

The Regulation of Investigatory Powers Act 2000 requires public authorities to establish a system of prior authorisation before conducting surveillance. This article addresses the particular types of surveillance the local government councils are permitted to undertake. For a Local Council the main areas that require RIPA authorisations are:

- 1) Directed Surveillance;
- 2) Covert Human Intelligence Sources (CHIS);
- 3) Requests for Communications Data.

RIPA does:

- require prior authorisation of directed surveillance.
- prohibit a Local Council from carrying out intrusive surveillance.
- require authorisation of the conduct and use of a CHIS.
- require safeguards for the conduct and use of a CHIS.

RIPA does not:

- make unlawful conduct which is otherwise lawful.
- prejudice or dis-apply any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under this Act. For example, it does not affect the County Council's current powers to obtain information via the DVLA or to get information from the Land Registry as to the ownership of a property.

'Surveillance' includes:

- monitoring, observing, listening to persons, watching or following their movements, listening to their conversations and other such activities or communications.
- recording anything mentioned above in the course of authorised surveillance.
- surveillance, by or with, the assistance of appropriate surveillance device(s).

Overt Surveillance

Most of the surveillance carried out by the Council will be done overtly. In many cases, Officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about Council business openly (e.g. a market inspector walking through markets). Similarly, surveillance will be overt if the subject has been told it will happen (e.g. where a noisemaker is warned (preferably in writing) that noise will be recorded if the noise continues, or where an entertainment licence is issued subject to conditions, and the licensee is told that officers may visit without notice or identifying themselves to the owner/proprietor to check that the conditions are being met. CCTV is usually overt because people know it is occurring and is not directed at a specific person over a prolonged period.

Covert Surveillance

Covert Surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place (Section 26(9) (a) of RIPA). RIPA regulates two types of covert surveillance, (Directed Surveillance and Intrusive Surveillance) and the use of Covert Human Intelligence Sources (CHIS).

Directed Surveillance

Directed Surveillance is surveillance which:-

- is covert; and
- is not intrusive surveillance;
- is not carried out in an immediate response to events which would otherwise make seeking authorisation under the Act unreasonable, e.g. spotting something suspicious and continuing to observe it; and
- it is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual (whether or not that person is specifically targeted for purposes of an investigation). (Section 26(10) of RIPA).

Private information in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others that s/he comes into contact, or associates, with.

'Directed Surveillance' must be authorised by an Authorising Officer who must follow the RIPA authorisation procedures.

Intrusive Surveillance

This form of surveillance can be carried out only by police and other law enforcement agencies. Council Officers must not carry out intrusive surveillance.

Intrusive Surveillance is when it: -

- is covert;
- relates to residential premises and private vehicles; and
- involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises/vehicle.

General observation forms part of the duties of many law enforcement officers and other public authorities and is not usually regulated by the 2000 Act. For example, police officers will be on patrol to prevent and detect crime, maintain public safety and prevent disorder or trading standards or HM Customs and Excise officers might covertly observe and then visit a shop as part of their enforcement function to verify the supply or level of supply of goods or services that may be liable to a restriction or tax. Such observation may involve the use of equipment to merely reinforce normal sensory perception, such as binoculars, or the use of cameras, where this does not involve systematic surveillance of an individual.

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