

7. Annual Surveillance Report

REPORT OF: Head of Regulatory Services
Contact Officer: Tom Clark
Email: tom.clark@midsussex.gov.uk Tel: 01444 477459
Wards Affected: All
Key Decision: No
Report to: Cabinet
19th March 2018

Purpose of Report

1. To report the activity under the Regulation of Investigatory Powers Act 2000 (RIPA) (as amended) in 2017.
2. The report also informs Cabinet of the outcome of the recent audit of the Council's surveillance activity by the Office of Surveillance Commissioners in January 2018. The report introduces a revised policy and guidance document that reflects the findings of the surveillance commissioner during his audit in late 2017.

Recommendations

3. **That Cabinet notes the Council's revised Regulation of Investigatory Powers Act policy and guidance set out in the report at Appendix 1.**
4. **The Cabinet notes that there has been no covert surveillance activity undertaken by the Authority in relation to criminal investigations since the previous inspection in January 2015.**

Background

5. The Regulation of Investigatory Powers Act 2000 (RIPA) is the law governing the use of covert surveillance technics by public authorities, including local authorities. RIPA was enacted as part of the suite of legislation flowing from the Human Rights Act 1998. RIPA requires that when public authorities need to use covert technics to obtain information about someone they must do so in a way compatible with the Human Rights Act.
6. RIPA regulates the interception of communications, directive and intrusive surveillance and the use of covert human intelligence sources (informants). Local authorities can only carry out direct surveillance, access certain communications data and use informants.
7. The Council has carried out no such surveillance activities since January 2015 and therefore none in 2017.
8. The Protection of Freedoms Act 2012 meant that any authorisation for such covert surveillance needs the approval of the Magistrates' Court. The Council has always worked in a transparent way to seek compliance and therefore covert surveillance has not been used. Such covert surveillance to collect evidence should be a last resort and only if investigations cannot be carried out transparently.

9. The 2012 legislation also requires directed surveillance only to be used where an offence carries a possible custodial sentence of 6 months or more save it may still be used for the investigation of underage sales of tobacco or alcohol. Frequently in its investigation work the Council works with third parties and when the police are involved they get the necessary authorisations.
10. The attached policy and guidance document reflects the recommendations of the recent audit. In particular paragraph 2.11 has been added to cover the use of social media as an investigation tool. It will also note there is a lot of control over authorisations and training to ensure staff do not accidentally fall into activities that will require authorisation.

Policy Context

11. While Mid Sussex District Council has not for some time used covert technics to investigate crime and is no longer the investigating authority for benefit fraud it is important the Council maintains a policy and guidance document and training to ensure that staff do not accidentally breach the Act by carrying out activities that require authorisation by the Magistrates Court. Evidence collected inappropriately would not be admitted at Court to support any prosecution and this is likely to reflect badly on the Council.

Other Options Considered

12. The Council is required to comply with the legislation and there is audit every three years. The level of Council activity should be reported to a Committee of the Council pursuant to a Code of Practice issued under Section 71 of RIPA.

Financial Implications

13. Officer time is expended in complying with the Legislation and this is met from the budgets available.

Risk Management Implications

14. A failure to comply with the Legislation is likely to jeopardise any prosecution which relies on such evidence and is also likely to attract bad publicity.

Equality and customer service implications

15. There is a high level of control on authorisations including a sign off by the Magistrates. This process should identify inappropriate authorisations that target minority groups in an inappropriate way.

Policy in relation to the Regulation of Investigatory Powers Act 2000

Contents

Introduction to Regulation of Investigatory Powers.....	59
Policy Statement.....	60
Obtaining Authorisation	61
Duration of Authorisations	62
Reviews	62
Renewals	62
Cancellations	63
Central Register of Monitoring	64
Training.....	64
Planned and Directed Use of Council CCTV Systems	64
Obtaining Judicial Approval of Authorisations.....	64
Glossary	66
Annex 1 – Surveillance forms	68
Annex 2 – Covert Human Intelligence Forms	69
Annex 3 – Access to data forms	70
Annex 4 – Guidance on completing surveillance forms	71
Annex 5 – Guidance on completing Covert Human Intelligence forms	74
Annex 6 – Guidance on completing access to data forms	76
Annex 7 – Guidance on Management of Covert Human Intelligence Sources	78

1. Introduction to Regulation of Investigatory Powers

This policy document is based on the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) The Protection of Freedom Act 2012 and the Home Office's Code of Practices for Directed Surveillance, Covert Human Intelligence Sources (CHIS) and Acquisition and Disclosure of Communications data.

