

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO POLICY & FINANCE COMMITTEE

Agenda Item No. 5

meeting date: 28 OCTOBER 2014
title: SURVEILLANCE COMMISSIONERS INSPECTION REPORT
submitted by: SOLICITOR
principal author: MAIR HILL

1. PURPOSE

1.1 To report to committee the receipt of the Office of Surveillance Commissioners inspection report dated 10 August 2014, arising from an inspection carried out by HH David Hodson (Assistant Surveillance Commissioner) on 5 August 2014.

1.2 Relevance to the Council's ambitions and priorities:

- Council Ambitions – To prevent and/or detect crime or disorder, whilst respecting individuals rights under the European Convention on Human Rights (“**ECHR**”) and the Human Rights Act 1998 (“**HRA**”), and ensuring compliance with the Regulation of Investigatory Powers Act 2000 (“**RIPA**”).
- Community Objectives – None.
- Corporate Priorities – None.
- Other Considerations – None.

2. BACKGROUND

2.1 RIPA came into force on 25 September 2000; its aim is to strike a balance between protecting individuals' rights under Article 8 ECHR and the HRA and the need for investigatory powers to protect the interests of society as a whole. RIPA allows the Council to carry out directed surveillance and/or use covert human intelligence sources (“**CHIS**”) lawfully if it is authorised in accordance with the provisions of RIPA, it is necessary for the purpose of preventing or detecting crime or disorder, it is proportionate to the aims, which it seeks to achieve, and any authorisation receives judicial approval.

2.2 The Office of the Surveillance Commissioner (“**OSC**”) carries out routine inspections of all public bodies to ensure their compliance with the requirements of RIPA.

2.3 HH David Hodson (“**Inspector**”) inspected the Council on 5 August 2014. A copy of the Inspector's report setting out his findings and recommendations is enclosed at **Appendix 1** to this report (“**Inspection Report**”).

2.4 Prior to the inspection it was made clear that its main purpose was to review the policies and procedures which the Council has in place to comply with RIPA and the use which the Council makes of its powers.

2.5 The Inspector made two recommendations in his report:

- Implement the amendments to the Corporate Policy Document as identified in the inspection and set out in paragraph 5 of his report; and
- Arrange RIPA training for the Chief Executive and the two Directors as soon as practicable.

2.6 In response to these recommendations the Council has:

- Amended its RIPA policy to incorporate all the recommended amendments set out in paragraph 5 of the Inspection Report and others discussed with the Inspector. A copy of this is contained at **Appendix 2**.
- Training has been arranged for the Chief Executive and two Directors, to be provided by the Council's Solicitor on 5 November 2014.

2.7 Whilst the Inspector does not make any formal recommendation with regard to the central record of authorisations, he does suggest including a column for the date of judicial approval. The central record has been amended to incorporate this suggestion and is appended at **Appendix 3**.

3. RISK ASSESSMENT

3.1 The approval of this report may have the following implications:

- **Resources** – Resources have been expended in amending the policy and will be in providing RIPA training to the Chief Executive, and the Directors of the Council.
- **Technical, Environmental and Legal** – The Council will be better able to pursue legal action as necessary.
- **Political** – None.
- **Reputation** – The Council's response to the Inspection Report will demonstrate the Council's commitment to carrying out its responsibilities.

4. RECOMMENDED THAT COMMITTEE

- 4.1 Note the Inspector's recommendations.
- 4.2 Approve the amended policy.
- 4.3 Approve the amended Central Record of Authorisations.

MARSHAL SCOTT
CHIEF EXECUTIVE

MAIR HILL
SOLICITOR

SOLICITOR BACKGROUND PAPERS

- Appendix 1 – Inspection Report
- Appendix 2 – Amended Policy
- Appendix 3 – Amended Central Record of Authorisations

For further information please ask for Mair Hill, on extension 3216.



