Name of meeting: Cabinet

Date: 19 December 2017

Title of report: Proposals to Update the Council's RIPA Policy

Purpose of report

To brief Cabinet on the use of the Regulation of Investigatory Powers Act 2000 by the Council since the last report on this matter and to seek approval to the adoption of an amended Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Guidance document.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	**No**
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	**No**
The Decision - Is it eligible for "call in" by Scrutiny?	**Yes**
Date signed off by Director & name **Is it also signed off by the Service Director for Finance, IT and Transactional Services?** **Is it also signed off by the Service Director - Legal Governance and Commissioning?**	 **Yes – 7 December 2017** **Yes – 6 December 2017**
Cabinet member portfolio	**Graham Turner and Musarrat Khan - Corporate**

Electoral wards affected: **All**
Ward councillors consulted: **None**

Public or private: **Public**

1. Summary

1.1 The role of Cabinet in RIPA matters is to provide strategic oversight and to keep the Council's use of surveillance under review. It should receive a report on its use by the Council regularly.

2. Information required to take a decision

2.1 The Council is subject to the requirements of RIPA which sets out how and when a local authority such as Kirklees Council, can use covert surveillance. The three types of surveillance regulated by RIPA are directed surveillance, the use of covert human intelligence sources (informants) and the obtaining of communications data (which does not include obtaining the content of any electronic communication). The Cabinet adopted the current RIPA Policy on 26 July 2016, following the last visit of the Office of the Surveillance Commissioners on 14 July 2016 and it sets out in detail how the requirements of RIPA were to be met.

2.2 Surveillance can only be authorised via RIPA where it is both necessary and proportionate to the aims to be achieved and the intrusion into other people's privacy which may result. Accordingly covert surveillance will only be appropriate where other options are not available. The Council cannot authorise "intrusive surveillance" which is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle and it is most unlikely that the Council would wish to use a covert human intelligence source as part of any investigation unless a request was made by West Yorkshire Trading Standards Service.

2.3 In November 2016, the Investigatory Powers Bill received Royal Assent and will now be known as the Investigatory Powers Act 2016. It will provide a new framework to govern the use and oversight of investigatory powers by law enforcement and the security and intelligence agencies. The relevant provisions are not yet in force and a consultation has been launched in December 2017 covering amendments proposed to the communications data regime, and the draft communications data code of practice.

2.4 The Council was inspected by the Office of the Surveillance Commissioners on 17 July 2016 in relation to its use of directed surveillance and of covert human intelligence sources. The Inspector's Report is appended to the report dated 26 July 2016 which is included in the background papers.

2.5 There are two outstanding recommendations from the report which is set out below:

1) *To establish a RIPA training programme (and regular refresher training) which ensures that all authorising officers likely applicants and RIPA officers are appropriately trained. This is to include the investigation of social networking sites and the management of CHIS*

Further training is planned for 2018.

2) *To raise RIPA awareness. The Inspector was concerned about the risk of officers, especially those having little resort to covert surveillance, unwittingly carrying out covert surveillance without RIPA authorisation.*

Officers will take steps to communicate this to managers and others within the Council. Further training of officers whose role may involve them in regulated activities is planned and this will include the new authorising officers.

2.6 There are further amendments to the RIPA policy and guidance required due primarily to reflect updates in legislation and changes in personnel and the Senior Leadership team re-structure. Cabinet is asked to agree the updates. There have been no RIPA authorisations since the previous report in July 2016 and there have been none in the last three years.

2.7 The draft RIPA Policy at Appendix 1 is intended to replace the RIPA Policy approved by Cabinet on 26 July 2016 and includes an amended list of officers with responsibilities for RIPA, amendment to RIPA roles, updated legislation and codes of practice.

Delegation to Corporate Governance and Audit

2.8 The Code of Practice advises that councillors are updated regularly on the use of the 2000 Act to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose.

2.9 In accordance with this it is recommended that Cabinet delegates the update reports to Corporate Governance and Audit Committee so that it may monitor the use through regular reports during the year. It is proposed Cabinet will continue to retain a strategic oversight, be updated annually, and will set the policy once a year. If agreed the terms of reference of CGAC will need amending to reflect this.

2.10 There have been updates to the authorising officers due to changes in personnel. The Chief Executive and Senior Responsible Officer for RIPA have been consulted and have confirmed that any new authorising officers will not be appointed until they have the received appropriate training arranged by the RIPA Monitoring Officer.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

N/A

3.2 Economic Resilience (ER)

N/A

3.3 Improving Outcomes for Children

N/A

3.4 Reducing demand of services

N/A

3.5 Legal/Financial Implications

It is important that the Council's limited use of covert surveillance is in accordance with the RIPA regime. Failure to do so could lead to legal challenge and/or evidence gathered via unlawful surveillance being ruled inadmissible in legal proceedings. There will be a small cost to arrange relevant training.

4. Consultees and their opinions

4.1 The following have been consulted on the contents of this report and have approved them:

4.1.1 The Service Director – Legal, Governance and Commissioning, as the Senior Responsible Officer.

4.1.2 The Head of Legal Services.

4.1.3 The Council's proposed Authorising Officers for RIPA.

4.1.4 The Cabinet members for Corporate Services.

5. Next steps

To comply with the outstanding recommendations of the Inspection Report as set out at paragraph 2.4

To arrange training for new authorising officers

6. Officer recommendations and reasons

6.1 That members note the steps being taken to implement the recommendations of the Office of the Surveillance Commissioners.

6.2 That members approve the adoption of the revised RIPA Policy and Guidance document as set out at Appendix 1.

6.3 The Cabinet will continue to exercise their executive powers relating to RIPA and will receive annual reports looking at the operation of it and consider if any policy changes are needed. Cabinet will request that the Corporate Governance and Audit Committee receive regular updates and monitor the Council's use of RIPA during the year.

6.4 An appropriate process be put in place to amend the terms of reference of the terms of reference of Corporate Governance and Audit Committee to enable them to receive regular updates and monitor use.

