

REGULATION OF INVESTIGATORY POWERS ACT 2003

COUNCIL PROCEDURES

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1. Introduction

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected whilst also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
- 1.2 Carmarthenshire County Council (the Council) is therefore included within the RIPA framework with regard to the authorisation of both Directed Surveillance (DS) and the use of Covert Human Intelligence Sources (CHIS).
- 1.3 The purpose of these Procedures is to set out the scope of RIPA, the circumstances where it applies, and the procedures to be followed when implementing it.
- 1.4 Regard has been had to the Codes of Practice issued by the Home Office, and Guidance and Good/Bad Practice notes issued by the Office of the Surveillance Commissioner (OSC) in preparing these procedures.
- 1.5 Subject to the provisions of Section 6 of this document, any covert surveillance activity carried out by or on behalf of the Council **MUST** be authorised one of the properly trained Authorising Officers listed in Appendix 2, and dealt with in accordance with Sections 5 or 10 of this document.
- 1.6 Individual Investigating Officers and Authorising Officers should familiarise themselves with this procedure document, the Codes of Practice issued by the Home Office, and such Guidance as is issued by the OSC from time to time.
- 1.7 Deciding when an authorisation is required is a question of judgement. However, if an investigating officer is in any doubt, he/she should immediately seek legal advice. **As a basic rule however, it is always safer to seek the appropriate authorisation.**
- 1.8 The Senior Officer within the Council with strategic responsibility for RIPA issues is David Lyn Thomas, Head of Administration & Law
- 1.9 The 'Gate-keeping' Officer, with responsibility for vetting all RIPA applications and maintaining the Central register is Robert Edgecombe, Senior Solicitor. In the absence of the Gate-Keeping Officer, his role will be undertaken by Philip Grafton, Senior Solicitor.
- 1.10 The elected member responsible for reviewing the authority's use of RIPA and setting the authority's RIPA policy each year is Councillor P A Palmer.

ALL OFFICERS MUST NOTE THAT THE COUNCIL MAY ONLY AUTHORISE COVERT SURVEILLANCE FOR THE PURPOSE OF PREVENTING OR DETECTING CRIME AND DISORDER.

2. BENEFITS OF OBTAINING AUTHORISATION

2.1 RIPA states that where an authorisation is obtained, and the covert surveillance activity is conducted in accordance with that authorisation, then the activity will be lawful for all purposes.

2.2 Where an authorisation is not obtained, then there is a risk that any evidence obtained as a result could be ruled as inadmissible in subsequent legal proceedings.

2.3 Furthermore, unauthorised covert surveillance activity is more likely to result in a breach of an individual's human rights, leading to a compensation claim against the Council.

3. DIRECTED SURVEILLANCE

3.1 Surveillance includes;

3.1.1 The monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication.

3.1.2 The recording of anything so monitored, observed or listened to in the course of surveillance.

3.1.3 The surveillance by or with the assistance of a surveillance device.

3.1.4 Directed Surveillance does NOT occur where covert recording of suspected noise nuisance takes place and the recording device is calibrated to record only excessive noise levels

3.2 Surveillance is 'Directed' for the purposes of RIPA if it is covert (but not intrusive) and is undertaken;

3.2.1 For the purposes of a specific investigation or operation

3.2.2 In such a manner as is likely to result in the obtaining of private information about a person (whether or not one is specifically identified for the purposes of the investigation or operation); and

3.2.3 Otherwise than by an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

3.2.4 ***OFFICERS SHOULD NOTE THAT THE SURVEILLANCE OF AN INDIVIDUAL'S ACTIVITIES AND/OR CONVERSATIONS IN A PUBLIC PLACE MAY AMOUNT TO THE OBTAINING OF PRIVATE INFORMATION AND THEREFORE FALLS WITHIN THE SCOPE OF PARAGRAPH 3.2.2 ABOVE (OSC Procedures & Guidance note, December 2008 paragraphs 149 & 150)***

3.3 Surveillance is 'covert' if it is carried out in a manner calculated to ensure that the target is unaware it is or may be taking place. Therefore surveillance of an individual using city centre CCTV cameras could still require RIPA authorisations if the cameras are targeted on that individual and he/she is unaware that they are being watched.

3.4 Covert surveillance becomes 'intrusive' if;

3.4.1 It is carried out in relation to anything taking place on any residential premises or in any private vehicle, and

3.4.2 Involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device on the premises/vehicle, or

3.4.3 Is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle but is carried out without that device being on the premises or vehicle, where 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 vehicle.