Office of Surveillance Commissioners

OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT

Ribble Valley Borough Council

5th August 2014

**Assistant Surveillance Commissioner:
HH David Hodson.**

OFFICIAL- SENSITIVE

■ DISCLAIMER

This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

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OFFICIAL - SENSITIVE

Office of Surveillance
Commissioners

The Rt. Hon Sir Christopher Rose Chief
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10 August 2014

**RIBBLE VALLEY BOROUGH COUNCIL
INSPECTION REPORT**

Inspection Date 5 August 2014
Inspector His Honour David Hodson
 Assistant Surveillance Commissioner

Introduction

1. Ribble Valley Borough Council reputedly boasts the largest geographical area for the size of its population in England and Wales. The inhabitants number approximately 57,000 and the area spreads over a large swathe of countryside from Gisburn in the east to Longridge in the west. In the north west the Borough encompasses the Forest of Bowland with its celebrated Trough. The boundary to the north east falls just south of Settle. The southern boundary takes in Sabden with its infamous treacle mines. Clitheroe is the largest town with a population just short of 15,000 people.
2. The Chief Executive is Mr Marshal Scott. Two Directors report to him. They are Mr John Head, Director of Community Services and Ms Jane Pearson, Director of Resources. Six Heads of Services answer to the two Directors. Ms Diana Rice is Head of Legal & Democratic Services. Ms Mair Hill is the Solicitor in that department with RIPA responsibilities. The Council employs approximately 240 people.
3. The Chief Executive's address for correspondence is: Ribble Valley Borough Council, Council Office, Church Walk, Clitheroe, Lancashire BB7 2RA.

RIPA Structure

4. Ms Hill is the Senior Responsible Officer, having been formalised in that role in 2012 by the Council following a recommendation in the report of the previous inspection. Ms Hill also maintains the Central Record. The Chief Executive is an Authorising Officer when confidential information is likely to be obtained. The two Directors, Mr Head and Ms Pearson are the two other Authorising Officers.

The Inspection

5. Ms Hill warmly welcomed me to the Council and I am most grateful to her for all the arrangements she had made. In view of the fact there had been no \ RIPA authorisations during the inspection period the inspection was of relatively short duration. We had a most useful general discussion about RIPA matters and most of our time was spent on considering the Council's Corporate Policy and Guidance Document. The inspection concluded with a brief meeting and discussion with the Chief Executive, Mr Marshal Scott.

The Council's Corporate Policy and Guidance Document

6. This document is dated November 2012. It purports to be up to date but, as Ms Hill readily admitted, amendments are required to restore accuracy. In fairness Ms Hill had already identified most of the points in issue when she was reading through the document in advance of the inspection. Ms Hill and I ran through the document together and the amendments we agreed as being required are:
 - Paragraph 2.7 - should be amended to read that any interference can only be necessary if it is "for the purpose of preventing or detecting crime where the offence is punishable by a maximum term of at least six months imprisonment."
 - Paragraph 2.8 should be amended to make clear that the legislative authority comes from the RIPA Order 2010 (SI 2010 No 521) as amended by the RIPA Order 2012 (SI 2012 No 1500). '
 - Paragraph 5.3.1 should be amended as for paragraph 2.7.
 - Paragraphs 5.15 and 5.16 should be deleted as urgent authorisations are no longer available.
 - Paragraph 5.19,2 should be amended as for paragraph 2.7.
 - Paragraph 5,28.4 should be deleted.
 - Paragraph 7 should be amended to make provision for recording in the Central Record the date when judicial approval was given.
 - Appendix 3 should be amended to ensure that the crime

threshold reference is accurate - ie not a maximum term of six months but a maximum term of at least six months. Ms Hid suggested that this flow chart should be replaced by the one in the Home Office's draft new Code of Practice. I fully endorse her suggestion.

- Inclusion of the appointment of Ms Mair Hill either by name or office held as RIPA Senior Responsible Officer.

See Recommendation

Training

7. The last training that was given to officers with RIPA responsibilities was in 2009. Although there has been no RIPA usage in the present inspection period and whilst it is extremely unlikely that the Council will undertake any in the future it is desirable that those officers who may have to consider applications and, perhaps, grant authorisations should be kept up to date. I therefore suggested to Ms Hill that some RIPA training should be provided as soon as is practicable. I indicated that it could be in-house training delivered by Ms Hill or training provided by an outside agency.

