

**North East Derbyshire District Council**

**Cabinet**

**10 February 2016**

**RIPA Corporate Policies and Procedures**

**Report No NB/03/15-16/MK of Councillor N Barker, Portfolio Holder with Responsibility for Human Resources, Training and Member Development**

This report is public

**Purpose of the Report**

- To present a new joint policy and procedures document covering the Council's activities under the Regulation of Investigatory Powers Act 2000.

**1 Report Details**

- 1.1 The Regulation of Investigatory Powers Act enables the Council to use covert surveillance, covert human intelligence sources (CHIS) and the acquisition of service use or subscriber information in relation to communications data in a manner that is compatible with Article 8 of the European Convention on Human Rights governing an individual's right to respect for their private and family life, home and correspondence.
- 1.2 Local authorities are sparing users of RIPA legislation. This has become more so since the enactment of the Protection of the Freedoms Act in 2012 which required local authority use of RIPA to be subject to approval by a Magistrate. Use of directed surveillance is also subject to a separate "seriousness threshold" which means that it may only be used where the offence is punishable by a maximum term of at least six months imprisonment, or where it would constitute an offence involving sale of tobacco or alcohol to underage children regardless of length of prison term.
- 1.3 In the past three years, neither Bolsover nor North East Derbyshire District Councils have used RIPA although officers within the Benefits section have assisted the Department of Work and Pensions - who are not required to obtain judicial approval - on applications and investigations. The Councils have also met with the Clerk to the Magistrates' Court to establish lines of communication and a procedure should the need to use RIPA arise.
- 1.4 Regardless of our low level of use, the Council is required to have in place up-to-date policies and procedures. Following the issue of new codes of practice for covert surveillance and CHIS in December 2014 and for acquisition, disclosure and retention of communications data in May 2015 a new joint policy covering the

Alliance has been produced and is attached for consideration. This will replace the separate policies each Council adopted in 2013. It is attached as **Appendix 1**.

- 1.5 The policy has been informed by a recent inspection from the Office of the Surveillance Commissioner on 17 November 2015. A copy of the inspection report is attached at **Appendix 2** and is generally positive with a handful of suggestions to strengthen the policy.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 To ensure the Councils have in place a fit for purpose policy and procedures document that complies with legislation.

## **3 Consultation and Equality Impact**

- 3.1 The new policy has been through extensive consultation with the Strategic Alliance Joint Committee, Standards Committee and Office of the Surveillance Commissioner.

## **4 Alternative Options and Reasons for Rejection**

- 4.1 None.

## **5 Implications**

- 5.1 None.

## **6 Recommendations**

- 6.1 That the joint policy for RIPA, attached at Appendix A, be approved.
- 6.2 That the recent report of the RIPA inspection of Bolsover and North East Derbyshire be noted.

## **7 Decision Information**

|  |    |
|--|----|
| <b>Is the decision a Key Decision?</b><br>(A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards) | No |
| <b>District Wards Affected</b>   |    |
| <b>Links to Corporate Plan priorities or Policy Framework</b>  |    |

## Document Information

| <b>Appendix No</b>   | <b>Title</b>   |
|--|--|
| 1<br>2   | RIPA Corporate Policy and Procedures Document<br>Report of RIPA Inspection |
| <b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers) |  |
| N/A  |  |
| <b>Report Author</b>   | <b>Contact Number</b>  |
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AGIN 6 (CAB 0210) RIPA Policy/AJD



# **REGULATION OF INVESTIGATORY POWERS ACT 2000 (“RIPA”)**

## **CORPORATE POLICY AND PROCEDURES**

**CONTROL SHEET FOR REGULATION OF INVESTIGATORY POWERS ACT 2000  
("RIPA") – CORPORATE POLICY AND PROCEDURES**

| <b>Policy Details</b>   | <b>Comments / Confirmation<br/>(To be updated as the document progresses)</b> |
|---|---|
| Policy title  | RIPA Corporate Policy and Procedures  |
| Current status – i.e. first draft, version 2 or final version   | First draft   |
| Policy author   | M Kane  |
| Location of policy – i.e. L-drive, shared drive   | L Drive   |
| Member route for approval   | Strategic Alliance Joint Committee and Standards                              |
| Cabinet Member (if applicable)  | Cllrs K Reid and N Barker   |
| Equality Impact Assessment approval date  | N/A   |
| Partnership involvement (if applicable)   | N/A   |
| Final policy approval route i.e. Executive/ Council /Planning Committee   | Cabinet / Executive   |
| Date policy approved  |   |
| Date policy due for review (maximum three years)  |   |
| Date policy forwarded to Strategy and Performance (to include on Intranet and Internet if applicable to the public) |   |