Links to the above documents can be found at:-

<http://www.legislation.gov.uk/ukpga/2000/23/contents>
<http://www.legislation.gov.uk/ukpga/2012/9/contents>
<https://www.gov.uk/government/collections/ripa-codes>

- 1.1 Surveillance plays a necessary part in modern life. It is used not just in the targeting of criminals, but also as a means of preventing crime and disorder.
- 1.2 In recent years the District Council has used its covert surveillance powers to investigate crime sparingly and only in the field of benefit fraud. Benefit fraud is now dealt with by the Department of Work and Pensions and the powers have not been used in the past 3 years.
- 1.3 Planning enforcement staff may need to observe the activities of person's acting without appropriate planning authority but such surveillance is done overtly.
- 1.4 Covert Directed Surveillance is undertaken in relation to a specific investigation or operation, where the person or persons subject to the surveillance are unaware that it is, or may be taking place. The activity is also likely to result in obtaining private information about a person, whether or not it is specifically for the purpose of the investigation.
- 1.5 Our investigations may also require the use of Covert Human Intelligence Sources (a CHIS). These may be under-cover officers, agents or informants. Such sources may be used by the Council to obtain and pass on information about another person, without their knowledge, as a result of establishing or making use of an existing relationship. This clearly has implications as regards the invasion of a person's privacy and is an activity, which the legislation regulates. A CHIS would be used only rarely and in exceptional circumstances and has not been used in the past 3 years. A CHIS must have an appointed controller to oversee their work.
- 1.6 The Regulation of Investigatory Powers Act 2000 (RIPA) introduced a system of authorisation and monitoring of surveillance activities, to ensure that the rights of the individual were not unnecessarily compromised, in the pursuance of regulatory compliance. The RIPA also requires a similar control and authorisation procedure to be in place in respect to the acquisition of telecommunications data. The Council would need to comply with these requirements should it be necessary to obtain telephone subscriber, billing and account information.
- 1.7 In addition, the Act put in place an Office of Surveillance Commissioners, and the Interception of Communications Commissioner whose duties are respectively to inspect those public bodies undertaking covert surveillance, and the acquisition of communications data, and introduced an Investigatory Powers tribunal to examine complaints that human rights have been infringed.

2. Policy Statement

- 2.1 Mid Sussex District Council will not undertake any activity defined within the Regulation of Investigatory Powers Act 2000 without prior authorisation or reauthorisation, from a trained, Head of Service, who is empowered to grant such consents subject to the approval of a Justice of the Peace. The Solicitor and Head of Regulatory Services has been appointed the Senior Responsible Officer (SRO) and, as such, has been given authority to appoint Authorising Officers (for surveillance activities) and Designated Persons and Single Points of Contact (for the purposes of access to communications data) under the Act. He has appointed the Chief Executive and the 3 other Heads of Service to be authorising officers.
- 2.2 Franca Currall, Solicitor and Deputy Monitoring Officer, is the RIPA Co-ordinating Officer responsible for maintaining the Central Record of Authorisations, acting as a gatekeeper by exercising oversight and quality control at the various stages of authorisation, organizing training and ensuring a high degree of RIPA awareness throughout the Council and arranging any authorisation hearings at the Magistrates Court.
- 2.3 The Authorising Officer or Designated Person will not authorise the use of directed covert surveillance techniques, human intelligence sources or access to communications data unless the authorisation can be shown to be necessary for the purpose of preventing or detecting crime but in the case of directed covert surveillance must involve the investigation of a crime which attracts a maximum custodial sentence of 6 months or more for criminal offences or relates to the underage sale of alcohol or tobacco.
- 2.4 In addition, the Authorising Officer or Designated Person must believe that the surveillance or obtaining of communications data is necessary, reasonable and proportionate to what it seeks to achieve. In making this judgment, the officer will consider whether the information can be obtained using other methods and whether efforts have been made to reduce the impact of the surveillance on other people, who are not the subject of the operation.
- 2.5 Applications for authorisation of surveillance, the use of a CHIS or the obtaining of communications data will, except in emergency where legislation permits, be made in writing on the appropriate up-to-date Home Office form (See annexes 1, 2 or 3).
- 2.6 Intrusive surveillance operations are defined as activities using covert surveillance techniques, on residential premises, or in any private vehicle, which involves the use of a surveillance device, or an individual, in such a vehicle or on such premises. MidSussex District Council officers are NOT legally entitled to authorise these types of operations.
- 2.7 However public bodies are permitted to record telephone conversations, where one party consents to the recording being made and a Directed Surveillance authorisation has been granted. On occasions, officers of the Mid Sussex District Council do need to record telephone conversations, to secure evidence and the other party is made aware of the possible recording. Where both parties are aware