See Recommendation

Examination of the Central Record

8. This was a perfectly acceptable document in an electronic spreadsheet format. I saw that the last authorisation was in 2008. As stated previously I suggested that there should be provision for recording the date of judicial approval. This could easily be accommodated by the deletion of the column that recorded urgent authorisations, A formal recommendation is not necessary.
- 9, It has already been stated that there were no authorisations during the inspection. No applications for directed surveillance or CHIS were refused.

Progress or otherwise relating to the recommendations of the last inspection.

10. Recommendation 1 to the effect that the role of the Senior Responsible Officer be formalised and included in the RiPA policy document has been partly discharged in that her role has been formalised but her position is not yet in the Corporate Policy document.
\\
11. Recommendations 2 & 3 have not been tested because of the absence of any applications or authorisations during the inspection period.

Conclusion

12. This has been a thoroughly satisfactory inspection. The Corporate Policy document requires relatively minor amendments which, I am confident, will be dealt with expeditiously. It is acknowledged that it is unlikely that this authority will resort to RiPA activity but should the necessity arise I would expect the Council to handle any authorisation efficiently, appropriately and with good record keeping.
13. My short concluding meeting with the Chief Executive gave him the opportunity to emphasise that RiPA usage in the future was a most remote possibility but that, if it had to be used, the processes would be invoked circumspectly and with close oversight from the legal department.

Recommendations

1. Implement the amendments to the Corporate Policy Document as identified in the inspection and set out in paragraph 5 above,
2. Arrange RiPA training for the Chief Executive and the two Directors as soon as is practicable.

**His Honour David Hodson Assistant
Surveillance Commissioner**

APPENDIX 2

Corporate Policy in Respect of Regulation of Investigatory Powers Act 2000 (“RIPA”)



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

OCTOBER 2014

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1. INTRODUCTION

- 1.1 This Corporate Policy is based upon the requirements of the Regulation of Investigatory Powers Act 2000 (“**RIPA**”), the Home Office’s Code of Practice for Covert Surveillance, and Covert Human Intelligence Sources (“**CHIS**”) (“**Codes**”), and the Home Office guidance for local authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance (“**Guidance**”).
- 1.2 Ribble Valley Borough Council (the “**Council**”) has also taken into account and incorporated the guidance given by the Office of Surveillance Commissioners in its report dated 4 June 2008, 21 August 2011, and 10 August 2014 and is grateful to it for providing this.
- 1.3 On 18 November 2008 the Head of Legal and Democratic Services was authorised by the Council’s Policy and Finance Committee to carry out periodic reviews of this policy and to amend it to the extent necessary to keep it up to date and in line with the Home Office’s Codes of Practice.
- 1.4 Whilst this policy provides guidance it is not intended to be an authoritative source on the provisions of RIPA. All Officers must therefore make reference to RIPA itself and to the Codes, and the Guidance for an authoritative position.
- 1.5 Should any Officer be uncertain in respect of any aspect of RIPA, the authorising procedures set out in this policy, or at all, they should contact the legal department of the Council immediately.
- 1.6 The Council’s Solicitor is the RIPA Senior Responsible Officer.

2. LEGISLATIVE BACKGROUND

- 2.1 The Human Rights Act 1998 (the “**HRA**”) incorporated the European Convention on Human Rights (the “**ECHR**”) into domestic law.
- 2.2 Article 8 of the ECHR provides that:

- “1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is **in accordance with the law** and is **necessary** in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protections of the rights and freedoms of others.” [Emphasis added]*
- 2.3 There is therefore a qualified right for interference with individual’s rights under Article 8 if it is:
- 2.3.1 done in accordance with the law;
- 2.3.2 necessary; and/or
- 2.3.3 proportionate.
- 2.4 Any individual undertaking surveillance and/or using CHIS on behalf of the Council will therefore be breaching a person’s human rights unless that surveillance is authorised in accordance with the law, is necessary for one of the reasons set out above, and is proportionate.
- 2.5 This could have serious implications for the Council, not only in terms of its reputation, but could also potentially render any evidence gathered during the surveillance inadmissible in criminal proceedings, leave the Council open to civil proceedings for a breach of an individual’s human rights, and/or lead to a complaint being made to the Ombudsman. To avoid such a situation arising therefore, Officers must not carry out either Surveillance and/or CHIS unless the provisions of paragraph 2.3 are complied with.

