

ENFORCEMENT POLICY - APPENDIX 2

LONDON BOROUGH OF TOWER

HAMLETS

POLICY ON THE USE OF COVERT

HUMAN INTELLIGENCE SOURCES

REGULATION OF INVESTIGATORY

POWERS ACT 2000

1. Introduction

1.1. The Council has broad statutory functions and takes targeted enforcement action in relation to those functions having regard to the following –

- The Tower Hamlets Community Plan, which contains the Council's sustainable community strategy for the purposes of section 4 of the Local Government Act 2000
- The Council's Local Development Framework
- Any external targets or requirements imposed under relevant legislation
- The Council's enforcement policy

1.2. There may be circumstances in the discharge of its statutory functions in which it is necessary for the Council to use covert human intelligence sources for one or more of the following purposes –

- Preventing or detecting crime
- Preventing disorder
- In the interests of public safety
- Protecting public health

1.3. The Council is mindful of its obligation under section 6(1) of the Human Rights Act 1998 not to act in a way which is incompatible with a Convention right (meaning the European Convention on Human Rights ("ECHR")).

1.4. The Council recognises the terms of Article 8 of the European Convention of Human Rights provides:

Everyone has the right to respect for his private and family life, his home and his correspondence.

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 protection of the rights and freedoms of others.

- 1.5. The Council recognises that individuals have the right to a fair trial under Article 6 of the ECHR and that this may be affected if evidence is improperly obtained.
- 1.6. The Council understands that it is obliged to comply with the provisions of the Regulation of Investigatory Powers Act 2000 (“RIPA”) in order to use covert human intelligence sources. The Council believes that by complying with the provisions of RIPA, the Council should also ensure that any use of a covert human intelligence source comes within the qualification in Article 8(2) of the ECHR and, accordingly, the Council should not breach its obligation under section 6(1) of the Human Rights Act 1998.
- 1.7. The Office of Surveillance Commissioners (‘OSC’) has recommended as best practice that public authorities develop a corporate policy. The Council concurs with the OSC that a corporate policy is best practice and has had such a policy in effect since 27th July 2004. This document is the Council’s corporate policy in relation to covert human intelligence sources. The Council also has a policy in place in respect of the use of directed surveillance, which is contained in a separate document.

1.8. The Council has prepared guidance notes and a procedure manual on the use of covert human intelligence sources, which should be read with this policy.

2. Responsibilities

2.1 The Assistant Chief Executive (Legal Services) (“ACE”) is responsible for the following –

- Ensuring the proper implementation of this policy and the guidance and procedures that go with it.
- Ensuring the Council complies with the requirements of Part II of RIPA.
- Ensuring that due regard is given to any code of practice issued pursuant to section 71 of RIPA.
- Engaging with commissioners and inspectors when they conduct inspections under RIPA.
- Overseeing the implementation of any recommendations made by a commissioner.

2.2 The Head of Legal Services (Community) (“HLS”) is the deputy to the ACE for the purposes of carrying out the functions in 2.1.

2.3 The Service Head – Community Safety is the Council’s authorising officer for the purposes of considering applications for authorisation to use covert human intelligence sources, with the exception of cases where confidential information is either targeted or likely to be obtained. If the Service Head – Community Safety is unavailable and the ACE or HLS agree that it is appropriate in respect of a specified application for authorisation, then the Head of Audit may act as the Council’s authorising officer in respect of that application.

- 2.4 In cases where the covert human intelligence source is targeted to obtain confidential information or confidential information is likely to be obtained, then the Council's authorising officers is the Chief Executive, or, in the Chief Executive's absence, the person acting as Chief Executive.
- 2.5 The Council considers that applications for authorisation to use covert human intelligence sources should be of a high and consistent standard. For this reason, all applications should be cleared by a gatekeeper before consideration by the authorising officer. The Council's gate-keeper is the Head of Enforcement and Support Intervention in Community Safety. In the absence of that officer, the HLS may act as the gatekeeper.
- 2.6 All officers have responsibility to ensure that covert human intelligence sources are only used where there is an authorisation from the authorising officer, an approval from a justice of the peace and the surveillance is conducted in accordance with that authorisation and approval and any other directions given by the authorising officer.
- 2.7 Section 8 deals with the responsibilities of the controller, the handler and the record keeper for any covert human intelligence source. Section 5 specifies that the officers nominated to control, handle and record-keep in respect of a covert human intelligence source must be trained to the satisfaction of both the authorising officer and the ACE before any authorisation may be granted.

3. Covert Human Intelligence Sources

- 3.1 Terms used in this policy have the meanings given by RIPA or any relevant code of practice made under section 71 of RIPA.