such conversations may be recorded there is no need for an Authority.

- 2.8 It is the policy of this authority to be open and transparent in the way that it works and delivers its services. To that end, a well-publicized Corporate Complaints procedure is in place and information on how to make a complaint to the Investigatory Powers Tribunal will be provided on request by the RIPA Co-ordinator.
- 2.9 Publicly available social media may be used to collect evidence but officers must not use any false identity and must view a profile only on an ad hoc basis. Regular viewing of the same profile will need an authorisation. Officers should seek to verify the information collected by other means.
- 2.10 Where data has restricted access (eg. where access is restricted to “friends” on a social networking site) an application for CHIS and, if appropriate, directed surveillance should be made before any attempt to circumvent those access controls is made.
- 2.11 Access to open source material does not require RIPA authorisation unless there are repeated visits to the same site. These normally occur when an attempt is being made to build a profile of the account operator. In that case, directed surveillance authorisation is required. If the privacy controls are breached (eg by becoming a “friend”) and a pseudo account is used, ensuring that the Officers identity as a Council employee is hidden, then at least directed authorisation will be required. If direct contact is made with the account owner/operator, and a relationship commences, CHIS authorisation will be required. In the latter case, it is a statutory requirement of RIPA that a controller handler and record keeper are appointed to manage the operation and a risk assessment is created.

3. Obtaining Authorisation (Please refer to paragraph 11 and the need to obtain judicial approval)

- 3.1 The Council’s Constitution provides for Heads of Service to fulfil the role of Authorising Officer (for the purposes of Surveillance and CHIS authorisation) and Designated Person and Single Point of Contact (for the purposes of access to communications data). The RIPA Co-ordinator shall maintain a register of the names of such Officers. All such authorisations must now be signed off by a Justice of the Peace.
- 3.2 Where the Covert Human Intelligence Source is a juvenile or a vulnerable person, or there is the likelihood that the information acquired will be Confidential Information then the authorisation must be from the Chief Executive or, in her absence, the Assistant Chief Executive subject to the approval of a Justice of the Peace.
- 3.3 Authorisations from the Authorising Officer for directed surveillance or the use of a CHIS shall be obtained using the appropriate application form (see annexes 1 and 2) and shall be limited to one month for a Juvenile Covert Human Intelligence Source (CHIS).
- 3.4 Applications for access to communications data shall be made to the

Designated Person using the appropriate application form (see annex 3) Data can be accessed by a Notice (which is served on the Communications Service Provider (CSP) to produce the data) or by way of an authorisation (which enables persons within a Public Authority to obtain the data). The latter process is unlikely to be used by officers of the Council.

- 3.5 Guidance for completing and processing the application forms is attached (annexes 4, 5, or 6). The draft authorisations should be discussed with the RIPA Co-ordinating Officer, and the final wording should also be checked with her before authorisation is sought.