In accordance with the law – RIPA

- 2.6 RIPA came into force on 25 September 2000, with the Codes subsequently coming into force pursuant to Section 71 of RIPA. The aim of RIPA was to strike a balance

between protecting individuals' rights under Article 8 ECHR and the HRA and the need for investigatory powers to protect the interests of society as a whole. It therefore allows interference with individuals' rights in certain circumstances.

Necessity

- 2.7 It should be noted that pursuant to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Statutory Instrument No. 2010/521 ("**RIPA Order 2010**") a local authority, (and hence the Council) can only rely on Section 28 (3) (b) of RIPA as a ground for its interference being necessary. Therefore, under RIPA any interference can **only** be necessary if it is "*for the purpose of preventing or detecting crime where the offence is punishable by a maximum term of at least six months imprisonment.*"
- 2.8 Regulation 7A of the 2010 RIPA Order (as amended by the 2012 RIPA Order SI 2012/1500) introduced this further limitation so that Authorising Officers may only authorise surveillance in respect of a criminal offence which is punishable by a maximum term of at least 6 months imprisonment or which constitutes an offence under section 146, 147 or 147A of the Licensing Act 2003 (sale of alcohol to children) or section 7 of the Children and Young Persons Act 1933 (sale of tobacco to children under 18 years old).
- 2.9 However, not all applications for the purpose set out above will be necessary. The Authorising Officer **must** be satisfied that it is necessary in all the circumstances. A judgment will have to be made on a case-by-case basis. Generally any such interference will not be necessary if there is an alternative **overt** method which could be used to obtain the information. Authorising Officers should therefore satisfy themselves that all other methods have either been exhausted or are not practicable. Authorising Officers should also take care to record in the authorisation their reasoning as to why the action is necessary.

Proportionate

- 2.10 Once it has been established that such interference is necessary it must then be considered whether it is **proportionate** to what is to be achieved. The Authorising

Officer should consider the following elements of proportionality (as set out in paragraph 3.6 of the Code):

- 2.10.1 Balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
 - 2.10.2 Explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
 - 2.10.3 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; and
 - 2.10.4 Evidencing as far as reasonably practicable what other methods had been considered and why they were not implemented.
- 2.11 Authorising Officers should also take care to record within the authorisation form the reasons why they consider that the action is proportionate.

Judicial Approval

- 2.12 Following authorisation by an Authorising Officer judicial approval must be obtained prior to any surveillance being undertaken. Section 32A(2) of RIPA states that “*The authorisation is not to take effect until such time (if any) as the relevant judicial authority has made an order approving the grant of the authorisation.*”
- 2.13 Section 32A(3) of RIPA further provides that:
- “(3) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 28 if, and only if, the relevant judicial authority is satisfied that-*
- at the time of the grant-*
- there were reasonable grounds for believing that the requirements of section 28(2) were satisfied in relation to the authorisation, and*
- the relevant conditions were satisfied in relation to the authorisation, and*
- at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 28(2) are satisfied in relation to the authorisation.*
- (4)For the purposes of subsection (3) the relevant conditions are –*

*(a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that-
the individual was a designated person for the purposes of section 28,
the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and
any other conditions that may be provided for by an order made by the Secretary of State were satisfied,.....”.*

- 2.14 The procedure for making an application for judicial approval is contained in *The Magistrates’ Court (Regulation of Investigatory Powers) Rules 2012 (SI 2012/2563*, and is explained further in the Guidance.

3. SURVEILLANCE

What is surveillance?

