

ENFORCEMENT POLICY - APPENDIX 1

LONDON BOROUGH OF TOWER

HAMLETS

POLICY ON THE USE OF COVERT

SURVEILLANCE

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 conduct directed surveillance 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 conduct directed surveillance. The Council believes that by complying with the provisions of RIPA, the Council should also ensure that any directed surveillance 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 directed surveillance. The Council also has a policy in place in respect of the use of covert human intelligence sources, which is contained in a separate document.
- 1.8. The Council has prepared guidance notes and a procedure manual on the use of directed surveillance, 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 conduct directed surveillance, 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 directed surveillance targets 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 conduct directed surveillance should be of a high and consistent standard. For this reason, all applications should be cleared by a gate-keeper 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 gate-keeper.

2.6 All officers have responsibility to ensure that directed surveillance is only conducted 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.

3. Directed Surveillance

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 Directed surveillance is surveillance that is covert (i.e. secret) but not intrusive and which is undertaken:

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

3.3 Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle. It involves the presence of an individual inside the residence or vehicle or is carried out by means of a surveillance device. **The Council is not permitted to conduct intrusive surveillance under RIPA and will not use intrusive surveillance.**

4. Priorities

4.1. The Council will use directed surveillance only where 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
- Licence breaches
- Touting.

5. Authorisations

5.1. Prior to directed surveillance taking place RIPA provides that the surveillance 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. Surveillance can only take place where it is for the purpose of preventing or detecting crime or of preventing disorder and relates to an offence of the kind specified in paragraph 4.2 above. The authorisation and approval ensure that the surveillance 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 covert surveillance.

- 5.3. There is a Code of Practice that has been issued by the Secretary of State relating to the use of Covert Surveillance and Property Interference and this came into force on 6th April 2010.
- 5.4. The Council is committed to only using directed surveillance 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 make only make applications and grant authorisations in accordance with RIPA and the Code.
- 5.5. The Council is not permitted to authorise intrusive surveillance under RIPA or property interference under the Police Act 1997. The Council will not use either measure in its investigations. Where an investigation will involve property interference such as the placing of a tracker on a vehicle then that will have to be authorised by the police.
- 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 at the time of preparing the application (ie 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. 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. Training

- 6.1 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.
- 6.2 All officers who may seek to use directed surveillance during an investigation must also have undertaken training on the operation of RIPA and the Code of Practice.
- 6.3 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.

7. Reviews/Cancellations

- 7.1. An authorisation for directed surveillance lasts for 3 months before having to be renewed but when authorising directed surveillance 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 surveillance.
- 7.2. 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.

- 7.3. If after the first review the authorising officer considers that the directed surveillance 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.
- 7.4. 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 by carrying it out then the authorising officer must request that the authorisation be cancelled and no further surveillance under that authorisation is to be carried out.
- 7.5. It should be stressed that authorisations for directed surveillance must be cancelled. They cannot and must not be allowed to just lapse.

8. Combined Authorisations

- 8.1 From time to time, it may well be that the directed surveillance will be undertaken by a Covert Human Intelligence Source ("CHIS"). If it does then both actions must 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.

9. Security of Covert Technical Equipment

- 9.1. The Council also 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.

10. Member Oversight

10.1 The Council's Standards Committee will review this Policy and the Council's conduct of directed surveillance. If issues arise, the Standards Committee will make recommendations to Cabinet for action.

11. Central Recording

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

11.2 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.

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