6.5 That members note that a further authorising officer is required to be nominated and named in this policy.

6.6 That Cabinet provide delegated authority to the Senior Responsible Officer to appoint a further authorising officer and arrange appropriate training and add their name to the policy once the training is complete

7. Cabinet portfolio holder recommendation

N/A

8. Contact officers

Samantha Lawton samantha.lawton@kirklees.gov.uk
Senior Legal Officer 01484 221 000

John Chapman john.chapman@kirklees.gov.uk
Head of Legal Services 01484 221 000

9. Background Papers and History of Decisions

Proposals to update the Councils RIPA report 26th July 2016

10. Service Director responsible

Julie Muscroft
Service Director – Legal, Governance and Commissioning
01484 221 000
julie.muscroft@kirklees.gov.uk

11. Appendices

Appendix 1 – RIPA Policy and Guidance 2017 v.3

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APPENDIX 1

KIRKLEES COUNCIL
POLICY AND GUIDANCE ON

THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

CONTENTS

Introduction

The Regulation of Investigatory Powers Act (RIPA) controls and regulates surveillance, and other means of gathering information, which public bodies employ in the discharge of their functions. Information gathering is one of the Council's many activities which could involve an interference with an individual's human rights, specifically an individual's rights under Article 8 of the European Convention on Human Rights to respect for his private and family life, his home and his correspondence. RIPA provides a statutory framework under which covert surveillance activity can be authorised and conducted compatibly with Article 8. The Home Office has issued Codes of Practice under RIPA which provide further guidance.

RIPA provides a statutory authorisation process for certain types of surveillance and information gathering. The Council may be required to justify, by reference to RIPA and the relevant Codes of Practice, the use or granting of authorisations in general or the failure to use or grant authorisations. No authorisation, renewal or notice issued by an authorising officer can take effect without judicial approval from a Justice of the Peace (magistrate). A failure to apply RIPA and the Codes of Practice in an appropriate manner may be considered by the courts in deciding whether material obtained via surveillance should be admissible in evidence or whether an individual's human rights have been infringed.

Unlike directed surveillance, which relates specifically to private information, authorisations for the use or conduct of a Covert Human Intelligence Source (CHIS) do not relate specifically to private information, but to the covert manipulation of a relationship to gain any information. Article 8 includes the right to establish and develop relationships. Accordingly, any manipulation of a relationship by the Council (e.g. one party to a relationship having a covert purpose on behalf of the Council) is likely to engage Article 8, regardless of whether or not the public authority intends to acquire private information.

The following are the main statutory documents relevant to this policy document:

- Regulation of Investigatory Powers Act 2000 (RIPA)
- Part II of the Protection of Freedoms Act 2012
- The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 as amended
- The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 (Applies to Directed Surveillance only and does NOT apply to CHIS)
- Covert Surveillance and Property Interference Revised Code of Practice (2014~~0~~)
- Covert Human Intelligence Sources Code of Practice (~~2010~~2014)
- Office of Surveillance Commissioners – Procedures and Guidance 2016
- Acquisition and Disclosure of Communications Data Code of Practice (2007) (This code does not relate to the interception of communications nor to the acquisition or disclosure of the contents of communications)

These Codes of Practice, along with the text of RIPA and copies of approved forms are available on the Home Office website or from Legal and Governance. This document reproduces material from the Codes of Practice.

The following terms are defined in RIPA and the definitions are summarised in the relevant Codes of Practice as follows:

"surveillance"	Surveillance, for the purpose of RIPA, includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained
"directed surveillance"	Directed surveillance is 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 (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek *authorisation* under RIPA)
"intrusive surveillance"	Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle (and that involves the presence of an individual on the premises or in the vehicle or is carried out by a means of a surveillance device). The Council cannot authorise intrusive surveillance.
"interference with property or wireless telegraphy"	There is a procedure for obtaining authorisation for interference with property or wireless telegraphy set out in the Police Act 1997 to enable the maintaining or retrieving of any equipment, apparatus or device whose placing or use has been authorised under RIPA. This procedure is available to the Police and other agencies but is **NOT** available to the Council and advice should be sought immediately from the RIPA Monitoring Officer if any proposed surveillance by the Council might involve any act of trespass.
"covert human intelligence source "	a person is a CHIS if: a) 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. NB It is most unlikely that the Council would wish to use a CHIS for surveillance purposes.
"private information"	Private information is any information relating to a person in relation to which that person has or may have a reasonable expectation of privacy. This includes

	information relating to a person's private, family or professional affairs. Private information includes information about any person, not just the subject(s) of an investigation
"collateral intrusion"	Collateral intrusion is the risk of obtaining private information about persons who are not subjects of the surveillance
"communications data"	The term 'communications data' embraces the 'who', 'when' and 'where' of a communication but not the content, not what was said or written. It includes the manner in which, and by what method, a person or machine communicates with another person or machine. It excludes what they say or what data they pass on within a communication including text, audio and video (with the exception of traffic data to establish another communication such as that created from the use of calling cards, redirection services, or in the commission of 'dial through' fraud and other crimes where data is passed on to activate communications equipment in order to obtain communications services fraudulently) NB The only form of communications data which the Council is ever likely to wish to obtain is the identity of individuals who are the subscribers for particular telephone numbers. To date the Council had not sought to obtain communications data.
"subscriber information"	Subscriber information relates to information held or obtained by a Communications Service Provider about persons to whom the Communications Service Provider provides or has provided a communications service
"Confidential information"	Confidential information consists of communications subject to legal privilege, communications between a Member of Parliament and another person on constituency matters, confidential personal information, or confidential journalistic material.
"Confidential personal Information"	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 from it.
"Confidential constituent Information"	Confidential constituent information is information relating to communications between a Member of Parliament and a constituent in respect of constituency matters
"Confidential journalistic Material"	Confidential constituent information includes material acquired or created for the purposes 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
"Legal privilege"	Legal privilege relates to communications between a lawyer and a client for the purposes of obtaining legal advice or conducting litigation but does not include communications made with the intention of furthering a criminal purpose

RIPA regulates the use of covert surveillance which consists of directed surveillance, intrusive surveillance, the conduct and use of covert human intelligence sources and the acquisition of communications data. Local authorities such as the Council can only authorise the use directed surveillance if:

- The authorisation is for the purpose of preventing or detecting conduct which constitutes one or more criminal offences; and
- The criminal offence or one of the criminal offences would be either –
    - Punishable, whether on summary conviction (in the magistrates' court) or on indictment (in the Crown Court), by a maximum term of at least 6 months of imprisonment; or
    - Is an offence under:
        - section 146 of the Licensing Act 2003(2) (sale of alcohol to children);
        - section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
        - section 147A of the Licensing Act 2003(3) (persistently selling alcohol to children);
        - section 7 of the Children and Young Persons Act 1933(4) (sale of tobacco, etc, to persons under eighteen)."
        - section 91 of the Children and Families Act 2014 (purchase of tobacco, nicotine products, etc. on behalf of persons under 18);
        - section 92 of the Children and Families Act 2014 (prohibition of sale of nicotine products to person under 18).