4. Duration of authorisations

- 4.1 All records shall be kept for at least 3 years and the original authorisations shall be submitted to and retained with the Central Record of Authorisation.
- 4.2 A written authorisation (unless renewed) will cease to have effect at the end of the following periods from when it took effect:
- a) Directed Surveillance - 3 months
 - b) Conduct and use of Covert Human Intelligence Source - 12 months or one month when the CHIS is a juvenile.
- 4.3 A notice issued for the production of communication data will remain valid for one month.

5. Reviews

- 5.1 Regular review of authorisations and notices shall be undertaken by the relevant Authorising Officer to assess the need for the surveillance or notice to continue. The results of the review shall be recorded on the central record of authorisations (see annexes 1, 2 or 3 for review forms). Where surveillance provides access to Confidential Information or involves collateral intrusion, particular attention shall be given to the review for the need for surveillance in such circumstances.
- 5.2 In each case, the Authorising Officer shall determine how often a review is to take place, and this should be as frequently as is considered necessary and practicable.

6. Renewals

- 6.1 If, at any time, an authorisation or notice would cease to have effect and the Authorising Officer considers it necessary for the authorisation or notice to continue for the purposes for which it was given, he or she may renew it, in writing, for a further period of (subject to the approval of a Justice of the Peace):-
- three months – directed surveillance
 - twelve months – use of a CHIS
 - one month – access to communications data

(see annexes 1, 2 or 3 for renewal forms)

- 6.2 A renewal takes effect at the time at which the authorisation would have ceased to have effect but for the renewal. 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. authorisation may be renewed more than once provided they continue to meet the criteria for authorisation.

7. Cancellations

- 7.1 The Authorising Officer who granted or last renewed the authorisation or notice must cancel it if he/she is satisfied that the Directed Surveillance, the use or conduct of the Covert Human Intelligence Source or the access to communications data, no longer meets the criteria for which it was authorised (see annexes 1,2 or 3 for cancellation forms). When the 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.
- 7.2 As soon as the decision is taken that Directed Surveillance should be discontinued or the use or conduct of the Covert Human Intelligence Source, no longer meets the criteria for which it was authorized the instruction must be given to those involved to stop all surveillance of the subject or use of the CHIS. The authorisation does not 'expire' when the activity has been carried out or is deemed no longer necessary. It must be either cancelled or renewed. The date and time when such an instruction was given should be recorded in the central register of authorisations and the notification of cancellation where relevant.

8. Central Register and Monitoring

8.1 The authorisation (including statements in respect of oral authorisations), any renewal or cancellation (together with any supporting information relevant to such authorisation or cancellation) and any application, notice or authorisation in respect of communications data shall be forwarded to the RIPA Co-ordinator within two working days of the date of the application, authorisation, notice, renewal or cancellation.

8.2 The RIPA Co-ordinator shall:

(a) keep a register of the original documents referred to in paragraph 8.1 above and be involved in, the drafting of those documents and their approval at the Magistrates Court .

9. Training

9.1 The Authorising Officers, Designated Persons and Single Points of Contact shall be provided with training to ensure awareness of the legislative framework. Single Points of Contact can only be appointed following attendance at a training course accredited by the Home Office and passing a written examination.

10. Planned and Directed Use of Council CCTV Systems

10.1 The Council's CCTV surveillance systems shall not be used for Directed Surveillance, without the RIPA Co- Coordinator or other senior legal officer confirming to the relevant operational staff that a valid authorisation is in place.

10.2 Also, regard must be had to the provisions of the Protection of Freedoms Act 2012, which required a regulatory framework for surveillance camera systems comprising a code of practice and a surveillance camera commissioner – see the Protection of Freedoms Act 2012 (Code of Practice for Surveillance Camera Systems and Specification of Relevant Authorities) Order 2013.