3.2 Under RIPA, a person is a covert human intelligence source if the person establishes or maintains a personal or other relationship with another person for the purpose of facilitating either –

(a) Covertly obtaining information or providing another person with access to any information.

(b) Covertly disclosing information obtained by use of the relationship or as a consequence of the existence of the relationship.

4. Priorities

4.1. The Council will use covert human intelligence sources only where an approval has been obtained under RIPA and only in accordance with the terms of the approval.

4.2. An authorisation may only be granted where –

- It is necessary for one of the following purposes: (1) preventing or detecting crime; (2) preventing disorder; (3) in the interests of public safety; and (4) protecting public health.
- It complies with any additional conditions imposed by the Secretary of State under RIPA. From 1 November 2012 this means that the Council's use of RIPA is restricted to the following offences:
 - An offence punishable by a maximum term of at least 6 months of imprisonment;
 - An offence under section 146 of the Licensing Act 2003 (sale of alcohol to children);
 - An offence under section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);

- An offence under section 147A of the Licensing Act 2003 (persistently selling alcohol to children); or
- An offence under section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc. to persons under eighteen).

4.3. Having regard to the permitted purposes and to the requirements in the Council's Enforcement Policy that enforcement action should be targeted (to the Council's stated objectives), the Council's current priorities for the use of RIPA are –

- Anti-social behaviour
- Fly-tipping
- Unlawful street vending of DVDs and tobacco
- Underage sales of knives, tobacco, alcohol and fireworks
- Fraud, including misuse of disabled parking badges and claims for housing benefit
- Illegal money-lending and related offending.
- All licence breaches.
- Touting.

5. Authorisations

5.1. Prior to a CHIS being used RIPA provides that the use must be –

- First, authorised by the Council's authorising officer as defined in section 2 of this Policy.
- Secondly, approved by a justice of the peace.

5.2. A CHIS can only be used where it is for the purpose of preventing or detecting crime or of preventing disorder and where it relates to an offence of the kind specified in paragraph 4.2 above. The authorisation and approval ensure that the use of the CHIS is both necessary and

proportionate as well as limiting any potential collateral intrusion. Further the authorisation and approval will need to consider whether confidential information is likely to be obtained as a result of the use of a CHIS.

- 5.3. There is a Code of Practice that has been issued by the Secretary of State relating to the use of a CHIS and this came into force on 6th April 2010.
- 5.4. The Council is committed to only using covert human intelligence sources in accordance with RIPA and any Code of Practice issued by the Secretary of State. The Council has adopted a guidance manual to assist officers to only make applications and grant authorisations in accordance with RIPA and the Code.
- 5.5. Requests to undertake covert human intelligence sources must be authorised by the Council's authorising officer as defined in section 2 of this Policy. No authorisation is to be granted unless both the authorising officer and the Assistant Chief Executive (Legal Services) are satisfied that the officers proposed as controller, handler and record-keeper have had sufficient training. The Council may as an alternative work in partnership with police, so that the police rather than the Council control any covert human intelligence source who may be required for one of the Council's investigations.
- 5.6. All authorisations are required to have a Unique Reference Number ("URN") and the officer seeking the authorisation must obtain the URN from Legal Services prior to seeking authorisation and the authorising officer is not to authorise that authorisation unless a URN has been provided.

- 5.7. The Council is committed to achieving a consistent high standard in applications for authorisation to conduct directed surveillance. All applications must first be submitted to the Council's gatekeeper as specified in section 2 of this Policy. Only when the gatekeeper has cleared the application may the authorised officer consider it.
- 5.8. The Council will not permit the authorisation of a CHIS who is under the age of 18.
- 5.9. After the Council's authorising officer has authorised the directed surveillance, the authorising officer must immediately notify the HLS or nominee who will update the central record and make the necessary court application to obtain approval from a justice of the peace. No investigation may commence unless and until a justice's approval has been obtained.

6. Reviews/Cancellations

- 6.1 An authorisation for use of a CHIS lasts for a maximum of 12 months before having to be renewed. When authorising the use of a CHIS the authorising officer is required to set a date for review of that authorisation. This is known as the first review. The Code of Practice requires regular reviews be undertaken by the authorising officer to assess the continuing need for the use of the CHIS.
- 6.2 The frequency of reviews must be considered at the outset by the authorising officer as frequently as is considered necessary and practicable on a case by case basis. In any event, the authorising officer must set a first review date when granting the authorisation.
- 6.3 If after the first review the authorising officer considers that the use of the CHIS is to continue then s/he will be required to set a further date

of review. Again, this assessment will be on a case by case basis and in a time that is considered necessary and practicable.