Local authorities such as the Council can only authorise the use of CHIS or the acquisition of communications data if *"for the purpose of preventing or detecting crime or the preventing of disorder"*

Where covert surveillance activities are unlikely to result in the obtaining of private information about a person, or where there is a separate legal basis for such activities, neither RIPA nor the relevant Code of Practice code need apply, but there is an assumption that intrusive surveillance will involve the obtaining of private information. It is important to distinguish between the types of surveillance and information gathering regulated by RIPA, and normal general observation, in the course of discharging the Council's functions. It is acknowledged that low-level general observation will not usually be regulated under the

provisions of RIPA. The relevant Code of Practice gives the following examples of this kind of general observation:

- patrolling to prevent and detect crime,
- review of images gathered by overt CCTV after the event to help identify the perpetrators of crime (however the use of such systems in a pre-planned manner to target a particular individual or group may require authorisation)
- officers attending a car boot sale where it is suspected that counterfeit goods are being sold, but where the intention is, through reactive "policing", to identify and tackle offenders.

The Office of the Surveillance Commissioners (OSC) and the Interception of Communications Commissioner's Office (IOCCO)

The OSC is one of the statutory regulators for RIPA. The OSC's aim is to provide effective and efficient oversight of the conduct of covert surveillance and covert human intelligence sources by public authorities. This includes inspecting public authorities and publishing reports on their compliance with RIPA. The most recent report on the Council by OSC can be obtained from Legal and Governance. The regulator in respect of the acquisition of communications data is the Interception of Communications Commissioner's Office (IOCCO).

The Role of Elected Members

Cabinet should review the authority's use of RIPA and set the policy at least once a year. They should also consider internal reports on use of RIPA on ~~at least a quarterly~~ a regular basis to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.

The Use of Home Office Forms

The forms which should be used in authorising, renewing, reviewing and cancelling surveillance are available via the RIPA part of the Home Office website. They are not reproduced as part of this document in order to avoid the use of out of date forms. Until the Home Office issue a revised form in relation to Directed Surveillance incorporating the requirements of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 the RIPA Monitoring Officer will circulate a form to Authorising Officers for use in authorising directed surveillance.

Who Can Authorise Surveillance?

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 permits the following officers within a local authority to grant authorisations - "Director, Head of Service, Service Manager or equivalent". The Council officers who can authorise directed surveillance and CHIS are set out in Appendix 1.

There are specific reporting requirements for confidential information and the OSC must be advised whether confidential information has been acquired and if so it must be made available to the inspector. In any case where confidential information is likely to be acquired advice should always be sought from the RIPA Monitoring Officer.

When Can Covert Surveillance Be Authorised?

The only specified ground upon which the Council can grant an authorisation is preventing or detecting crime or preventing disorder. There are no other grounds available to local authorities.

RIPA stipulates that the person granting an authorisation for directed or intrusive surveillance must believe that the activities to be authorised are necessary *for the purpose of preventing or detecting crime or of preventing disorder*.

If the activities are deemed necessary on this ground, the person granting the authorisation must also believe that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render intrusive actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means. The following elements of proportionality should therefore be considered:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

It is important therefore that all those involved in undertaking directed or intrusive surveillance activities under RIPA are fully aware of the extent and limits of the authorisation in question.

All applications should include an assessment of the risk of collateral intrusion and details of any measures taken to limit this, to enable the authorising officer fully to consider the proportionality of the proposed actions. Where it is proposed to conduct surveillance activity specifically against individuals who are not suspected of direct or culpable involvement in the overall matter being investigated, interference with the privacy or property of such individuals should not be considered as collateral intrusion but rather as intended intrusion. Any such surveillance or property interference activity should be carefully considered against the necessity and proportionality criteria.

Judicial Authority

As above no authorisation, renewal or notice issued by an authorising officer can take effect without judicial approval from a Justice of the Peace (magistrate). Applications for Judicial Authority are the responsibility of the RIPA Monitoring Officer. The Home Office guidance suggests that investigating officers may be authorised to present such applications to the magistrates and such authorisation would be a matter for the ~~RIPA Assistant Director~~Senior Responsible Officer.

Review of Authorisations

Regular reviews of all authorisations should be undertaken to assess the need for the surveillance activity to continue. The results of a review should be retained for at least three years. Particular attention is drawn to the need to review authorisations frequently where the surveillance involves a high level of intrusion into private life or significant collateral intrusion, or confidential information is likely to be obtained.

In each case the frequency of reviews should be considered at the outset by the authorising officer. This should be as frequently as is considered necessary -and practicable. Any proposed or unforeseen changes to the nature or extent of the surveillance operation that may result in the further or greater intrusion into the private life of any person should also be brought to the attention of the authorising officer by means of a review. The authorising officer should consider whether the proposed changes are proportionate (bearing in mind any extra intended intrusion into privacy or collateral intrusion), before approving or rejecting them. Any such changes must be highlighted at the next renewal if the authorisation is to be renewed.

Confidential Information

Special consideration must also be given to authorisations that involve confidential personal information, confidential constituent information and confidential journalistic material. Where such material has been acquired and retained, the matter should be reported to the OSC during the next inspection and the material be made available to him if requested. It is not anticipated that the Council would wish to engage in surveillance which would involve confidential information but if it did, only the Chief Executive could authorise the surveillance.

What Steps Must Be Followed in Authorising Covert Surveillance?

Responsibility for authorising the carrying out of directed surveillance rests with the authorising officer and requires the personal authority of the authorising officer.

The Code of Practice on Covert Surveillance and Property Interference refers to authorisations being granted verbally in urgent cases and records being made as soon as reasonably practicable but this procedure is NO LONGER AVAILABLE to the Council as it is incompatible with the requirements for obtaining judicial authority.