THE COUNCIL HAS NO POWER TO AUTHORISE INTRUSIVE SURVEILLANCE. IF INVESTIGATING OFFICERS HAVE ANY CONCERNS REGARDING THIS THEY SHOULD IMMEDIATELY SEEK LEGAL ADVICE.

- 3.5 Surveillance is for the purposes of a specific investigation or operation if it is targeted in a pre-planned way at an individual or group of individuals, or a particular location or series of locations.
- 3.6 Surveillance will not require authorisation if it is by way of an immediate response to an event or circumstances where it is not reasonably practicable to get an authorisation. For example, CCTV operators will not require an authorisation to monitor the activities of a suspected shoplifter immediately upon that person being reported to the operator. However CCTV operators should be aware that were they are requested to monitor such a person for more than 30 minutes, authorisation will be required.

4. COVERT HUMAN INTELLIGENCE SOURCES (CHIS)

4.1 A person is a CHIS if;

- 4.1.1 He/she establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within the paragraphs immediately below.
- 4.1.2 He/she covertly uses such a relationship to obtain information or provide access to any information to another person, or
- 4.1.3 He/she covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

4.2 A purpose is covert in this context if the relationship is conducted in a manner that is calculated to ensure that one of the parties is unaware of that purpose.

4.3 It is unclear whether RIPA only applies to private information in this context. Council policy therefore is to treat all such activities as being in need of authorisation whether or not the information sought is private information.

4.4 When considering whether to make use of a CHIS, investigating officers ***MUST*** consult with the gate-keeping officer before taking any action, in order to ensure that the relevant Home Office Code of Practice is complied with. Where use is made of a CHIS, his/her designated handler must be a properly trained officer, who may not necessarily be based within the same department/section as the investigating officer.

4.5 ONLY THE CHIEF EXECUTIVE MAY AUTHORISE THE USE OF A JUVENILE CHIS.

5. AUTHORISATION PROCESS

5.1 Applications must normally be in writing, using the standard forms contained in Appendix 1.

5.2 ONLY WHERE THE APPLICATION IS URGENT MAY MATTERS BE DEALT WITH ORALLY. IN SUCH CASES OFFICERS MUST FOLLOW THE CODES OF PRACTICE ISSUED BY THE HOME OFFICE.

5.3 Although it is possible to combine two or more applications in the same form, this practice is generally to be avoided. One situation where it may be appropriate is during a covert test purchase exercise involving more than one premise. In such cases investigating officers should contact the gate-keeping officer to discuss the operation before completing the forms.

5.4 Once the appropriate application forms are completed, they should be submitted by email to the gate-keeping officer.

5.5 The gate-keeping officer will then vet the application, enter in onto the Central Register and allocate a unique central reference number. The application may also be copied to the Chief Executive.

5.6 The gate-keeping officer may recommend changes to the application, or agree to it being submitted unaltered to a designated authorising officer.

5.7 Where an application must be authorised by the Chief Executive (in the case of a juvenile CHIS or cases involving confidential information), the gate-keeping officer will arrange a meeting between the investigating officer, gate-keeping officer and Chief Executive.

5.8 In all other cases the investigating officer shall arrange to meet one of the authorising officers listed in Appendix 2 to discuss the application.

5.9 When determining whether or not to grant an authorisation, Authorising Officers must have regard to;

5.9.1 Whether what is proposed is necessary for preventing/detecting crime/disorder,

5.9.2 Whether what is proposed is proportionate to the aim of the action

5.9.3 Whether the proposed action is likely to result in collateral intrusion into the private lives of third parties, and if it is, whether all reasonable steps are being taken to minimise that risk.

5.9.4 In the case of applications to authorise the use of a CHIS, whether all the requirements of Paragraphs 4.14 to 4.16 of the Code of Practice relating to the authorisation of a CHIS issued by the Home Office are complied with.

