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Date: 10 July 2009

Your ref:

Our ref: MO/dm263

BY POST AND E-MAIL

Dear Sir

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) CONSOLIDATING ORDERS AND CODES OF PRACTICE HOME OFFICE CONSULTATION PAPER

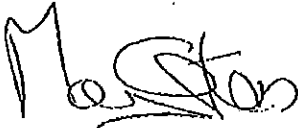
I write with reference to the above consultation paper, published by the Home Office on 17 April 2009. Please find below Waverley Borough Council's response to the seven questions raised by the Government on page 16 of the paper.

1. While this Council has used the RIPA provisions sparingly in recent years, covert surveillance continues to be a valuable tool in respect of investigating criminal activity with Waverley, and the availability to local authorities of those provisions should remain. The Council has not, since RIPA was brought into force, authorised the interception of communications data or the use of Covert Human Intelligence Sources, and therefore it is difficult to comment on whether these techniques should remain within the RIPA framework. Nonetheless, the Council considers that they too are valuable investigatory tools.
2. The Council does not consider that it is appropriately placed to comment on whether other non-local authority public authorities should be removed from the RIPA framework.
3. The Council is not in a position to comment on how bureaucracy could be reduced from the Police in respect of RIPA.
4. The Council currently authorises all RIPA applications at Chief Executive, Deputy Chief Executive or Strategic Director level. This ensures that authorising officers have the requisite understanding of operational requirements and techniques to give them a clear knowledge of what is reasonable and workable. The Council's response is that the "senior executive" level identified in the consultation paper should include the rank of Strategic Director (or equivalent).



5. The Government's proposal regarding oversight by elected Members is a prudent one, and the Council's Executive recently agreed that the Council's use of RIPA will be reported to it on a regular basis.
6. The Government's Consolidating Orders propose no changes as far as local authorities are concerned, save for the desire to raise the rank at which RIPA applications are authorised, and the Council views this as a sensible approach.
7. The revised Codes of Practice have clearly been expanded considerably, and the Council considers that the changes made provide clearer and more comprehensive guidance than before, thereby ensuring the necessary clarity for local authorities.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mary Orton', written in a cursive style.

Mary Orton
Chief Executive



COVERT SURVEILLANCE POLICY

Adopted by the Council on 11 December 2007

Introduction:

The main purpose of the Regulation of Investigatory Powers Act 2000 (RIPA) is to ensure that the relevant investigatory powers are used in accordance with the European Convention of Human Rights.

One of the principles of the Convention is that particular rights, (such as the right to respect for privacy protected by Article 8 of the Convention), may only be infringed by investigating authorities where specific legislation allows for investigations to be conducted in a *lawful* contravention of the Convention right (i.e. the requirement of "legality").

Investigative activities pursued in accordance with the provisions of RIPA will conform to the requirement of "legality", because their lawful use is likely to be assured where an investigating authority has complied with the RIPA provisions. In this way, conformity to the Council's policy and procedures in accordance with RIPA will protect the investigative activity of the Council, the outcome of investigations, and the reputation of the Council.

It is the responsibility of the Council to ensure that its investigations are conducted effectively and ethically in accordance with legislation.

Preliminary Human Rights Considerations:

1. Whether covert surveillance is necessary

In accordance with RIPA and to comply with the European Convention, the action being authorised must not only conform to the Council's RIPA procedures, but must also be necessary to achieve a legitimate aim.

For the investigative purposes of the Council covert surveillance may properly be regarded as necessary only where it is conducted for the prevention and detection of crime or the prevention of disorder.

In considering whether covert surveillance on behalf of the Council is necessary, authorising officers will be required to be satisfied that alternative investigative procedures not entailing covert surveillance have been considered. Authorising officers will require to be satisfied that for reasons of urgency or effectiveness the covert surveillance technique selected is the most appropriate for securing the relevant information.