Authorising officers should not normally be responsible for authorising operations in which they are directly involved

A written application for a directed surveillance authorisation should describe any conduct to be authorised and the purpose of the investigation or operation. The application should also include:

- the reasons why the authorisation is necessary in the particular case and specify the criminal offences the directed surveillance is intended to prevent or detect;
- the nature of the surveillance;
- the identities, where known, of those to be the subject of the surveillance;
- a summary of the intelligence case and appropriate unique intelligence references where applicable;
- an explanation of the information which it is desired to obtain as a result of the surveillance;

- the details of any potential collateral intrusion and why the intrusion is justified;
- the details of any confidential information that is likely to be obtained as a consequence of the surveillance;
- the reasons why the surveillance is considered proportionate to what it seeks to achieve;
- the level of authority required (or recommended where that is different) for the surveillance; and,
- a subsequent record of whether authorisation was given or refused, by whom, and the time and date this happened.

Duration of Authorisations

~~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 time at which it took effect.~~ The duration period of an authorisation commences with the Magistrates' approval.

Renewal of Authorisations

If, at any time before a directed surveillance authorisation would cease to have effect, the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, he may renew it in writing for a further period of three month but such authorisations do not take effect until judicial authority is granted by the Magistrates' Court.

An application for renewal should not be made until shortly before the authorisation period is drawing to an end. Any person who would be entitled to grant a new authorisation can renew an authorisation. All applications for the renewal of a directed surveillance authorisation should record (at the time of application):

- 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;
- the results of regular reviews of the investigation or operation.

Authorisations may be renewed more than once, if necessary and provided they continue to meet the criteria for authorisation. The details of any renewal should be centrally recorded.

As above, for any renewal of an authorisation to take effect judicial authority must be obtained.

Cancellation of Authorisations

During a review, the authorising officer who granted or last renewed the authorisation may amend specific aspects of the authorisation, for example, to cease surveillance against one of a number of named subjects or to discontinue the use of a particular tactic. They must cancel the authorisation if satisfied that the directed surveillance as a whole no longer meets the criteria upon which it was authorised. Where the original authorising officer is no longer available, this duty will fall on the person who has taken over the role of authorising officer or the person who is acting as authorising officer.

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). 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 effective practice suggests that a record should be retained detailing the product obtained from the surveillance and whether or not objectives were achieved.

The Keeping of Records

A record of the following information pertaining to all authorisations shall be centrally retrievable within each public authority for a period of at least three years from the ending of each authorisation. This information should be regularly updated whenever an authorisation is granted, renewed or cancelled and should be made available to the relevant Commissioner or an Inspector from the OSC upon request.

- the type of authorisation;
- the date the authorisation was given;
- name and job title of the authorising officer;
- the unique reference number (URN) of the investigation or operation;
- the title of the investigation or operation, including a brief description and names of subjects, if known;
- The date of any review and the details of the decision made.
- if the authorisation has been renewed, when it was renewed and who authorised the renewal, including the name and job title of the authorising officer;
- whether the investigation or operation is likely to result in obtaining confidential information;
- whether the authorisation was granted by an individual directly involved in the investigation;
- the date the authorisation was cancelled.

The following documentation should also be centrally retrievable for at least three years from the ending of each authorisation:

- a copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the authorising officer;
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the authorising officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction to cease surveillance was given;
- the date and time when any other instruction was given by the authorising officer.
- The order of the magistrates' court granting judicial authority for the surveillance, including judicial authority for the renewal of authorisations, or any such order refusing authority.

The written records of every directed surveillance and CHIS authorisation, review, renewal, refusal or cancellation must be sent to the RIPA Monitoring Officer for inclusion in the Central Record, which will be made available to the OSC upon request. It is the responsibility of all Authorising Officers to ensure that the RIPA Monitoring Officer receives the relevant forms within 7 days of refusal, authorisation, review, renewal or cancellation.

Retention and Destruction of Materials

The Council must ensure that arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed or intrusive surveillance. Authorising officers must ensure compliance with the appropriate data protection requirements under the Data Protection Act 1998 and any relevant codes of practice produced by the Council relating to the handling and storage of material.

Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable further period, commensurate to any subsequent review. There is nothing in RIPA which prevents material obtained under directed or intrusive surveillance authorisations from being used to further other investigations

Where surveillance is being carried out as part of a criminal investigation officers are reminded of the requirements of the Code of Practice issued under the Criminal Procedure And Investigations Act 1996.

The Roles of RIPA Officers

The ~~Director of Resources~~Service Director – Legal, Governance and Commissioning is the Senior Responsible Officer and is responsible for:

- the integrity of the process in place within the Council to authorise directed surveillance, the management of CHIS and the acquisition of communications data;
- compliance with RIPA, the Code of Practice on Covert Surveillance and Property Interference, the Code of Practice on Covert Human Intelligence Sources and the Code of Practice on Acquisition and Disclosure of Communications Data;
- 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;
- engagement with the Commissioners and inspectors when they conduct their inspections, and
- where necessary, overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner.

~~The Assistant Director with responsibility for supporting the Senior Responsible Officer is the Assistant Director for Legal, Governance and Monitoring and is referred to as the RIPA Assistant Director.~~

The RIPA Monitoring Officer is the solicitor within Legal, Governance and Monitoring responsible for advising the Senior Responsible Officer and the Council upon RIPA issues and for providing day to day advice and support to investigating and authorising officers. The RIPA Monitoring Officer will:

- Take steps to raise awareness of the requirements of RIPA across the Council
- maintain a central record of all directed surveillance operations
- monitor the quality of authorisation, review, renewal and cancellation forms
- raise issues as necessary with the Applicant Officer, the Authorising Officers and/or the Senior Responsible Officer as relevant
- return an application for authorisation to the relevant Authorising Officer for further

information if deemed appropriate as a result of the information on the form

- keep the Senior Responsible Officer informed about the Council's conduct of directed surveillance and compliance with the law and relevant codes of practice, etc
- act as the contact point for any enquiries from the Office of the Surveillance Commissioners
- provide first line advice to those involved in covert surveillance
- ensure that all areas which may undertake directed surveillance operations are familiar with the RIPA legislation and codes of practice and the Council's Policy and Code of Practice
- in conjunction with the RIPA Legal Advisers, may carry out spot checks on any forms/activity from department to department, or may visit departments to check knowledge of RIPA.
- provide or arrange RIPA training, awareness raising, briefing notes and other corporate communications ~~at~~ as necessary
- be responsible for applications to the magistrates' court for judicial authority

Overall responsibility for each directed surveillance operation will lie with the Authorising Officer in charge of the operation. Officers who authorise directed surveillance are responsible for granting, reviewing, renewing and cancelling authorisations. Corporate responsibility for monitoring the use of covert surveillance rests with the Senior Responsible Officer.