- 6.4 If on the review, however, the authorising officer is satisfied that the authorisation is no longer necessary on the ground under which it was granted or renewed or it is no longer proportionate to what is sought to be achieved then the authorising officer must request that the authorisation be cancelled and the CHIS no longer used under that authorisation.
- 6.5 It should be stressed that authorisations for the use of a CHIS must be cancelled. They cannot and must not be allowed to just lapse.

7. Training

- 7.1 Authorising officers can only authorise once they have undertaken training on the operation of RIPA and the Code of Practice. The Council's gatekeepers may only clear applications for consideration by the authorising officer after undertaking the same training as the authorising officers.
- 7.2 Officers may only undertake the roles of controller, handler, or record-keeper if they have undertaken training in the discharge of those roles. If there are no officers who have been trained to the satisfaction of the authorising officer and the Assistant Chief Executive (Legal Services), then the Council will not use covert human intelligence sources.
- 7.3 All officers who may seek to use covert human intelligence sources during an investigation must also have undertaken training on the operation of RIPA and the Code of Practice.

7.4 The Council will arrange appropriate training courses at regular intervals. It is expected that members of the Corporate Management Team will require authorising officers, gatekeepers and those who may apply to conduct directed surveillance to undertake the training.

8. Controller/Handler/Record Keeper

8.1 Where the use of a CHIS is authorised then section 29(5)(a) of RIPA requires the Council to have at all times a person holding a position with the Council who will have day-to-day responsibility for dealing with the source (“the handler”). This will not be the officer seeking authorisation but will be the responsibility of the person who supervises the investigation.

8.2 Further, section 29(5)(b) of RIPA requires the Council to have at all times another person holding a position with the Council who will have general oversight of the use made of the source (“the controller”). The controller is the officer responsible for the general oversight of the use of the source. . . . The controller will be the Service Manager for the Service in which the officer seeking the authorisation is based so that the Service Manager will be the controller and will be the person managing the handler.

8.3 Although an authorising officer can also act as the controller of a source, the Council will not permit an authorising officer to be responsible for authorising their own activities, e.g. those in which they, themselves, are to act as the source or in tasking the source. Therefore if the authorising officer would be the Service Manager for the handler then a Service Manager of the same level from another Service will be the controller.

- 8.4 Additionally, section 29(5)(c) of RIPA requires the Council to have at all times a person holding a position with the Council who will have responsibility for maintaining a record of the use made of the CHIS. This will be the Service Head (i.e. the Service Manager's manager) responsible for the service area using the covert human intelligence source. If the service area falls within the authorising officer's responsibility, then the Corporate Director Communities, Localities and Culture must maintain the record.
- 8.5 Guidance suggests that a local authority may prefer to seek the assistance of the police to manage its CHIS. In such a case a written protocol between the parties should be produced in order to ensure that an identified CHIS is properly managed. Without such an agreement the local authority must be capable of fulfilling its statutory responsibilities. Where the CHIS is not a Council Officer then the intention is to seek assistance of the police. Where the CHIS is a Council Officer then prior to the authorisation being sought the investigating officer must give consideration to seeking the assistance of the Police and if it is decided not to then justification for that decision must be included within the risk assessment for the use of the CHIS.

9. Combined Authorisations

- 9.1. From time to time, it may well be that the use of a CHIS involves directed surveillance. If it does then the directed surveillance must also be authorised. A single authorisation can combine the two, however, and this should be done on the application form used for the authorisation of the CHIS.

10. Security of Covert Technical Equipment

10.1. The Council requires each Service that uses covert technical equipment when undertaking surveillance to ensure that such equipment is securely locked away when not used. Further, such equipment will only be issued to an officer who has authorisation to use it. There will be a logging in and out book and the officer will be required to sign for the equipment. In signing for the equipment, the officer will be reminded that misuse of the equipment is a disciplinary offence.

11. Member Oversight

11.1. The Council's Standards Committee will review this Policy and the Council's use of covert human intelligence sources. If issues arise, the Standards Committee will make recommendations to Cabinet for action.

12. Central Recording

12.1. The Council is required to keep records in relation to authorisations centrally. Those records will be maintained by Legal Services.

12.2. The relevant authorising officer must provide copies of all authorisations and all reviews, renewals and cancellations to the ACE, the HLS, or a person nominated by either of them. The authorisation officer must provide those documents forthwith after following signing by the authorising officer.

12.3. All officers are expected to use the most up to date versions of forms recommended by the Home Office.