held in confidence relating to the physical or mental health or spiritual counselling of a person (whether living or dead) who can be identified by it. Such information is held in confidence if it is held subject to an express or implied undertaking to hold it in confidence or it is subject to a restriction on disclosure or an obligation of confidentiality contained in existing legislation.

Confidential constituent information is information relation to communications between a Member of Parliament and a constituent in respect of constituency matters.

Confidential journalistic material includes material acquired or created for the purpose of journalism and held subject to an undertaking to hold it in confidence as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

Legally Privileged Information – Matters subject to legal privilege are defined in s98 of the 1997 Act. This includes certain communications between professional legal advisers and their clients or persons representing the client.

APPENDIX 2

Directed surveillance Procedure

Role of Authorising Officers

Authorising Officers do not only cover investigations carried out within their own services - any Authorising Officer may give authorisation in relation to surveillance to be carried out by Officers from a different service.

Paragraph 5.9 of the amended Code of Practice for Covert Surveillance recommends that Authorising Officers should not normally be responsible for authorising operations in which they are directly involved, although it is recognised that there are occasions where this may be unavoidable, for instance in cases of urgency. If an operation is authorised by an Authorising Officer who is involved, this should be highlighted within the central register, and the attention of the Commissioner drawn to the authorisation at the next inspection.

Any Officer authorising such decisions must ensure that he or she is properly trained so that the decision is made in accordance with the law. It is important that the person seeking authorisation and the Authorising Officer ensures that the decision to take (and it is recommended not to take) action is properly documented with full reasons. Guidance is available on the Legal Services Home Page intranet under "Service Documents" - "RIPA" - "Application form with prompting questions", together with course notes. If in doubt, guidance must be sought from a member of Legal Services. Comments should be put in the Authorising Officer's Statement box in the application form and not just "I agree". Authorising Officers must consider carefully any factors identified and set out in paragraph 5.8 below and record their reasons.

It is also important to note that the Authorising Officer's job does not stop should s/he agree to authorisation. That person must keep the investigation under review, particularly if information may be obtained about someone other than the target of the surveillance (collateral intrusion). Material which is not necessary or proportionate to the aims of the operation or investigation should be discarded or securely retained separately where it may be required for future evidential purposes.

The Authorising Officer or person considering issuing the warrant should ensure appropriate safeguards for the handling, retention or destruction of such material in accordance with chapter 9 of the CHIS code, as well as compliance with data protection requirements.

In all surveillance the risks should also be assessed properly and kept under review. So that there is a proper review system, Officers should record the date when the authorisation should be reviewed. Whilst this can be the full 3 months (less a day) permitted the review will invariably be a much shorter period.

The Deputy Chief Executive acts as the Council's 'Senior Responsible Officer' ensuring that all Authorising Officers are of an appropriate standard. (See paragraph 5 of this Policy for the role of the Senior Responsible Officer.)

What the Authorising Officer must take into account

Upon turning their mind as to whether or not authorisation is warranted in a particular circumstance the Authorising Officer has to be satisfied on a two-stage test of necessity and proportionality. Necessary in this context means that nothing else will do, and it presupposes that the Investigating Officer has considered other options.

Under s28(3) of the Regulation of Investigatory Powers Act 2000 (RIPA) an authorisation for directed surveillance may be granted if the senior Authorising Officer believes that:

- It is in the interests of national security.
- it is for the purposes of preventing, or detecting crime or preventing disorder
- It is in the interests of national security
- It is in the interests of the economic well-being of the UK
- It is in the interests of public safety
- It is for the purpose of protecting public health.
- It is for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department or
- For any other purpose described by an order made by the Secretary of State.

In considering whether or not the proposed surveillance is proportionate, the Authorising Officer will need to consider whether there are other more non-intrusive ways of achieving the desired outcome; the least intrusive means should always be chosen. The Authorising Officer ought also to pay attention to the means by which the surveillance is proposed and whether or not that means it is the most appropriate for the particular circumstances of the case. Does it, for example, minimise collateral intrusion (invasion of third parties' privacy) and is it readily workable?

The Authorising Officer must take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance and measures must be taken whenever practicable to avoid or minimise the intrusion.

The Court will consider the least intrusive method proportionate. This involves a balancing exercise of the activity on the subject and others who may be affected by it against the need in operational terms.