- 3.1 Surveillance includes:

3.1.1 Monitoring, observing, listening to persons, watching or following their movements, listening to their conversations and other such activities or communications;

3.1.2 Recording anything mentioned above in the course of authorised surveillance; and/or

3.1.3 Surveillance, by or with, the assistance of appropriate surveillance device(s).

- 3.2 Surveillance can be either overt or covert.

Overt Surveillance

- 3.3 The vast majority of surveillance, which the Council carries out, will be overt and will involve Officers and employees noting events in the course of their normal daily duties. This will not fall within the scope of RIPA and will not require an authorisation. For example, a dog warden who notes an offence being committed as he/she carries out their daily routine will not require RIPA authorisation.

Covert Surveillance

- 3.4 Covert surveillance is defined in section 26(9)(a) of RIPA. It provides that *“surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place”*.

RIPA Part II

- 3.5 RIPA Part II applies to the following conduct:

- 3.5.1 Directed Surveillance
- 3.5.2 Intrusive surveillance
- 3.5.3 Covert Human Intelligence Sources

Directed Surveillance (Section 26(2) RIPA)

- 3.6 **Section 26(2)** defines directed surveillance as surveillance, which is:

- 3.4.1 Covert but not intrusive;
- 3.4.2 Undertaken for the purpose of a specific operation;
- 3.4.3 Undertaken in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); or
- 3.4.5 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 surveillance.

- 3.7 **Section 26(10)** defines “private information” in relation to a person as *“including any information relating to his private or family life”*.

Intrusive Surveillance (Section 26(3)-(6))

- 3.8 **Section 26(3)** defines surveillance as intrusive if and only if it is covert surveillance that:

3.8.1 Is carried out in relation to anything taking place on any residential premises or in any private vehicle; and

3.8.2 involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

- 3.9 Pursuant to **Section 26 (5)** surveillance which:

39.1 Is carried out by means of a surveillance device in relation to anything taking place on a residential premises or in any private vehicle, but

3.9.2 Is carried out without that device being present on the premises or in the vehicle.

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

- 3.10 Please note that there is **NO** provision for a local authority to authorise intrusive surveillance.

4. **COVERT INTELLIGENCE SOURCES (“CHIS”)**

Who is a CHIS?

- 4.1 **Section 26(8)** of RIPA defines a CHIS as a person who:

- (a) Establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within (b) & (c) below;
- (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.

4.2 This is defined further within **Section 26(9)(b)&(c)** so that:

4.2.1 A **purpose** will only be covert if, and only if, it is carried out in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

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

4.3 Hence, there is no use of CHIS if a member of the public offers information to the Council that may be material to an investigation of an offence, but there would be if the Council then asked that person to obtain further information.

Authorising a CHIS

4.4 An authorisation **must** be obtained for CHIS in the same way as for directed surveillance. A detailed explanation of the authorisation process is contained in **Section 5** below. However, in addition, to the process for considering whether an authorisation is justified, a CHIS should not be authorised if it does not comply with the requirements of **Section 29(5)** of RIPA.

4.5 **Section 29(5)** requires that:

- 4.5.1 There will at all times be a person holding an office, rank, or position with the relevant investigating authority who will have **day to day responsibility for dealing with the source** on behalf of that authority, and **for the source's security and welfare**;
- 4.5.2 There will at all times be another person holding an office, rank or position with the relevant investigating authority who will have **general oversight** of the use made of the source;
- 4.5.3 There will at all times be another person holding an office, rank or position with the relevant investigating authority who will have responsibility for **maintaining a record** of the use made of the source;
- 4.5.4 The records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State (**see below**); and
- 4.5.5 The records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.
- 4.6 With regard to paragraph 4.5.4 above the regulations are set out in the Regulation of Investigatory Powers (Source Records) Regulations 2000. These regulations can be found at www.security.homeoffice.gov.uk/ripa/legislation/ripa-statutory-instruments, and **must** be referred to by Officers.

Vulnerable Individuals

- 4.7 A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age, illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation.