2. Whether covert surveillance is proportionate

The use of covert surveillance techniques must be proportionate to the aims of the Council in pursuing the investigation. For the investigative purposes of the Council covert surveillance may properly be regarded as proportionate where it is conducted in such a way that the extent of the necessary interference with the human rights of individuals (the subject of the investigation or others) is proportionate to achieving the legitimate aim of the investigation.

Policy

1. It is the policy of Waverley Borough Council to conduct all investigations involving the use of covert surveillance techniques in accordance with the Regulation of Investigatory Powers Act 2000.
2. To ensure that investigations are compliant with the requirements of the Human Rights Act 1998 and are fairly and lawfully conducted, covert surveillance techniques will be used only where they relate to a specific investigation, where they are necessary, and where they are proportionate to the aims of the investigation.
3. Investigations involving covert surveillance techniques will not proceed until authorised by the relevant Director or an officer nominated by a Director and being an Assistant Chief Officer or an Assistant Head of Service, or a Service manager or equivalent.¹ Please refer to the Appendix for a list of officers, by position, who may authorise directed surveillance.

¹ See *Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order (Statutory Instrument No. 3171 of 2003)*

4. The Council will comply with any Code of Practice issued by the Secretary of State current at the time of a specific and authorised investigation.
5. The Council will provide regular training for all staff who may conduct or be involved in covert surveillance operations, and all who may authorise such surveillance activity.

APPENDIX

COUNCIL OFFICERS RESPONSIBLE FOR AUTHORISING COVERT SURVEILLANCE

The following officers of Waverley Borough Council have been approved as 'Authorised Officers' for the purposes of the Regulation of Investigatory Powers Act 2000 at a meeting of the Council on 11 December 2007:-

- Chief Executive
- Deputy Chief Executive
- Strategic Director (Environment)
- Strategic Director (Community Services)

Corporate Services & Planning Department

- Head of Planning Services

Resources Department

- Head of Internal Audit
- Head of Revenues & Benefits
- Head of Human Resources

Environment Department

- Head of Environmental Services

Community Services Department

- Head of Environmental Health & Community Safety
- Environmental Health Manager
- Head of Housing
- Housing Manager
- Rent Accounts Manager



**Covert Surveillance and Acquisition
of Communications Data Policy**

[DRAFT – To be considered by the Executive on 25 May 2010]

Introduction:

The purpose of the Regulation of Investigatory Powers Act 2000 ("RIPA") is to regulate certain covert investigatory activities and to ensure that they are used in accordance with the Human Rights Act 1998.

One of the principles of the 1998 Act is that investigating authorities may only infringe particular rights, such as the right to respect for privacy protected by Article 8 of the European Convention of Human Rights, where specific legislation allows for investigations to be conducted in a *lawful* interference of the Convention right (i.e. the requirement of "legality").

Investigative activities pursued in accordance with the provisions of RIPA will conform to the requirement of "legality", because their lawful use is likely to be assured where an investigating authority has complied with the RIPA provisions. In this way, conformity to the Council's policy and procedures in accordance with RIPA will protect the investigative activity of the Council, the outcome of investigations, and the reputation of the Council.

It is the responsibility of the Council to ensure that its investigations are conducted effectively and ethically in accordance with legislation.

Part 2 of RIPA dictates that the Council can use the following three covert techniques:

Directed Surveillance:

Covert surveillance that is not intrusive but is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person, and which is undertaken otherwise than as an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under RIPA.

Covert Human Intelligence Sources:

A person authorised by a local authority to establish or maintain a relationship in order covertly to obtain information and disclose it to that local authority. The person acting as a 'CHIS' can be an undercover officer or a tasked informant (e.g. a member of the public).

Part 1 of RIPA now permits the Council to obtain communications data from Telecoms Services Operators or a Postal Service and places obligations on operators to make disclosures in certain circumstances.

Interception of Communications Data:

Information about a communication, such as telephone numbers involved and the time and place a call was made, but not the content of the communication. The same applies in respect of an email. The Council is only permitted to intercept service use data and subscriber data, and it cannot intercept communications during the course of their transmission.