11. Obtaining Judicial Approval of Authorisations

11.1 **Authorising Officers must, when making authorisations, be aware that each authorisation (or renewal of an authorisation) will be subject to judicial approval.** The Protection of Freedoms Act 2012 amended RIPA, to require that where a Authorizing Officer has granted an authorisation for the use of directed surveillance, acquisition of communication data or for the use of a CHIS, judicial approval will be required. The Council will be required to make an application, without giving notice, to the Magistrates' Court. The Magistrates will give approval if at the date of the grant of authorisation or renewal of an existing authorisation if and only if, they are satisfied that:

(a) there were reasonable grounds for believing that obtaining the covert surveillance or use of a human covert intelligence source was necessary, reasonable and proportionate and that these grounds still remain.
the "relevant conditions" were satisfied in relation to the authorisation.
Relevant conditions are that:

(i) the relevant person was designated as an Authorising Officer;

- (ii) it was necessary reasonable and proportionate to believe that using covert surveillance acquisition of communication data or a covert human intelligence source was necessary, reasonable and that the relevant conditions have been complied with;
- (iii) the grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA; and
- (iv) any other conditions provided for by an order made by the Secretary of State were satisfied.

If the Magistrates' Court refuses to approve the grant of the authorisation, then it may make an order to quash that authorisation.

11.2 Judicial approval will also review that the serious crime threshold has been met in relation to the carrying out of directed surveillance. This threshold is that the directed surveillance is for the purpose of preventing or detecting a criminal offence and meets the following conditions:

- a) that the criminal offence to be prevented or detected is punishable by a maximum term of a least six months' imprisonment: or
- b) constitutes an offence under sections 146, 147 or 147A of 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) or
- c) constitutes an offence under section 92 Children and Families Act 2014 (sale of nicotine inhaling products to children under 18 years old) or proxy purchasing of tobacco, including nicotine inhaling products to children under 18 years old under section 91 Children and Families Act 2014.

If the Magistrates' Court refuses to approve the grant of the authorisation, then it may make an order to quash that authorisation.

11.3 No activity permitted by the authorisation granted by the Authorising Officer may be undertaken until the approval of the Magistrates' Court to that authorisation has been obtained.

To ensure compliance with this requirement, any Authorising Officer who proposes to approve an application for the use of directed surveillance acquisition of communications data or for the use of a CHIS must immediately inform the RIPA Coordinating Officer by telephone or e-mail of the details of the authorisation. The RIPA Coordinating Officer will then make the necessary arrangements for an application for an order to approve the authorisation to be made to the Magistrates' Court. The Authorising Officer and the Investigating Officer may be required to attend the Magistrates' Court to support the application.

Glossary

"Confidential information" consists of matters subject to legal privilege, confidential personal information, or confidential journalistic material.

"Directed Surveillance" is defined in section 26 (2) of RIPA as surveillance which is covert, but not intrusive (i.e. takes place on residential premises or in any private vehicle), and undertaken:

(a) for the purpose of specific investigation or specific operation;

(b) in such a manner 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); and

(c) 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 Part II of RIPA to be sought for the carrying out of the surveillance.

"A person is a Covert Human Intelligence Source" if:

- a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything 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.

(See section 26 (8) of RIPA)

"Communications Data" is:-

(a) any traffic data comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of any postal service or telecommunication system by means of which it is being or may be transmitted; **(NOT AVAILABLE TO LOCAL AUTHORITIES)**

(b) any information which includes none of the contents of a communication (apart from any information falling within paragraph (a)) and is about the use made by any person-

(i) of any postal service or telecommunications service; or

(ii) in connection with the provision to or use by any person of any telecommunications service, of any part of a telecommunication system;

(c) any information not falling within paragraph (a) or (b) that is held or obtained, in relation to persons to whom he provides the service, by a person providing a postal service or telecommunications service.

(See section 21(4) of RIPA)

Senior Responsible Officer (SRO) means the Solicitor and head of Regulatory Services, or such person as he shall from time to time designate with such role.

RIPA Co-ordinator means the Solicitor and Deputy Monitoring Officer.

CHIS Controller means an Officer appointed to oversee the work of a CHIS and ensure the risk assessments are kept up to date.