- 5.10 If an application is refused, the reasons for refusal shall be endorsed on the application
- 5.11 If an application is granted, the authorising officer must specify;
- 5.11.1 The scope of the authorisation
- 5.11.2 The duration of the authorisation
- 5.11.3 The date (not more than 28 days) for review of the authorisation.
- 5.12 Irrespective of the outcome of the application, the investigating officer must immediately forward a copy of the completed application together with the authorising officers decision, to the gate-keeping officer, who will make the appropriate entries in the Central Register, and place the copy application/decision in the Central Record.
- 5.13 If, upon initial review of the authorisation, the authorising officer determines that it should remain in effect, reviews must take place every 28 days during the life of the authorisation. The investigating officer must keep a record the results of any review and communicate them to the gate-keeping officer for entry in the Central Register.
- 5.14 Once an authorising officer determines that an authorisation is no longer necessary it must be cancelled immediately.
- 5.15 Once the operation to which the authorisation relates is concluded, or the activity authorised ceases, then the investigating officer must immediately meet the authorising officer to cancel the authorisation.
- 5.16 Whenever an authorisation is cancelled, the authorising officer must endorse the cancellation with his/her views as to the value of the authorised activity.
- 5.17 Whenever an authorisation is cancelled, a copy of that cancellation must be sent to the gate-keeping officer for it to be placed in the Central Record, and appropriate entries to be made in the Central Register.
- 5.18 Unless previously cancelled, an authorisation will last as follows;
- 5.18.1 Written authorisation for Directed Surveillance – **3 months**
- 5.18.2 Urgent oral authorisation for Directed Surveillance – **72 hours**
- 5.18.3 Written authorisation for use of a CHIS – **12 months**
- 5.18.4 Urgent oral authorisation for use of a CHIS – **72 hours**

- 5.19 Immediately upon an authorisation ceasing to have effect in accordance with paragraph 5.18, the investigating officer and authorising officer shall meet to formally cancel the authorisation in accordance with paragraphs 5.14 to 5.17. *(In order to assist officers, it is recommended that the reviews referred to in paragraph 5.13 be scheduled to coincide with the scheduled termination date of the authorisation.)*
- 5.20 If shortly before an authorisation ceases to have effect, the authorising officer is satisfied that the grounds for renewing the authorisation are met, then he/she may renew the authorisation. *(Before renewing an authorisation, authorising officers must have regard to the appropriate sections of the relevant code of practice issued by the Home Office)*
- 5.21 An authorisation may be renewed for;
- 5.21.1 In the case of a written renewal of a Directed Surveillance authorisation **3 months**.
- 5.21.2 In the case of an urgent oral renewal of a directed surveillance authorisation – **72 hours**.
- 5.21.3 In the case of a written renewal of a CHIS authorisation – **12 months**.
- 5.21.4 In the case of an urgent oral renewals of a CHIS authorisation – **72 hours**.
- 5.22 An authorisation may be renewed more than once.
- 5.23 All applications for renewal of an authorisation must record;
- 5.23.1 In the case of directed surveillance all matters set out in paragraph 4.26 of the relevant Code of Practice issued by the Home Office
- 5.23.2 In the case of CHIS, all matters set out in paragraph 4.24 of the relevant Code of Practice issued by the Home Office.
- 5.24 Where an authorisation is renewed, it must continue to be reviewed in accordance with paragraph 5.13 above.
- 5.25 Where an authorisation is renewed, a copy of the renewal must be sent to the gate-keeping officer and placed in the Central Record and appropriate entries made in the Central Register.

WHERE AN APPLICATION IS GRANTED OR RENEWED THE INVESTIGATING OFFICER MUST ENSURE THAT ALL OFFICERS TAKING PART IN THE COVERT SURVEILLANCE ACTIVITY HAVE AN OPPORTUNITY TO READ THE AUTHORISATION AND FAMILIARISE THEMSELVES WITH ITS TERMS AND RESTRICTIONS BEFORE THE OPERATION COMMENCES.

6. ACTIVITIES INCAPABLE OF AUTHORISATION

6.1 RIPA only applies to ‘core functions’ of the authority, as defined by the Investigatory Powers Tribunal in *C v The Police (2006)*. It will also be apparent from Sections 1 to 5 above that certain instances of covert surveillance carried out by the authority are incapable of being authorised under RIPA. Examples of this include;

- 6.1.1 Surveillance carried out as part of a planning investigation prior to issuing an enforcement notice
- 6.1.2 Surveillance carried out as part of a public health investigation prior to issuing an abatement notice. (But see paragraph 3.1.3 above)
- 6.1.3 Surveillance carried out as part of an internal disciplinary investigation
- 6.1.4 Surveillance carried out in support of a defence of a personal injury claim

6.2 None of these examples can be authorised as directed surveillance under RIPA, although all are capable of being justifiable cases of interference with an individual's human rights on the grounds that they are necessary and in the interests of public safety, the economic well-being of the country, for the protection of health or morals or for the protection of rights and freedoms of others. In these cases, although the authority cannot rely upon RIPA for protection, steps should be taken to ensure the authority is acting lawfully.