Preliminary Human Rights Considerations:**1. Whether covert surveillance is necessary**

In accordance with RIPA and to comply with the 1998 Act, the action being authorised must not only conform to the Council's RIPA procedures, but must also be necessary to achieve a legitimate aim.

For the investigative purposes of the Council covert surveillance may properly be regarded as necessary only where it is conducted for the prevention and detection of crime or the prevention of disorder.

In considering whether covert surveillance on behalf of the Council is necessary, 'Authorised Officers' will be required to be satisfied that alternative investigative procedures not entailing covert surveillance have been considered. Authorised Officers will require to be satisfied that for reasons of urgency or effectiveness the covert surveillance technique selected is the most appropriate for securing the relevant information.

2. Whether covert surveillance is proportionate

The use of covert surveillance techniques must be proportionate to the aims of the Council in pursuing the investigation. For the investigative purposes of the Council covert surveillance may properly be regarded as proportionate where it is conducted in such a way that the extent of the necessary interference with the human rights of individuals (the subject of the investigation or others) is proportionate to achieving the legitimate aim of the investigation.

Policy Statement

1. Waverley Borough Council periodically needs to use covert surveillance and acquire communications data in order to carry out certain statutory functions. It is the policy of the Council to conduct all investigations involving the use of covert surveillance techniques in accordance with the Regulation of Investigatory Powers Act 2000.
2. To ensure that investigations are compliant with the requirements of the Human Rights Act 1998 and are fairly and lawfully conducted, covert surveillance techniques will be used only where they relate to a specific investigation, where they are necessary, and where they are proportionate to the aims of the investigation.

3. Investigations involving covert surveillance techniques will only proceed if authorised by an officer of the requisite statutory level.¹ Please refer to the Appendix to this Policy for a list of Authorised Officers, by position, who may authorise the use of directed surveillance, Covert Human Intelligence Sources and the acquisition of communications data.
4. The Council will comply with all relevant Codes of Practice issued by the Secretary of State current at the time of a specific and authorised investigation.
5. The Council has appointed a Senior Responsible Officer from within its Corporate Management Team who is responsibility for:
 - the integrity of the process in place within the Council for authorising the use of directed surveillance, Covert Human Intelligence Sources and acquiring communications data;
 - compliance with RIPA and the supporting Codes of Practice;
 - engagement with the Office of Surveillance Commissioners ("OSC") and the Interception of Communications Commissioner's Office ("IOCCO"), and their inspectors;
 - overseeing the implementation of any post-inspection action plans recommended or approved by the OSC or IOCCO; and
 - ensuring that all Authorised Officers are of an appropriate standard in light of any recommendations from the OSC or IOCCO.
6. The Council will provide regular training for all staff who may conduct or be involved in covert surveillance operations, and all who may authorise such surveillance activity.

¹ See *The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (Statutory Instrument No. 521 of 2010)* and *The Regulation of Investigatory Powers (Communications Data) Order 2010 (Statutory Instrument No. 580 of 2010)*.

7. The Council's Executive will review the Council's use of RIPA, and review and set this Policy, annually, and will consider reports from Officers on a quarterly basis to ensure that it is being used in a manner consistent with this Policy and that this Policy remains fit for purpose.

APPENDIX

COUNCIL OFFICERS RESPONSIBLE **FOR AUTHORISING COVERT SURVEILLANCE**

The following officers of Waverley Borough Council have been approved as 'Authorised Officers' for the purposes of the Regulation of Investigatory Powers Act 2000 at a meeting of the Council on [INSERT DATE]:-

- Chief Executive
- Deputy Chief Executive
- Strategic Director

- Head of Environmental Health
- Head of Environmental Services
- Head of Housing
- Head of Human Resources
- Head of Internal Audit
- Head of Planning Services
- Head of Revenues and Benefits