Vulnerable individuals should only be authorised to act as a source in the most exceptional circumstances, and the Chief Executive may only give such an authorisation.

Juvenile sources

- 4.8 There are also special safeguards with regard to the use or conduct of juvenile sources (under 18 years).
- 4.9 A source under 16 years of age **must not** be authorised to give information against his parents or any person who has parental responsibility for him.
- 4.10 There are also further requirements within the Regulation of Investigatory Powers (Juveniles) Order 2000 (SI No. 2793), and in other cases authorisations should not be granted unless these provisions are complied with. A copy of this can be also be found at www.security.homeoffice.gov.uk/ripa/legislation/ripa-statutory-instruments, and must be referred to by all Officers
- 4.11 The duration of such an authorisation is **one month** instead of 12 months.
- 4.12 Notwithstanding the above, the Council has not to date utilised these powers and considers that it is rare that they would be used in the future. As such **only** the **Chief Executive** may authorise any application for the use of CHIS and Officers should contact the legal department before making any application.

5. AUTHORISATION PROCESS

- 5.1 Directed surveillance and/or the use of CHIS shall be lawful for all purposes, if the conduct is properly and legitimately authorised and an Officer's conduct is in accordance with the authorisation.
- 5.2 Therefore all officers must obtain an authorisation from an Authorising Officer and Judicial approval before undertaking either directed surveillance and/or the use of CHIS, to ensure that it is lawful. A flowchart setting out the steps to be taken is contained at page 17 of the Guidance which can be found at **Appendix 3**.

- 5.3 Authorisations will only be given where:
- 5.3.1 The directed surveillance and/or the use of CHIS is necessary in the interests of preventing or detecting crime or disorder where the offence is punishable by a maximum term of at least six months imprisonment; and
 - 5.3.2 It is proportionate to the objective which it is intended to achieve.
- 5.4 The Authorising Officer **must** satisfy himself of this before granting the authorisation.
- 5.5 In particular the Authorising Officer must consider whether the activity could be carried out in an overt or less intrusive manner. If it could then this should be the preferred method.

Collateral Intrusion

- 5.6 Before granting an authorisation an Authorising Officer **must** take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation.
- 5.7 Wherever practicable measures should also be taken, to avoid or minimise unnecessary intrusion into the lives of those people.
- 5.8 The applicant should also have included an assessment of the risk of collateral intrusion in the application form and the Authorising Officer should consider this in making their decision.

Confidential Information

- 5.9 RIPA does not provide any special protection for “confidential information”.
- 5.10 Notwithstanding this, special care should be taken where the subject of the investigation or operation might reasonably expect a high degree of privacy or where confidential information may be involved.

- 5.11 Confidential information includes, matters subject to legal privilege, confidential personal information or confidential journalistic material.
- 5.12 For example special care should be taken with **surveillance** where it would be possible to acquire knowledge of discussions between a minister of religion and an individual relating to the latter's spiritual welfare, or where matters of medical or journalistic confidentiality or legal privilege may be involved.
- 5.13 In cases where through the use of surveillance and/or CHIS, confidential information may be obtained, **only** the Chief Executive, or in his absence, a Director, may give authorisation.

Application Forms

- 5.14 All applications and authorisations **must** be made/granted on the relevant Home Office forms. Electronic copies of these forms are available on the Home Office website at www.security.homeoffice.gov.uk/ripa/publication-search/ripa-forms. If an officer has difficulty obtaining the correct form they should contact the Legal Department.

Content of Application

- 5.15 The applicant must ensure that each application contains a **unique reference number** ("URN"). This must be inserted into the box at the top right hand corner of the relevant form. This should include a reference to their department, the year, and the number of the application during that year. Authorising Officers should not authorise any application, which does not contain this.
- 5.16 Applicants must also ensure that they complete all boxes within the forms. If done properly this will ensure compliance with RIPA's requirements. However, to ensure that there is full compliance the details of RIPA's requirements are set out below.

