

FOLKESTONE AND HYTHE DISTRICT COUNCIL

Non-RIPA Surveillance Authorisation Policy

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1. Introduction

The Regulation of Investigatory Powers Act 2000 (RIPA) sets out a statutory framework for public bodies to carry out certain investigative activities. In relation to local authorities, RIPA can be used to authorise directed surveillance, the use of covert human intelligence sources (CHIS). The acquisition of communications data can be acquired under the Investigatory Powers Act 2016.

The Council has adopted a [RIPA Policy](#) which sets out who can make and authorise RIPA applications, what investigative procedures can be used, how to obtain authorisations and how applications and authorisations must be recorded.

RIPA applications can only be made for directed surveillance (as defined in the RIPA Policy) where:

- the surveillance relates to the core functions of the Council i.e. its specific public functions;
- it is for the purpose of preventing or detecting crime; and
- that crime is punishable by at least 6 months imprisonment or relates to the sale of tobacco or alcohol to underage children.

In all other cases, RIPA authorisation for directed surveillance cannot be obtained.

This Policy sets out the procedure to be followed where the Council proposes to undertake surveillance to investigate a criminal offence which cannot be authorised under RIPA. It does not cover surveillance carried out for other purposes such as part of an investigation into an employment issue. In such cases, advice should be sought from HR or Legal Services.

2. Undertaking non-RIPA surveillance

If the RIPA procedures are followed correctly the conduct of an investigation will be deemed lawful for all purposes (section 27 RIPA).

Surveillance which is obtained outside of the RIPA regime is not necessarily unlawful but its admissibility can be questioned. It is therefore important that Officers consider why the surveillance is required, whether or not the information can be obtained in some other way and how the surveillance can be conducted in order to minimise the intrusion into the privacy of those who are not the intended subjects of the surveillance activity.

Wherever possible, RIPA authorisation (and judicial approval) must be obtained prior to undertaking directed surveillance. It is only where the matter being investigated falls outside of RIPA that the procedure in this Policy can be followed. Even where this Policy is followed, it is important to remember that the Council's actions could be challenged both by claiming that the evidence obtained through non-RIPA surveillance is inadmissible or that the Council has infringed a person's civil liberties. This could lead to action being against the Council in the civil courts or lead to a complaint being made to the Investigatory Powers Tribunal. A person might also complain to the Local Government and Social Care Ombudsman about the Council's

actions. It is therefore very important that non-RIPA surveillance is only considered in appropriate cases and this Policy is followed.

3. Examples of non-RIPA surveillance

Where the person under surveillance is warned that surveillance is taking place or where the surveillance does not obtain private information (e.g. Where noise levels only are recorded) the surveillance does not need to be authorised under RIPA or this Policy.

Most breaches of planning notices cannot be investigated using RIPA authorised Surveillance, nor can dog fouling, littering and fly posting.

4. The procedure to be followed

The procedure for obtaining authorisation for non-RIPA directed surveillance is the same as applying for authorisation under RIPA, except there is no requirement to obtain judicial approval and Officers should refer to the RIPA policy for full details of how to apply for authorisation.

In brief, the procedure is as follows:

- the applying Officer is to complete the directed surveillance application form;
- the Authorising Officer is to consider the application form;
- if granted, the Authorising Officer must set a review date (to be not more than month from the date of the authorisation);
- if the surveillance is no longer required either at the point of a review or earlier, the applying Officer must complete a cancellation form and submit this to the Authorising Officer;
- if further surveillance is required at the end of the authorisation period, the applying Officer must complete a renewal form and submit this to the Authorising Officer.

The applying Officer should make it clear on the application forms that this is non-RIPA surveillance.

Copies of all forms including:

- application forms;
- review forms;
- renewal forms; and
- cancellations

must be kept by the department applying for the authorisation and a copy must also be sent to the RIPA Monitoring Officer within two working days of completion of the form.

The proposed surveillance must:

- be necessary; Local authorities are only permitted to use the statutory grounds of the prevention and detection of crime or preventing disorder or it is for one of the

exemptions for underage sales. Therefore, for non-RIPA activity this is not able to meet this criteria.

- be proportionate; and
- take into account issues of collateral intrusion.

To ensure there is an alignment of processes, all material that is obtained under a non-RIPA authorisation will be managed in exactly the same way as material that has been obtained under a RIPA authorisation. Full details of this can be found in the RIPA policy.