Annex 1 – Surveillance forms

- Application for Authorisation to Carry Out Directed Surveillance
- Review of Directed Surveillance Authorisation
- Cancellation of a Directed Surveillance Authorisation
- Application of Renewal of a Directed Surveillance Authorisation

(Always check the Home Office web site for the most up to date forms)

Annex 2 – Covert Human Intelligence forms

- Application for Authorisation of the use or conduct of a Covert Human Intelligence Source
- Review of a Covert Human Intelligence Source (CHIS) Authorisation
- Cancellation of an Authorisation for the use of or Conduct of a Covert Human Intelligence Source
- Application for renewal of a Covert Human Intelligence Source Authorisation

(Always check the Home Office web site for the latest forms)

Annex 3 – Access to data forms

- Application for access to Communications Data
- RIPA Section 22 Notice to obtain Communications Data from Communications Service providers

(Always check the Home office web site for the latest forms)

Annex 4 - Guidance on completing surveillance forms

Please refer to Covert Surveillance and Property Interference : Code of Practice (Pursuant to Section 71 of the Investigatory Powers Act 2000) issued by the Home Office

Details of Applicant

Details of requesting officer's work address and contact details should be entered.

Details of Application

1. Give rank or position of authorising officer in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010; No. 521.

Fill in details of Authorising Officer (see paras 3.1 and 3.2 of Policy).

2. Purpose of the specific operation or investigation.

Outline what the operation is about and what is hoped to be achieved by the investigation. Indicate whether other methods have already been used to obtain this information. Give sufficient details so that the Authorising Officer has enough information to give the Authority e.g. Surveillance at Pelham House and Mr. X".

3. Describe in detail the surveillance operation to be authorized and expected duration, including any premises, vehicles or equipment (e.g. camera, binoculars, recorder) that may be used.

Give as much detail as possible of the action to be taken including which other officers may be employed in the surveillance and their roles. If appropriate append any investigation plan to the application and a map of the location at which the surveillance is to be carried out.

4. The identities, where known, of those to be subject of the directed surveillance.

5. Explain the information that it is desired to obtain as a result of the directed surveillance.

This information should only be obtained if it furthers the investigation or informs any future actions

6. Identify on which grounds the directed surveillance is necessary under section 28(3) of RIPA

The ONLY grounds for carrying out Directed Surveillance activity is for the purpose of preventing or detecting crime under the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 (SI 2012/1500) which came into force on 1 November 2012. It restricts Authorizing Officers in a local authority in England or Wales from authorizing the carrying out of directed surveillance unless it is for the purpose of preventing or detecting a criminal offence and meets the following conditions:

- **that the criminal offence to be prevented or detected is punishable by a maximum term of at least six months' imprisonment; or**
- **constitutes an offence under sections 146, 147 or 147A of 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).

It is therefore essential that Investigating officers consider the penalty attached to the criminal offence which they are investigating, before considering whether it may be possible to obtain an authorisation for directed surveillance

This can be used in the context of local authority prosecutions, or where an employee is suspected of committing a criminal offence e.g. fraud.

7. Explain why this directed surveillance is necessary on the grounds you have identified (code paragraph 3.4).

Outline what other methods may have been attempted in an effort to obtain the information and why it is now necessary to use surveillance.

8. Supply details of any potential collateral intrusion and why the intrusion is unavoidable (code paragraphs 3.6 -3.10) Describe precautions you will take to minimize collateral intrusion.

Who else will be affected by the surveillance, what steps have been done to avoid this, and why it is unavoidable.

9. Explain why the Directed Surveillance is proportionate to what it seeks to achieve. How intrusive might it be on the subject of surveillance or on others? Why is this intrusion outweighed by the need for surveillance in operational terms or can the evidence be obtained by any other means? [Code paragraph 3.5]

If the Directed Surveillance is necessary and reasonable, is it proportionate to what is sought to be achieved by carrying it out? This involves balancing the intrusiveness of the activity on the target and others who may be affected by it against the need for the activity in operational terms. Reasons should be given why what is sought justifies the potential intrusion on the individual's personal life and his privacy. The activity will not be proportionate if it is excessive in the circumstances of the case or 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 responsible way, having considered all reasonable alternatives of obtaining the Evidence.
- Evidencing, as far as reasonably practicable, what other methods have been considered and why they were not implemented (Code para 3.6)

10. Confidential information. (Code paragraphs 2.1 to 2.12)

Will information of a confidential nature be obtained? (i.e. communications subject to legal privilege, or communications involving confidential personal information and confidential journalistic material) If so the appropriate level of authorisation must be obtained (see para 3.2 of the Policy).