Application for Directed Surveillance

- 5.17 A written application for directed surveillance should include:

- 5.17.1 the reason(s) why the authorisation is necessary and the ground on which it is considered necessary pursuant to Section 28(3). As set above the only ground on which the Council can now rely is “*for the purpose of preventing or detecting crime or disorder*”.
- 5.17.2 the reasons why the surveillance is considered proportionate to what it seeks to achieve;
- 5.17.3 the nature of the surveillance;
- 5.17.4 the identities, where known of those to be the subject of the surveillance;
- 5.17.5 an explanation of the information, which it is desired to obtain as a result of the surveillance;
- 5.17.6 the details of any collateral intrusion and why the intrusion is justified;
- 5.17.7 the details of any confidential information that is likely to be obtained as a consequence of the surveillance;
- 5.17.8 the level of authority required (or recommended where that is different) for the surveillance; and
- 5.17.9 a subsequent record of whether authorisation was given or refused, by whom, and the date and time.

Application for the use of CHIS

5.18 An application for the use or conduct of a source should include:

- 5.18.1 the reasons why the authorisation is necessary, and the grounds listed in section 29(3). Again, the only ground upon which the Council can rely is “*for the purpose of preventing or detecting crime where the offence is punishable by a maximum term of at least six months imprisonment*”;

- 5.18.2 the reasons why the authorisation is considered proportionate to what it seeks to achieve;
- 5.18.3 the purpose for which the source will be tasked or deployed;
- 5.18.4 where a specific investigation or operation is involved, the nature of that investigation or operation;
- 5.18.5 the nature of what the source will be tasked to do;
- 5.18.6 the level of authority required (or recommended where different);
- 5.18.7 the details of any potential collateral intrusion and why the intrusion is justified;
- 5.18.8 the details of any confidential information that is likely to be obtained as a consequence of the authorisation; and
- 5.18.9 a subsequent record of whether authority was given or refused, by whom and the time and date.

Duration Of Authorisations

Directed Surveillance

- 5.19 A written authorisation granted by an Authorising Officer will cease to have effect (unless renewed) at the end of a period of **three months** beginning with the day on which it took effect.

CHIS

- 5.20 A written authorisation will unless renewed cease to have effect at the end of a period of **twelve months** beginning with the day on which it took effect.

Reviews

- 5.21 Regular reviews should be carried out to assess the need for the authorisation to continue. Reviews should take place frequently if the source of surveillance provides confidential information or involves collateral intrusion.
- 5.22 The Authorising Officer must decide how frequently and when the reviews should take place. This should be as frequently as is considered necessary and practicable.
- 5.23 The Authorising Officer must use the appropriate form to complete the review, and the results of the review should be recorded in the central record of authorisations.

Renewals

- 5.24 If at any time before an authorisation ceases to have effect an Authorising Officer considers it necessary for the authorisation to continue for the purpose for which it was given he may renew it for:
 - 5.28.1 3 months (Directed Surveillance)
 - 5.28.2 12 months CHIS
- 5.25 The renewal will take effect at the time at which, or the day on which the authorisation would have ceased to have effect but for the renewal.
- 5.26 An application for renewal of an authorisation should not be made until shortly before the authorisation is due to cease to have effect.
- 5.27 Any person who would be entitled to grant a new authorisation is able to renew an authorisation.
- 5.28 An authorisation can be renewed more than once as long as it continues to meet the criteria for authorisation.
- 5.29 The application for renewal must include:

Directed Surveillance

- Whether this is the first renewal of an authorisation on which the authorisation has been renewed previously;
- Any significant changes to the information included in the original application;
- The reasons why it is necessary to continue with the directed surveillance;
- The content and value to the investigation or operation of the information so far obtained by the surveillance; and
- The results of regular reviews of the investigation or operation.

CHIS

- 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 original application;
- The reasons why it is necessary to continue to use the source;
- The use made of the source in the period since the grant or, as the case may be, latest renewal of the authorisation;
- The tasks given to the source during that period and the information obtained from the conduct or use of the source; and
- The results of regular reviews of the use of the source.