The RIPA Monitoring Officer in conjunction with the Senior Responsible Officer will ensure that relevant members of staff are suitably trained as applicants for RIPA authorisations and as authorising officers, as well as ensuring that relevant departments are kept informed of any significant changes in RIPA.

The Council's Internal Audit service will review this area of work when requested to do so by the RIPA Monitoring Officer.

APPENDIX 1

LIST OF OFFICERS RESPONSIBLE FOR RIPA DUTIES

Senior Responsible Officer	~~David Smith~~Julie Muscroft (Service Director – Legal, Governance and Commissioning ~~of Resources~~)
~~RIPA Assistant Director~~	~~Julie Muscroft (Assistant Director (Legal, Governance and Monitoring)~~
RIPA Monitoring Officer	John Chapman (~~Interim Deputy~~ Head of Legal Services)
RIPA Legal Advisors	Samantha Lawton (Senior Legal Officer) David Stickley (Senior Legal Officer) Louise Carter (Assistant Legal Officer)

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LIST OF AUTHORISING OFFICERS

~~Adrian Lythgo~~ Jacqui Gedman	Chief Executive (for confidential information and juvenile CHIS authorisations)
~~David Smith~~ (To Be Confirmed)	~~Director of Resources~~ (for authorisation in exceptional circumstances)
Dave Thompson	~~Customer Services Manager~~Head of Access Strategy and Delivery (~~Customer and Exchequer~~Office of the Chief Executive)

NOTES

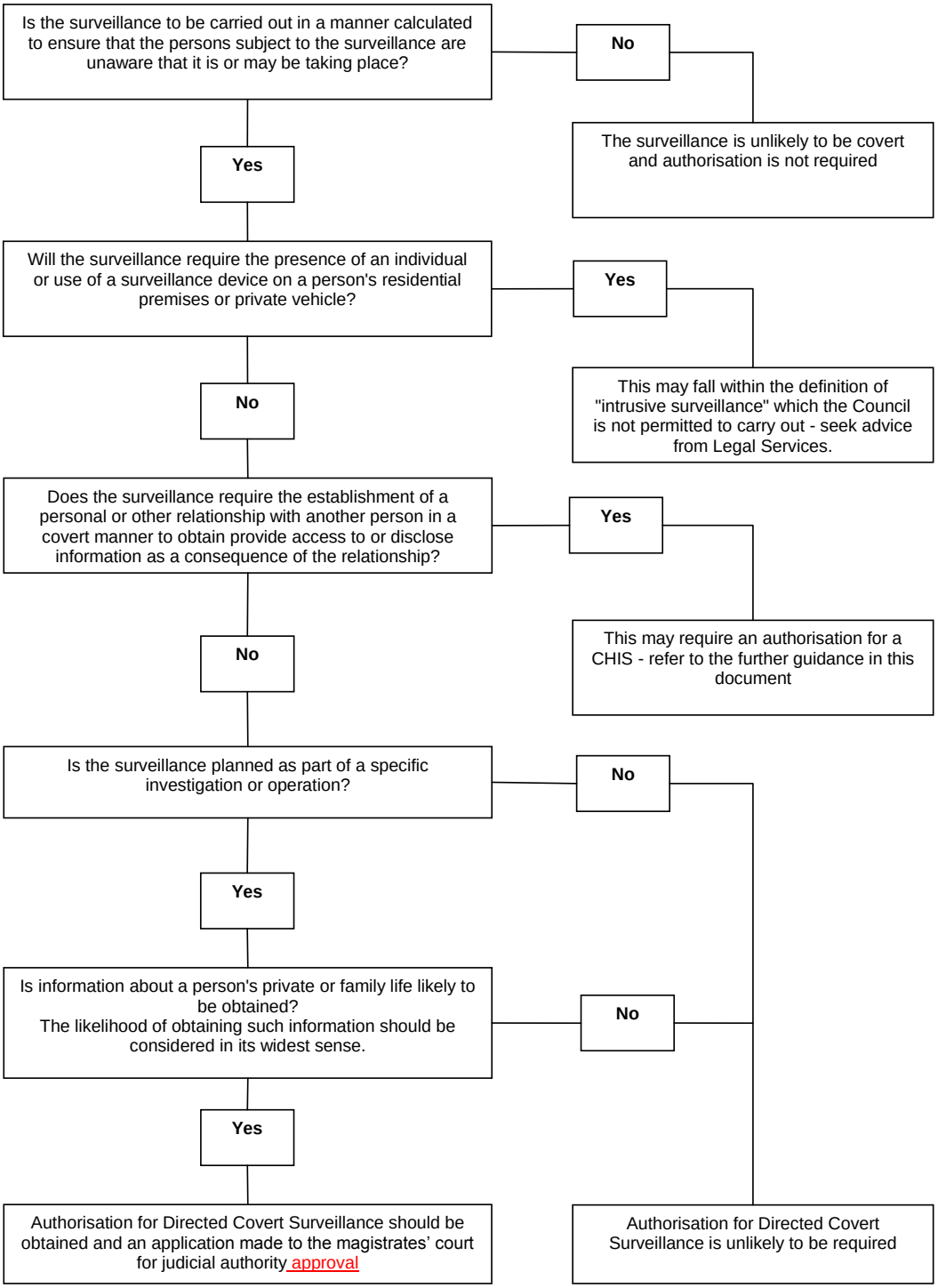
A. Only the Chief Executive or in his absence, the Senior Responsible Officer can authorise activities involving confidential information or the use of CHIS

B. No person shall become an Authorised Officer and/or an Applicant Officer without undergoing and maintaining RIPA training. In the case of Authorised Officers, no person shall become an Authorised Officer until their appointment is confirmed by the Senior Responsible Officer following training provided by or arranged by the RIPA Monitoring Officer.