6.3 Wherever an officer wishes to consider carrying out directed surveillance, which cannot be justified on crime and disorder grounds, but may fall within the scope of paragraph 6.2, he/she must contact the gate-keeping officer for advice.

6.4 Where it is considered that the proposed surveillance activity is justifiable under paragraph 6.2, the officer will complete the RIPA application forms in the usual way, substituting the appropriate justification from paragraph 6.2 for the words ‘prevent/detect crime & disorder’ in Section 3 of the application form.

6.5 The officer will then email the application to the gate-keeping officer, who will enter it into the Central Register and forward it to the Chief Executive.

6.6 The proposed activity contained within the application can only take place if approved by the Chief Executive or in his absence, by another designated authorising officer

6.7 THE USE OF A CHIS CANNOT TAKE PLACE UNDER THE TERMS OF THIS SECTION.

6.8 Any activity permitted under this section will subsequently be subject to the provisions of Section 5 above, and must be reviewed, renewed and cancelled in the same way. All such reviews, renewals and cancellations must be reported to the gate-keeping officer in accordance with Section 5.

7. CONFIDENTIAL MATERIAL

7.1 Confidential material such as personal medical or spiritual information, confidential journalistic information or information subject to legal privilege is particularly sensitive and is subject to additional safeguards.

7.2 In cases where such information may be obtained, an investigator must seek immediate legal advice.

7.3 Only the Chief Executive may authorise surveillance activity, which may result in confidential information being obtained.

7.4 Any application for an authorisation, which is likely to result in the acquisition of confidential material **MUST** include an assessment of how likely it is that confidential material will be acquired.

7.5 Special care should be taken where the target of the investigation is likely to be involved in handling confidential material. Such applications should only be considered in exceptional and compelling circumstances and with full regard to the proportionality issues this raises.

7.6 The following general principles apply to confidential material acquired under such authorisations;

7.6.1 Officers handling material from such operations should be alert to anything that may fall within the definition of confidential material. Where there is any doubt, immediate legal advice should be sought.

7.6.2 Confidential material should not be retained or copied unless it is necessary for a specified purpose.

7.6.3 Confidential material should only be disseminated, after legal advice has been sought, where it is necessary for a specified purpose.

7.6.4 The retention and/or dissemination of confidential material should be accompanied by a clear warning of its confidential nature.

7.6.5 Confidential material should be destroyed as soon as it is no longer necessary to retain it for a specified purpose.

8. JOINT OPERATIONS

- 8.1 Where officers are engaged in operations with other public authorities, any covert activity must be authorised either in accordance with this document, or by an appropriate officer employed by the other authority.
- 8.2 Officers should always ensure that when operating under an authorisation issued by another authority, that the authorising officer has the power to issue that authorisation, and that the authorisation covers the scope of the proposed activity.
- 8.3 Officers are advised to request a copy of the relevant authorisation, or at least obtain a written note of the scope, duration and conditions of the authorised activity.
- 8.4 Officers should also have regard to any other protocols specifically dealing with joint operations.

9. HANDLING & DISCLOSURE OF PRODUCT

- 9.1 Officers are reminded of the rules relating to the retention and destruction of confidential material set out in section 7 above.
- 9.2 Authorising Officers must ensure compliance with the appropriate data protection requirements and the relevant codes of practice in the handling and storage of material.
- 9.3 Where material is obtained by surveillance, which is wholly unrelated to a criminal or other investigation or to any person who is the subject of such an investigation, and there is no reason to believe it will be relevant to future criminal or civil proceedings, it should be destroyed immediately.
- 9.4 Consideration as to whether or not unrelated material should be destroyed is the responsibility of the Authorising Officer.
- 9.5 RIPA does not prevent material properly obtained in one investigation being used in another investigation. **However, the use of any covertly obtained material outside the council and/or for purposes other than for which the surveillance was authorised, should only be sanctioned in exceptional cases.**