12. Authorising Officer's Statement

13. Authorising Officer's comments

Must be completed outlining why it is proportionate and why he/she is satisfied that it is necessary.

Annex 5 - Guidance on completing Covert Human Intelligence forms

Please refer to Covert Human Intelligence Sources: Code of Practice (Pursuant to Section 71 of the Regulations of Investigatory Powers Act 2000) issued by the Home Office

1. Details of Application.

Authority Required

Fill in details of Authorizing Officer (see paras 3.1 and 3.2 of the Policy)

Where a vulnerable individual or juvenile source is to be used, the authorisation **MUST** be given by Chief Executive or in her absence the Assistant Chief Executive.

2. Describe the purpose of the specific operation or investigation.

Sufficient details so that the Authorizing Officer has enough information to give Authority. Outline what the operation is about and the other methods used already to obtain this information.

3. Describe in detail the purpose for which the source will be tasked or used.

Give as much detail as possible as to what the use of the source is intended to achieve.

4. Describe in detail the proposed covert conduct of the source or how the source is to be used.

Describe in detail the role of the source and the circumstances in which the source will be used

5. Identify on which grounds the conduct or the use of the source is necessary under Section 29(3) of RIPA.

The **ONLY** grounds for carrying out a CHIS activity is for the purpose of preventing or detecting crime or of preventing disorder

This is can be used in the context of local authority prosecutions, or where an employee is suspected of committing a criminal offence e.g. fraud.

6. Explain why this conduct or use of the source is necessary on the grounds you have identified (Code para 3.2).

Outline what other methods may have been attempted in an effort to obtain the information and why it is now necessary to use a CHIS for the investigation to proceed.

7. Supply details of any potential collateral intrusion and why the intrusion is unavoidable. (Code paras 3.8-3.11)

Who else will be affected, what steps have been done to avoid this, and why it is unavoidable?

8. Are there any particular sensitivities in the local community where the source is to be used? Are similar activities being undertaken by other public authorities that could impact on the deployment of the source? (see Code 3.17)

Ensure that other authorities such as the police or other council departments are not conducting a parallel investigation or other activity which might be disrupted.

9. Provide an assessment of the risk to the source in carrying out the proposed conduct. (see Code 6.14)

A risk assessment will have to be carried out to establish the risks to that particular source, taking into account their strengths and weaknesses. The person who has day to day responsibility for the source and their security (the 'Handler') and the person responsible for general oversight of the use made of the source (the 'Controller') should be involved in the risk assessment.

10. Explain why this conduct or use of the source is proportionate to what it seeks to achieve. How intrusive might it be on the subject(s) of surveillance or on others? How is this intrusion outweighed by the need for a source in operational terms, and could the evidence be obtained by any other means? [Code paragraph 3.5]

If the use of a Covert Human Intelligence Source is necessary, is it proportionate to what is sought to be achieved by carrying it out? This involves balancing the intrusiveness of the activity on the target and others who may be affected by it against the need for the activity in operational terms. Reasons should be given why what is sought justifies the potential intrusion on the individual's personal life and his privacy. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means.

11. Confidential information (Code para 4.17). Indicate the likelihood of acquiring any confidential information.

Will information of a confidential nature be obtained (i.e. communications subject to legal privilege, or communications involving confidential personal information and confidential journalistic material) if so the appropriate level of authorisation must be obtained (see para 3.2 of the Policy).

13. Authorizing Officer's comments.

Must be completed outlining why it is proportionate and why he/she is satisfied that it is necessary to use the source and that a proper risk assessment has been carried out.

Annex 6 – Guidance on completing access to data forms

1 - 7. Details of Applicant etc

Details of requesting officer's Department, Grade and contact details should be entered. The unique reference number at 4 would normally be entered by the SPOC.

1. Statutory Purpose

The ONLY grounds for accessing communications data is for the purpose of preventing or detecting crime or of preventing disorder

This can be used in the context of local authority prosecutions, or where an employee is suspected of committing a criminal offence e.g. fraud.