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## 1. Abbreviations

|         |  |
|---------|--|
| CCTV    | Closed Circuit Television  |
| CSP     | Communications service provider  |
| Council | Bolsover/North East Derbyshire District Council  |
| CHIS    | Covert Human Intelligence Sources  |
| ECHR    | European Convention for the Protection of Human Rights and Fundamental Freedom agreed on 2 November 1950 |
| HRA     | Human Rights Act 1998  |
| ICCO    | The Interception of Communications Commissioner's Office   |
| NAFN    | The National Anti Fraud Network  |
| OSC     | Office of Surveillance Commissioners   |
| PFA     | Protection of Freedoms Act 2012  |
| RIPA    | Regulation of Investigatory Powers Act 2000  |
| SPoC's  | Single Points of Contact for Acquisition and Disclosure of Communications Data                           |

## Introduction

This Corporate Policy and Procedures document is based upon the requirements of the Regulation of Investigatory Powers Act 2000 and the Home Office's Codes of Practice on Covert Surveillance and Property Interference, Covert Human Intelligence Sources and Acquisition and Disclosure of Communications Data.

The use of covert surveillance, covert human intelligence sources and the acquisition of service use or subscriber information in relation to communications data is sometimes necessary to ensure effective investigation and enforcement of the law. However, they should be used only rarely and in exceptional circumstances. RIPA requires that public authorities follow a clear authorisation process prior to using these powers. Authorisations granted under Part II of RIPA are subject to all the existing safeguards considered necessary by Parliament to ensure that investigatory powers are exercised compatibly with the ECHR.

**Any potential use of RIPA should be referred to the Monitoring Officer, Sarah Sternberg, for preliminary advice at the earliest possible opportunity. Her telephone number is 01246 217058/242414. In her absence, advice should be sought from her deputies Adele Wylie (BDC) and Matthew Kane (BDC/NEDDC). Their phone numbers are 01246 242477 (AW) and 01246 217753/242505/0799 9924276 (MK).**

## Consequences of Failing to Comply with this Policy

Where there is interference with Article 8 of the ECHR, and where there is no other source of lawful authority for the interference, the consequences of not following the correct authorisation procedure set out under RIPA and this Policy may result in the Council's actions being deemed unlawful by the Courts under Section 6 of the HRA or by the Investigatory Powers Tribunal, opening up the Council to claims for compensation and loss of reputation. Additionally, any information obtained that could be of help in a prosecution will be inadmissible.



## 2. Background

On 2 October 2000 the Human Rights Act 1998 (“HRA”) made it unlawful for a local authority to breach any article of the ECHR. An allegation that the Council or someone acting on behalf of the Council has infringed the ECHR is dealt with by the domestic courts rather than the European Court of Justice.

The ECHR states:-

- (a) individuals have the right to respect for their private and family life, home and correspondence (Article 8 ECHR); and
- (b) there shall be no interference by a public authority with the exercise of this right unless that interference is:-

- **in accordance with the law;**
- **necessary; and**
- **proportionate**

RIPA, which came into force on 25 September 2000, provides a lawful basis for three types of covert investigatory activity to be carried out by local authorities which might otherwise breach the ECHR. These activities are:-

- covert directed surveillance;
- covert human intelligence sources (“CHIS”); and
- acquisition and disclosure of communications data

RIPA sets out procedures that must be followed to ensure the investigatory activity is lawful. Where properly authorised under RIPA the activity will be a justifiable interference with an individual’s rights under the ECHR. If the interference is not properly authorised an action for breach of the HRA could be taken against the Council, a complaint of maladministration made to the Local Government Ombudsman or a complaint made to the Investigatory Powers Tribunal. In addition, if the procedures are not followed any evidence collected may be disallowed by the courts. RIPA seeks to balance the rights of individuals against the public interest in the Council being able to carry out its statutory duties.

A flow chart attached at **Appendix A** to this policy sets out the process in pictorial form.

### **What RIPA Does and Does Not Do**

RIPA does:-

- require prior authorisation of covert directed surveillance;
- prohibit the Council from carrying out intrusive surveillance;
- compel disclosure of communications data from telecom and postal service providers;
- permit the Council to obtain communications records from communications service providers;
- require authorisation of the conduct and use of CHIS;
- require safeguards for the conduct of the use of a CHIS.

RIPA does not:-

- make unlawful conduct which is otherwise lawful;
- prejudice any existing power to obtain information by any means not involving conduct that may be authorised under RIPA. For example, it does not affect the Council's current powers to obtain information via the DVLA or to obtain information from the Land Registry as to the owner of a property;
- apply to activities outside the scope of Part II of RIPA. A public authority will only engage RIPA when in performance of its "core functions" – i.e. the functions specific to that authority as distinct from all public authorities.
- cover overt surveillance activity.

Under no circumstances can local authorities be authorised to obtain communications traffic data under RIPA. Local authorities are not permitted to intercept the content of any person's communications and it is an offence to do so without lawful authority.