C. If an Authorising Officer is in any doubt about an individual matter they should consult the RIPA Monitoring Officer or RIPA legal advisers before any directed surveillance and/or CHIS is refused, authorised, reviewed, renewed or cancelled.

APPENDIX 2

FLOWCHART



APPENDIX 3

DUTIES OF AUTHORISING OFFICERS

A. Nominate Applicant Officers within their Services who can make applications and ensure that any Applicant Officer who submits an application to them has received appropriate training prior to making the application

B. Only grant an authorisation for directed surveillance if it is necessary for the purpose of preventing or detecting conduct which constitutes one or more criminal offences; and the criminal offence or one of the criminal offences would be either –
   - Punishable, whether on summary conviction (in the magistrates' court) or on indictment (in the Crown Court), by a maximum term of at least 6 months of imprisonment; or
   - Is an offence under:
     - section 146 of the Licensing Act 2003(2) (sale of alcohol to children);
     - section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
     - section 147A of the Licensing Act 2003(3) (persistently selling alcohol to children);
     - section 7 of the Children and Young Persons Act 1933(4) (sale of tobacco, etc, to persons under eighteen)."
     - section 91 of the Children and Families Act 2014 (purchase of tobacco, nicotine products etc. on behalf of persons under 18);
     - section 92 of the Children and Families Act 2014 (prohibition of sale of nicotine products to persons under 18).

C. Only grant an authorisation for CHIS or the acquisition of communications data if it is necessary for the purpose of preventing or detecting crime or of preventing disorder.

D. Only grant an authorisation that is proportionate to what is sought to be achieved by carrying out surveillance

E. Before authorising surveillance, take into account the risk of collateral intrusion

F. Be aware of particular sensitivities in the local community where the surveillance is taking place and of similar activities that might be taking place by other public authorities

G. Unless it is unavoidable, do not issue authorisations if you were directly involved in the original investigation(s)

H. Ensure that you have sufficient information and justification to authorise an investigation, if in doubt seek further information

I. Nominate the appropriate level of officer to be in charge of the investigation

J. Determine how often a review should take place in each case and ensure that this is at intervals of no longer than one month and review authorisations granted, at intervals of no longer than one month, to assess the need for the surveillance to continue

K. Ensure that the RIPA Monitoring Officer is informed whenever an authorisation is refused, granted, reviewed, renewed or cancelled and that the relevant form is sent to the RIPA Monitoring Officer within 7 days

L. Ensure that no surveillance commences unless and until the RIPA Monitoring Officer has obtained judicial authority

M. Only renew authorisations where appropriate

N. Cancel the authorisation if you are satisfied that the surveillance no longer meets the criteria applied when it was authorised

O. On cancellation, issue appropriate instructions to officers in charge of investigations

P. In cases where confidential information is likely to be acquired ensure that the case is referred to the RIPA Monitoring Officer for a decision on authorisation to be made by the Chief Executive. If in doubt consult the RIPA Monitoring Officer

Q. Provide an annual return to the RIPA Monitoring Officer recording the RIPA training which shows the RIPA training received by themselves and by their Applicant Officers

APPENDIX 4

DUTIES OF OFFICERS IN CHARGE OF INVESTIGATIONS

A. Seek authorisation for surveillance where it is likely to interfere with any person's rights to privacy by obtaining private information about that person

B. Make formal applications for Directed Surveillance and CHIS where appropriate

C. Inform the Authorising Officer if the investigation unexpectedly interferes with the privacy of individuals who were not considered by the authorisation

D. Make the Authorising Officer aware of particular sensitivities in the local community where the surveillance is taking place and of similar activities being undertaken by other public authorities which could impact on the surveillance

E. Ensure that authorisations are regularly reviewed

F. Apply for renewal shortly before the expiry of the authorisation period and at least 7 days before expiry where possible

G. Cancel the authorisation when the surveillance is completed and advise any officers involved in the investigation accordingly

H. Act immediately to terminate surveillance when instructed by the Authorising Officer

I. Make the Authorising Officer aware of any likelihood that confidential information may be acquired if surveillance is authorised

J. Properly store and retain the product of surveillance

K. Ensure that no surveillance commences unless and until the RIPA Monitoring Officer has obtained judicial authority.

APPENDIX 5

MANAGEMENT OF COVERT HUMAN INTELLIGENCE SOURCES

Information Note: The use of a CHIS in Council investigations is most unlikely. Any officer contemplating such use should immediately seek advice from the RIPA Monitoring Officer

This is the text of the 2014~~0~~ Home Office Code of Practice on Covert Human Intelligence Sources, Chapter 6 Management of Covert Human Intelligence Sources

Tasking

6.1. Tasking is the assignment given to the CHIS by the persons defined at sections 29(5)(a) and (b) of [RIPA], asking him to obtain, provide access to or disclose information. Authorisation for the use or conduct of a CHIS will be appropriate prior to any tasking where such tasking involves the CHIS establishing or maintaining a personal or other relationship for a covert purpose.

6.2. Authorisations should not be drawn so narrowly that a separate authorisation is required each time the CHIS is tasked. Rather, an authorisation might cover, in broad terms, the nature of the source's task. If the nature of the task changes significantly, then a new authorisation may need to be sought.

6.3. It is difficult to predict exactly what might occur each time a meeting with a CHIS takes place, or the CHIS meets the subject of an investigation. There may be occasions when unforeseen action or undertakings occur. When this happens, the occurrence must be recorded as soon as practicable after the event and if the existing authorisation is insufficient it should either be updated at a review (for minor amendments only) or it should be cancelled and a new authorisation should be obtained before any further such action is carried out.

6.4. Similarly, where it is intended to task a CHIS in a significantly greater or different way than previously identified, the persons defined at section 29(5)(a) or (b) of [RIPA] must refer the proposed tasking to the authorising officer, who should consider whether the existing authorisation is sufficient or needs to be replaced. This should be done in advance of any tasking and the details of such referrals must be recorded. Efforts should be made to minimise the number of authorisations per CHIS to the minimum necessary in order to avoid generating excessive paperwork.

Handlers and controllers

6.5. Public authorities should ensure that arrangements are in place for the proper oversight and management of CHIS, including appointing individual officers as defined in section 29(4A) and (4B) and 29(5)(a) and (b) of [RIPA] for each CHIS.