- 5.30 **As with new applications judicial approval must also be sought after the Authorising Officer gives authorisation.**

Cancellations

- 5.31 The Authorising Officer who granted or last renewed the authorisation **must** cancel it if he is satisfied that it no longer meets the criteria under which it was first granted.
- 5.32 The Authorising Officer must complete the relevant form to do so and pass the information to the legal department to be included on the central register.
- 5.33 In addition, when the decision is taken to stop surveillance, an immediate instruction must be given to those involved to stop all surveillance of the subject(s). The date and time when such an instruction was given should be recorded in the central register and on the cancellation form.
- 5.34 There is no requirement for any further details to be recorded when cancelling a directed surveillance authorisation but effective practice suggests that a record should be retained detailing the product obtained from the surveillance and whether or not objectives were achieved.

6. AUTHORISING OFFICERS

- 6.1 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 SI 2010 No. 521 provides that the Director, Head of Service, Service Managers, or equivalent officer may give authorisations for directed surveillance and CHIS under RIPA.
- 6.2 In light of the infrequent use made of RIPA and CHIS and based on advice given by the OSC, Ribble Valley Borough Council has resolved that it will only have three Authorising Officers who will be the Chief Executive, the Director of Community Services, and the Director of Resources. These Officers will receive regular training to enable them to deal properly with all authorisations.

6.3 Moreover, applicants must submit their application to an Authorising Officer, from outside of their department.

7. RECORDS AND CENTRAL REGISTER

7.1 The Council's Legal Department will maintain a central record of all authorisations. This will be updated whenever an authorisation is granted, renewed, or cancelled.

7.2 The record will be retained for a period of at least **three years** from the end of the authorisation and will contain the following information:

7.2.1 the type of authorisation;

7.2.2 the date the authorisation was given;

7.2.3 Name and rank/grade of the authorising officer,

7.2.4 the unique reference number (URN) of the investigation or operation;

7.2.5 the title of the investigation or operation, including a brief description and names of subjects, if known;

7.2.6 details of attendances at the magistrates' court to include the date of attendances at court, the determining magistrate, the decision of the court and the time and date of that decision;

7.2.7 the dates of any reviews;

7.2.8 if the authorisation is renewed, when it was renewed and who authorised the renewal, including the name and rank/grade of the Authorising Officer;

7.2.9 whether the investigation or operation is likely to result in obtaining confidential information as defined in this code of practice;

7.2.10 whether the authorisation was granted by an individual directly involved in the investigation; and

7.2.11 the date the authorisation was cancelled.

7.3 In respect of each step in the procedure Authorising Officers **must** retain all original documentation **and must** give to the legal department a copy of the following information:

7.3.1 the application, and authorisation together with any supplementary documentation and notification of the approval given by the authorising officer;

7.3.2 a record of the period over which the surveillance has taken place;

7.3.3 the frequency of reviews prescribed by the authorising officer;

7.3.4 a record of the result of each review of the authorisation;

7.3.5 the renewal of an authorisation, given together with the supporting documentation submitted when the renewal was requested;

7.3.6 the date and time when any instruction to cease surveillance was given; and

7.3.7 the date and time when any other instruction was given by the authorising officer.

7.4 For the avoidance of doubt the information set out above must be passed to the legal department contemporaneously to ensure that the Council's central record can be maintained and that the Council can therefore ensure that all authorisations are reviewed and cancelled in accordance with RIPA.

8. COMPLAINTS

8.1 Any person who reasonably believes that they have been adversely affected by surveillance activity and/or the use of a CHIS, by or on behalf of the Council may complain to the Head of Legal and Democratic Services (as Monitoring Officer) who will investigate the complaint.

8.2 They may also complain to:

The Investigatory Powers Tribunal
PO Box 33220
London SW1H 92Q

9. APPENDICES

1.	Code of Practice on Covert Surveillance - www.security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/
2.	Code of Practice on Covert Human Intelligence Sources - www.security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/
3.	Home Office Guidance to local authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance – www.gov.uk/government/uploads/system/uploads/attachment_data/file/118173/local-authority-england-wales.pdf