10. USE OF SURVEILLANCE DEVICES

- 10.1 Surveillance devices include, static and mobile CCTV cameras, covert surveillance cameras, noise monitoring/recording devices, and any other mechanical and/or recording devices used for surveillance purposes.
- 10.2 Static CCTV cameras include 'Town Centre' cameras operated from Police Stations under the control of Council staff, as well as fixed security cameras located in council buildings.
- 10.3 Fixed security cameras, which are incapable of being remotely controlled, do not require RIPA authorisation ***provided*** their existence and purpose is made clear to the public through appropriate signage.
- 10.4 'Town Centre' and mobile CCTV cameras will not ordinarily require RIPA authorisation where their existence and use is also made clear by signage. However, where camera operators are requested to control the cameras so as to target specific individuals or locations, then the following rules apply;
- 10.4.1 Where the request is made by way of an immediate response to an incident or intelligence received, no RIPA authorisation is required, subject to the proviso in paragraph 10.4.2 below.
- 10.4.2 Where a request is made in accordance with paragraph 10.4.1 above and the surveillance lasts, or is likely to last for 30minutes or more, RIPA authorisation must be obtained.
- 10.4.3 Where the request is made as part of a pre-planned operation or investigation, RIPA authorisation must be obtained.
- 10.5 The use of 'Town Centre' and mobile CCTV cameras in the context of police operations is covered in more detail in a separate protocol.
- 10.6 Camera operators should refuse to comply with any requests for surveillance activity unless they are satisfied;
- 10.6.1 That a RIPA authorisation is unnecessary, or
- 10.6.2 That an authorisation has been obtained and the scope, duration and limitations of the permitted activity have been confirmed in writing.
- 10.7 The Council maintains other covert surveillance equipment the control of which is regulated by a separate protocol.
- 10.8 It is recognised that many departments maintain conventional cameras and mobile phone cameras for use by staff on a regular basis. Staff must be reminded;

- 10.8.1 That the covert use of such cameras (ie where the ‘target’ is not aware that he/she is being photographed) may require RIPA authorisation.
- 10.8.2 As a general rule, unless the photograph is being taken as an immediate response to an unexpected incident, RIPA authorisation should be sought.
- 10.9 Use of noise monitoring/recording equipment is also covered by RIPA, where the equipment records actual noise, as opposed to just noise levels.
- 10.10 Where a target is made aware that noise monitoring may be taking place, then RIPA authorisation is not required. However;
- 10.10.1 Officers should take care to ensure that, when informing the target, that the identity of the complainant is not revealed.
- 10.10.2 Where there is a risk that the complainant’s identity could become known as a result of the target being informed of the proposed noise monitoring, it is advisable that RIPA authorisation be obtained.

11. CODES OF PRACTICE

- 11.1 The Home Office has issued Codes of Practice relating both to Directed Surveillance and the use of CHIS. Copies of these codes are available via the Home Office, or Office of the Surveillance Commissioner (OSC) websites, or can be obtained from the gate-keeping officer.
- 11.2 Whilst these codes do not have the force of law, they represent best practice, and adherence to them will give the authority a better chance of opposing any allegation that RIPA and/or the Human Rights Act has been breached.
- 11.3 Investigating and Authorising Officers should ensure that when dealing with applications, regard is had to these codes.
- 11.4 The Office of the Surveillance Commissioner has also publishes useful guidance, copies of which can be obtained from the gate-keeping officer.

SCRUNTINY AND TRIBUNAL

11.5 In order to 'police' RIPA, the council will be subject to an inspection by an OSC inspector every 2 years. The inspector will;

11.5.1 Examine the Central Register

11.5.2 Examine authorisations, renewals and cancellations

11.5.3 Question officers regarding their implementation of the legislation.

11.5.4 Report to the Chief Executive regarding his/her findings

11.6 A Tribunal has also been set up to deal with complaints made under RIPA. The tribunal may quash or cancel any authorisation and order the destruction of any record or information obtained as a result of such an authorisation.

12.3 However, the greatest scrutiny of the council's actions under RIPA will come from the courts;

12.3.1 Both the Magistrates Court and Crown Court may exclude evidence obtained as a result of covert surveillance.

12.2.2 The County Court may when dealing with a case (eg Housing possession) take into account any activity, which amounts to a breach of Human Rights and exclude all or part of the case accordingly.

12.3.3 The High Court may rule that the Council has acted in breach of an individual's Human Rights as a result of undertaking covert surveillance, and award compensation as a result

12.4 The Gate-Keeping officer will provide the following to the elected member responsible for reviewing the authority's RIPA activities;

12.4.1 A quarterly report detailing the extent of the authority's RIPA activities during the previous quarter

12.4.2 An annual report setting the RIPA policy for the next 12 months.