6.6. Oversight and management arrangements for undercover operatives, while following the principles of the Act, will differ, in order to reflect the specific role of such individuals as members of public authorities. The role of the handler will be undertaken by a person referred to as a 'cover officer' and the role of controller will be undertaken by a 'covert operations manager'.

6.7. The person referred to in section 29(5)(a) of [RIPA] (the "handler") will have day to day responsibility for:

- *dealing with the CHIS on behalf of the authority concerned;*

- *directing the day to day activities of the CHIS;*
- *recording the information supplied by the CHIS; and*
- *monitoring the CHIS's security and welfare.*

6.8. The handler of a CHIS will usually be of a rank or position below that of the authorising officer.

6.9. The person referred to in section 29(5)(b) of [RIPA] (the "controller") will normally be responsible for the management and supervision of the "handler" and general oversight of the use of the CHIS.

Joint working

6.10. In cases where the authorisation is for the use or conduct of a CHIS whose activities benefit more than a single public authority, responsibilities for the management and oversight of that CHIS may be taken up by one authority or can be split between the authorities. The controller and handler of a CHIS need not be from the same public authority.

6.11. There are many cases where the activities of a CHIS may provide benefit to more than a single public authority, responsibilities for the management and oversight of that CHIS may be taken up by one authority or can be split between authorities. The controller and handler of a CHIS may not be from the same public authority. Such cases may include:

- *The prevention or detection of criminal matters affecting a national or regional area, for example where the CHIS provides information relating to cross boundary or international drug trafficking;*
- *The prevention or detection of criminal matters affecting crime and disorder, requiring joint agency operational activity, for example where a CHIS provides information relating to environmental health issues and offences of criminal damage, in a joint police/ local authority anti-social behaviour operation on a housing estate;*
- *Matters of national security, for example where the CHIS provides information relating to terrorist activity and associated criminal offences for the benefit of the police and the Security Service.*

6.12. In such situations, however, the public authorities involved must lay out in writing their agreed oversight arrangements.

6.13. Management responsibility for CHIS, and relevant roles, may also be divided between different police forces where the Chief Officers of the forces concerned have made a collaboration agreement under section 23 of the Police Act 1996 or section 12 of the Police (Scotland) Act 1967, and the collaboration agreement provides for this to happen.

Security and welfare

6.14. Any public authority deploying a CHIS should take into account the safety and welfare of that CHIS when carrying out actions in relation to an authorisation or tasking, and the foreseeable consequences to others of that tasking. Before authorising the use or conduct of a CHIS, the authorising officer should ensure that a risk assessment is carried out to determine the risk to the CHIS of any tasking and the likely consequences should the role of the CHIS become known. The ongoing security and welfare of the CHIS, after the cancellation of the authorisation, should also be considered at the outset. Also, consideration should be given to the management of any requirement to disclose information tending to reveal the existence or identity of a CHIS to, or in, court.

6.15. The CHIS handler is responsible for bringing to the attention of the CHIS controller any concerns about the personal circumstances of the CHIS, insofar as they might affect:

- *the validity of the risk assessment;*
- *the conduct of the CHIS; and*
- *the safety and welfare of the CHIS.*

6.16. Where appropriate, concerns about such matters must be considered by the authorising officer, and a decision taken on whether or not to allow the authorisation to continue.

Sections 7.3 and 7.4 of the same Code of Practice provide:

Individual records of authorisation and use of CHIS

7.43 Detailed records must be kept of the authorisation and use made of a CHIS. Section 29(5) of the 2000 Act provides that an authorising officer must not grant an authorisation for the use or conduct of a CHIS unless he believes that there are arrangements in place for ensuring that there is at all times a person with the responsibility for maintaining a record of the use made of the CHIS. The Regulation of Investigatory Powers (Source Records) Regulations 2000; SI No: 2725 details the particulars that must be included in these records.

7.54 Public authorities are encouraged to consider maintaining such records also for human sources who do not meet the definition of a CHIS. This may assist authorities to monitor the status of a human source and identify whether that source becomes a CHIS.

Officers should be particularly careful to ensure that individuals who are not a CHIS at the outset of an investigation do not inadvertently become a CHIS by a process of “status drift”. If, for example a complainant volunteers to obtain further information about a person being investigated, care should be taken to consider whether the proposed action would involve the complainant becoming a CHIS and if so whether that is appropriate and in accordance with RIPA and the CHIS Code of Practice.

Appendix 6

Policy Statement

Kirklees Council takes seriously its statutory responsibilities and will take great care at all times to make sure that the use of surveillance is proportionate to the desired outcome of that surveillance.

In addition the RIPA Monitoring Officer can be contacted for further advice and assistance and the officers with particular expertise in this area are also listed at Appendix 1 and referred to throughout this document as the RIPA Legal Advisers.

Kirklees Council will only use directed surveillance:

- where it is necessary to do so for the prevention or detection of conduct which constitutes one or more criminal offences; and the criminal offence or one of the criminal offences would be either –
    - Punishable, whether on summary conviction (in the magistrates' court) or on indictment (in the Crown Court), by a maximum term of at least 6 months of imprisonment; or
    - Is an offence under:
        - section 146 of the Licensing Act 2003(2) (sale of alcohol to children);
        - section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
        - section 147A of the Licensing Act 2003(3) (persistently selling alcohol to children);
        - section 7 of the Children and Young Persons Act 1933(4) (sale of tobacco, etc, to persons under eighteen)."
        - section 91 of the Children and Families Act 2014 (purchase of tobacco, nicotine products etc. on behalf of persons under 18);
        - section 92 of the Children and Families Act 2014 (prohibition of sale of nicotine products to persons under 18).

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- in a way that is proportionate to the circumstances

Kirklees Council will only use CHIS or the acquisition of communications data;

- where it is necessary to do so for the prevention or detection of crime or to prevent disorder
- in a way that is proportionate to the circumstances

Kirklees Council will when using directed surveillance:

- do so with due consideration of human rights issues

- properly investigate any complaints made about its use
- actively monitor its use
- observe the appropriate law and Home Office Codes of Practice
- ensure that staff (and contractors) are properly trained

In the normal course of any covert surveillance activity the Council will not use Covert Human Intelligence Sources unless the surveillance is for the purposes of the West Yorkshire Trading Standards Service. If there appears to be a need to employ such sources, the application must be authorised by either the Chief Executive or the Senior Responsible Officer. The appropriate Home Office Code of Practice will then be followed.