The activity will not be proportionate if it is excessive in the circumstances – each case will be judged and be unique on its merits. Authorising Officers should be keen to limit the scope of the authorisation where at all possible and where such limitation is imposed the Authorising Officer must bring such limitation to the attention of the Investigating Officer.

Even in cases of serious crime or disorder, it may be possible to obtain the necessary evidence by means other than covert surveillance, and the least intrusive method of investigation should still be considered in the first instance. Special care needs to be given in relation to joint operations with other agencies and where the Council employs an agent to carry out investigations on its behalf.

Record Keeping

Each Department must send a copy of any authorisation to Legal Services and keep it updated as to renewals, cancellations etc. It is also recommended that refusals of authorisations are sent to Legal Services.

To assist Legal Services in maintaining the central record, and to make it easier to trace authorisation forms in the event of an inspection or query, individual departments should not enter their own reference number on authorisation forms. A unique reference number will be assigned to each authorisation form upon its receipt by Legal Services, prior to it being placed in the central record, and the investigating Officer notified of that number. A full list of the matters to be recorded can be found in paragraphs 8.1 – 8.3 of the revised Code of Conduct for Covert Surveillance. See Appendix 4 for a blank copy of the Central Record, to see the information required.

RIPA records must be available for inspection by the Commissioner and retained to allow the Investigatory Powers Tribunal, established under Part IV of the Act, to carry out its functions. The Tribunal will consider complaints made up to one year after the conduct to which the complaint relates and, where it is equitable to do so, may consider complaints made more than one year after the conduct to which the complaint relates, particularly where continuing conduct is alleged.

Following receipt of a complaint or claim from a person, the IPT can undertake its own enquiries and investigations and can demand access to all information necessary to establish the facts of a claim and to reach a determination. A 'person' for these purposes includes an organisation, an association, or combination of persons (see section 81(1) of RIPA), as well as an individual.

Although records are only required to be retained for at least three years it is desirable if possible to retain the records for five years and the Council will keep these records for five years.

Covert Human Intelligence Sources Procedure

6.3 What the Authorising Officer must take into account

Under s29(3) of RIPA an authorisation for the use or conduct of a CHIS may be granted by an Authorising Officer where they believe that:

1. The authorisation is necessary and
 - In the interests of national security.
 - For the purposes of preventing and detecting crime or of preventing disorder.
 - In the interest of the economic wellbeing of the UK.
 - In the interests of public safety
 - For the purpose of protecting public health
 - For the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or for any other purpose prescribed in an order made by the Secretary of State.

2. It is proportionate to what it seeks to achieve & appropriate arrangements for managing the source,

3. It should take into account the risk of collateral intrusion,
4. It ensures that particular care is taken concerning confidential material,
5. Any adverse impact upon the community confidence has been considered,
6. Any risk to the source has been appropriately assessed.

Sometimes authorisation is needed in the process of cultivating the source where this would infringe the privacy of the source. The cultivation process itself may require authorisation if it involves directed surveillance, for example.

Record Keeping

As with authorisations for directed surveillance, the central register is kept and maintained by Legal Services (Solicitor to the Council) to whom every authorisation should be sent.

Detailed records of the authorisation must also be kept by the department carrying out the activities. A full list of the matters to be recorded can be found at section 8 of the 2022 revised Code of Practice for CHIS. Those records should be kept for at least five years. This must be done in such a way as to preserve the confidentiality of the source.

The revised Code of Practice for CHIS suggests that a record should also be maintained for human sources who do not fall within the definition of a CHIS. This will assist the Council in monitoring the status of human sources, and to determine if and when that source becomes a CHIS.

The 2022 revised Code of Practice for CHIS confirms that the Investigatory Powers Tribunal will consider complaints made up to one year after the conduct to which the complaint relates and, where it is equitable to do so may consider complaints made more than one year after the conduct to which the complaint relates. This is particularly true where continuing conduct is alleged. For this reason records will be kept for at least five years.

Duration of authorisation

A written authorisation (except a juvenile source which is only valid for 4 months) unless renewed will cease to have effect at the end of a period of 12 months beginning with the day on which it took effect.