2. Communications Data

Describe the communications data, specifying, where relevant, any historic or future date(s) and, where appropriate, time period(s).

Indicate the time periods within which the data is required. For example subscriber details can change over relatively short periods of time. Also billing data can be expensive to retrieve and should only be requested for times relevant to the investigation. It is therefore important to be specific as to the relevant time otherwise there may be collateral intrusion, the data obtained may not be relevant or the cost may be prohibitive. Times should be specified as GMT or BST. If unsure as to whether the data can be obtained from a CSP the SPOC should be consulted.

3. Necessity

Outline brief details of the investigation, the circumstances leading to the application, the link between the communications data and the subject under investigation, the source of the data and how this data links to the offence or subject under investigation.

4. Proportionality

Explain what you expect to achieve by obtaining the requested data; what will be done with the data; how it will benefit the investigation and how the level of intrusion is justified when taking into consideration the benefit the data will give to the investigation Also explain why the specific date/timescale has been requested and how this is proportionate to what is trying to be achieved.

5. Collateral Intrusion

Collateral intrusion is intrusion into the privacy of innocent third parties. It is important to detail any plan to minimise collateral intrusion. If the subject has been contacted via the communication service (e.g. telephone number or e-mail) or if it has been used in business correspondence, advertising etc this should be explained as this demonstrates that it is being used by the subject and is therefore unlikely to result in collateral intrusion. Explain how data obtained which refers to third parties will be handled.

6. Timescale

Indicate whether the application is urgent. The Code of Practice requires CSPs to disclose the data within ten working days (The notice served by the SPOC will remain valid for one month).

The form should then be forwarded to the SPOC officer who will assess and quality control the application. If it meets the legal threshold for obtaining communications data the SPOC will forward it to the appropriate Designated Person.

If rejected, by the Designated Person or the SPOC, the SPOC will retain the application and inform the applicant in writing of the reason(s) for its rejection

Annex 7 – Guidance on Management of Covert Human Intelligence Sources

The Covert Human Intelligence Sources Code of Practice can be found on the Home Office website.

This guidance is taken from Chapter 6 of the Code of Practice.

1. Tasking

- 1.1 Tasking is the assignment given to the CHIS (i.e. to obtain, provide access to or disclose information). Where the CHIS's task involves establishing or maintaining a personal or other relationship for a covert purpose, authorisation for the use of the CHIS should be obtained in advance.
- 1.2 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.
- 1.3 In the event of any unforeseen action or undertakings during the task, these must be recorded as soon as practicable after the event. 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.
- 1.4 Where it is intended to task a CHIS in a significantly greater or different way than previously identified, the Handler and the Controller must refer the proposed tasking to the Authorizing Officer and the details of such referrals must be recorded. The Authorizing Officer should consider whether the existing authorisation is sufficient or needs to be replaced, which must be done in advance of any tasking.

2. Handlers and controllers

- 2.1. For each authorized CHIS surveillance, the Authorizing Officer shall appoint an appropriate officer of the Authority ('the Handler') to have day to day responsibility for:
 - Dealing with the CHIS;
 - Directing the day to day activities of the CHIS;
 - Recording the information supplied by the CHIS; and
 - Monitoring the CHIS's security and welfare.
- 2.2. For each authorised CHIS surveillance, the Authorizing Officer shall appoint an appropriate officer of the Authority ('the Controller') to be responsible for the management and supervision of the Handler and general oversight of the use of the CHIS.

3. Joint working

- 3.1. There are many cases where the activities of a CHIS may provide benefit to more than a single public authority. 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 behavior operation on a housing estate.

4. Security and Welfare

- 4.1. Prior to authorizing the use or conduct of CHIS, the Authorizing Officer should be satisfied that a risk assessment has been carried out. The risk assessment should determine the risk to the CHIS of any tasking and the likely consequences should their identity become known; and should consider the ongoing security and welfare of the CHIS after the cancellation of the authorisation. Consideration should also be given to the management of any requirement to disclose information tending to reveal the existence or identity of the CHIS, or in court.

- 4.2. The Handler is responsible for bringing to the attention of the 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.