The Council will not carry out intrusive surveillance within the meaning of RIPA.

The Council will, through the RIPA Monitoring Officer, maintain a central record of all directed surveillance operations which it undertakes and will monitor the quality of all forms created for this purpose. Any issues will initially be raised as necessary with Authorising Officers and will be drawn to the attention of the RIPA Monitoring Officer.

Responsibilities

Overall responsibility for each directed surveillance operation will lie with the Authorising Officer in charge of the operation.

Officers who authorise directed surveillance are responsible for granting, reviewing, renewing and cancelling authorisations.

The RIPA Monitoring Officer will be responsible for making applications for judicial authority.

Corporate responsibility for monitoring the use of covert surveillance rests with the Senior Responsible Officer.

The Council's Internal Audit service will review this area of work when requested to do so by the RIPA Monitoring Officer.

In cases where the Council's equipment or premises are used by the Police for the purposes of their investigations, the Police will be responsible for obtaining the necessary authorisations under the Act. Council officers should ensure that an appropriate authorisation has been obtained. If the Council officer is not satisfied that an appropriate authorisation has been obtained the Police should not be allowed to use the Council's equipment or premises. In cases where joint operations are undertaken, the lead authority should obtain the authorisation.

APPENDIX 7

RIPA AND ANTI-SOCIAL BEHAVIOUR ENFORCEMENT

7.1 Persons who complain about anti-social behaviour and thereafter keep a diary or incident log sheet will not normally be a CHIS as they are not required to establish or maintain a relationship for a covert purpose.

7.2 Recording the level of noise such as the decibel level, will not normally capture private information and therefore does not require directed surveillance authorisation.

7.3 Recording sound with a DAT recorder or matron box on the complainant's private premises will be directed surveillance unless it is done overtly, for example by informing the alleged perpetrator that a complaint has been received and monitoring will take place. The alleged perpetrator should also be informed of the period when this monitoring is likely to take place (e.g. over the next three months) and what this monitoring may involve (e.g. the use of log sheets, matron boxes etc).

Placing a covert stationary or mobile video camera outside a building to record anti-social behaviour on residential estates will also require an authorisation for directed surveillance.

NB There will be types of Anti-Social Behaviour which no longer meet the conditions for the authorisation of directed surveillance because the underlying criminal conduct does not carry a penalty of at least 6 months imprisonment. Such conduct may involve minor offences of violence, disorder or harassment. If there is any doubt as to what the underlying offences might be or what penalties they carry advice must be sought from the RIPA Monitoring Officer.

APPENDIX 8

WORKING WITH OTHER AGENCIES

Where another agency has been instructed on behalf of Kirklees Council to undertake any action under RIPA, this document and the forms referred to in it must be used (as per normal procedure) and the agency advised or kept informed, as necessary, of the various requirements. They must be made aware explicitly what they are authorised to do.

Where another agency such as the Police wishes to use the Council's resources (e.g. CCTV surveillance system), that agency must use its own RIPA procedures and before any officer agrees to allow the Council's resources to be used for the other agency's purposes, they must obtain a copy of that agency's RIPA form for the record or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources in accordance with any service/end agreement and/or Code of Practice in force between agencies.

Where another agency such as the police wishes to use the Council's premises for their own RIPA action and is expressly seeking assistance from the Council, the officer should normally co-operate with the same, 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 agency's RIPA operation. In such cases, however, the Council's own RIPA forms should not be used as the Council is only assisting, not being involved in the RIPA activity of the external agency.

If the police or another agency wishes to use the Council's resources for general surveillance as opposed to specific RIPA operations, an appropriate information request and the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the Police or other agency before the Council's resources are made available for the proposed use.

APPENDIX 9

COMMUNICATIONS DATA

There are two types of communications data which can be obtained by local authorities such as the Council. These are:

Service data (s21(4)(b)) This covers itemised telephone call records, connection records, timing and duration of calls, connection, reconnection and disconnection data, use of forwarding or redirection service, additional telecom services and records of postal items.

Subscriber Data (s21(4)(c)) This includes information on subscribers of E-mail and telephone accounts, account information, including payment details, addresses for installing and billing and abstract personal records such as sign-up data.

Accordingly the Council cannot access the content of communications. The Council has an agreement in place with an external agency who will contact a communications provider if data is required. For more information on this contact the RIPA Monitoring Officer or the RIPA Legal Advisers. Authorisations will only be granted where necessary and proportionate. It seems unlikely that the Council would wish to use this facility unless requested to do so by the West Yorkshire Trading Standards Service.

Any errors must be reported to the RIPA Monitoring Officer who in turn will notify IOCCO as appropriate.

APPENDIX 10

COVERT SURVEILLANCE AND SOCIAL MEDIA

This is the text of the 2016 Office of Surveillance Commissioners Procedures and Guidance, Paragraph 289

The fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the Social Networking Sites (SNS) being used works. Authorising Officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.

289.1 Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as "open source" or publicly available; the author has a reasonable expectation of privacy if access controls are applied. In some cases data may be deemed private communication still in transmission (instant messages for example). Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. Repeat viewing of "open source" sites may constitute directed surveillance on a case by case basis and this should be borne in mind.

289.2 Providing there is no warrant authorising interception in accordance with section 48(4) of the 2000 Act, if it is necessary and proportionate for a public authority to breach covertly access controls, the minimum requirement is an authorisation for directed surveillance. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (i.e. the activity is more than mere reading of the site's content).

289.3 It is not unlawful for a member of a public authority to set up a false identity but it is inadvisable for a member of a public authority to do so for a covert purpose without an authorisation for directed surveillance when private information is likely to be obtained. The Senior Responsible Officer should be satisfied that there is a process in place to ensure compliance with the legislation. Using photographs of other persons without their permission to support the false identity infringes other laws.

289.4 A member of a public authority should not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without authorisation, and without the consent of the person whose identity is used, and without considering the protection of that person. The consent must be explicit (i.e. the person from whom consent is sought must agree (preferably in writing) what is and is not to be done).

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