Reviews & Renewals

A review should be carried out and the Authorising Officer satisfied that the conditions for authorisation continue to be met before the authorisation is renewed for a further period. Approval for the renewal must then be sought from a Justice of the Peace. Provided conditions continue to be met authorisation can be renewed more than once. The renewal extends the time from when the authorisation would expire (but for the renewal) so the renewal decision should be taken shortly before expiry of the authorisation. Renewals can be granted for a further period of 12 months only. The results of the Review should be kept for at least three years and it is desirable best practice for them to be kept for five years. The Council will therefore keep the results of Reviews for five years.

It is necessary that the Council record:

- whether this is the first renewal or every occasion on which the authorisation has been renewed previously;
- any significant changes to the information in the initial application;
- the reasons why the authorisation for directed surveillance should continue;
- the content and value to the investigation or operation of the information so far obtained by the surveillance;
- whether any privileged material or information was obtained as a result of activity undertaken under the authorisation, to which the safeguards in chapter 9 of this code should apply;
- the results of regular reviews of the investigation or operation.

Cancellations

Authorisations should be cancelled where the conditions justifying authorisation are no longer satisfied. The Authorising Officer should do this in writing although it is suggested that the Officer seeking authorisation should also seek cancellation where s/he becomes aware that the conditions are no longer satisfied. There is a standard form for recording this. Although some authorisations will be renewed on a number of occasions, every authorisation must be cancelled at the end of the surveillance operation.

As soon as the decision is taken that directed surveillance should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject(s) as soon as reasonably practicable. The date the authorisation was cancelled should be centrally recorded and documentation of any instruction to cease surveillance should be retained. There is no requirement for any further details to be recorded when cancelling a directed surveillance authorisation. However it is good practice that a record should be retained detailing the product obtained from the surveillance and whether or not objectives were achieved.

APPENDIX 3

Documents

(For information only – the forms are available from [gov.uk website](https://www.gov.uk))

1. PROCEDURE FOR AN APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE.
2. [DIRECTED SURVEILLANCE - APPLICATION FORM](#)
3. JP (AUTHORISATION FORM)
4. [DIRECTED SURVEILLANCE - RENEWAL FORM](#)
5. [DIRECTED SURVEILLANCE - REVIEW FORM](#)
6. [DIRECTED SURVEILLANCE - CANCELLATION FORM](#)
7. BLANK COPY OF CENTRAL RECORD
8. [CHIS – APPLICATION FORM](#)
9. [CHIS – RENEWAL FORM](#)
10. [CHIS – REVIEW FORM](#)
11. [CHIS – CANCELLATION FORM](#)

APPENDIX 4

PROCEDURE FOR AN APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE

1. Ensure the application form has been approved by the Authorising Officer
2. Contact the Admin Team at Essex Magistrates Court as soon as possible to arrange a hearing.
3. Provide the Justice of the Peace (JP) with a copy of the original RIPA authorisation or notice and the supporting documents which set out the case.
4. The original authorisation or notice should be shown to the JP
5. Provide the JP with a partially completed judicial application/order form.
6. The order form will be completed by the JP and this will need to be retained by the local authority.
7. When out of hours access to a JP is required – need to look at local arrangements (not to be used where a renewal has not been processed in time). In most emergency situations where the police have the power to act they can authorise activity under RIPA without prior JP approval. No authority is required in immediate response to events or situations where it is not reasonably practicable to obtain it i.e. during routine inspections.
8. At the hearing – Officers to be formally designated to appear (check authorisations), be sworn in and present evidence or provide information as required by the JP.
9. Hearing is in private and the JP will consider the RIPA authorisation or notice and the judicial application/order form. The JP may have questions to clarify points or require additional reassurance on matters.
10. Officers attending court may be asked questions on the policy and practice of conducting covert operations together with detail of the case itself.
11. JP to make decision that at the time of granting or renewal there were reasonable grounds for believing that the authorisation or notice was necessary and proportionate.
12. The forms and supporting information must themselves make the case. If more information is required to determine whether the application or notice has met the tests then the JP will refuse the authorisation.

13. Outcomes; approval the grant or renewal of an authorisation or notice, refuse to approve the grant or renewal of an authorisation or notice (if this is the case then we will need to consider the reasons for the refusal), refuse to approve the grant or renewal and quash the authorisation or notice – if the JP is considering quashing this then we have 2 business days from the date of the refusal in which to make representations.

Monday to Friday
10am to 5pm



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