### **3. Policy Statement**

The Council is determined to act responsibly and in accordance with the law. To ensure that the Council's RIPA activity is carried out lawfully and subject to the appropriate safeguards against abuse, Bolsover and North East Derbyshire District Council adopted separate RIPA Policies in 2013, which have subsequently been combined into a single Corporate Policy and Procedures document as detailed below.

All staff who are considering undertaking RIPA activity should be aware that where that activity may involve handling confidential information or the use of vulnerable or juvenile persons as sources of information, a higher level of authorisation is required. Please see paragraphs 4.6 (in respect of handling confidential information) and 5.2 (in respect of using information sources who are vulnerable or juvenile persons) below.

The following documents are available on the Council's intranet:-

- 2014/15 Home Office Statutory Codes of Practice on:-
  - Covert Surveillance and Property Interference
  - Covert Human Intelligence Sources
  - Acquisition and Disclosure of Communications Data
- Office of the Surveillance Commissioners' Guidance Procedures
- Home Office Guidance on Protection of Freedoms Act 2012 – changes to RIPA;
- RIPA forms for covert surveillance; CHIS and acquisition and disclosure of communications data;
- Application for Judicial approval and Order made for Judicial approval;
- Surveillance camera training;
- Corporate RIPA Training.

The Monitoring Officer is the Council's Senior Responsible Officer (SRO) and is responsible for the following roles:-

- Appointing Authorising Officers (see 8.1[a]);

- Appointing Designated Persons (see 8.1[a]);
- Maintaining a central record for all RIPA authorisations;
- Arranging training to individuals appointed as Authorising Officers and Designated Persons, and
- Carrying out an overall monitoring function as the SRO for the Council's use of RIPA powers.

Any officers who are unsure about any RIPA activity should contact the Monitoring Officer for advice and assistance.

## 4. Types of Surveillance

Surveillance can be overt or covert and includes:-

- Monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
- Recording anything monitored, observed or listened to in the course of surveillance; and
- Surveillance by or with the assistance of a device.

### 4.1 Overt Surveillance

The majority of the Council's surveillance activity will be overt surveillance, i.e. will be carried out openly. For example (i) where the Council performs regulatory checks on licensees to ensure they are complying with the terms of any licence granted; and (ii) where the Council advises a tenant that their activities will be monitored as a result of neighbour nuisance allegations. This type of overt surveillance is normal Council business and is not regulated by RIPA.

### 4.2 Covert Surveillance

This is where surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware it is taking place. Covert surveillance can be intrusive or directed. **The Council is not permitted to carry out covert intrusive surveillance.** Para 4.3 below explains when covert surveillance is intrusive and therefore not permitted. The Council is permitted to carry out covert directed surveillance subject to strict compliance with RIPA. Paragraph 4.4 below explains when covert surveillance is directed.

### 4.3 Covert intrusive Surveillance

Covert intrusive surveillance takes place when covert surveillance is carried out in relation to anything taking place on residential premises or in a private vehicle and which involves the presence of an individual or surveillance device on the premises or in the vehicle, or which uses a device placed outside the premises or vehicle which consistently provides information of the same quality and detail as expected of a device placed inside.

Additionally, the Regulation of Investigatory Powers (Extension of Authorisations Provisions: Legal Consultations) Order 2010 states that covert surveillance carried out in relation to anything taking place in certain specified premises is intrusive when they are being used for legal consultation.

#### 4.4 Covert Directed Surveillance

This is surveillance that is:-

- Covert;
- Not intrusive;
- For the purposes of a specific investigation or operation;
- Likely to obtain private information<sup>1</sup> about a person (whether or not that person was the target of the investigation or operation); and
- Not carried out as an immediate response to events or circumstances which could not have been foreseen prior to the surveillance taking place.

Private information includes any information relating to a person's private and family life, home and correspondence (whether at home, in a public place or in the work place).

#### 4.5 Directed Surveillance Crime Threshold

Following the changes to RIPA introduced by the Protection of Freedoms Act 2012, a crime threshold applies to the authorisation of covert directed surveillance by local authorities.

Local Authority Authorising Officers may not authorise covert directed surveillance unless it is for the purpose of preventing or detecting a criminal offence **and** meets the following test:-

- The criminal offence is punishable by a maximum term **of at least six months imprisonment**, or
- It would constitute an offence under Sections 146, 147A of the Licensing Act 2003 or Section 7 of the Children and Young Persons Act 1993 (**offences involving sale of tobacco and alcohol to underage children**) regardless of length of prison term.

The crime threshold **only** applies to covert directed surveillance, not to CHIS or Communications Data.

The Home Office Statutory Covert Surveillance and Property Interference Code of Practice can be found on the Home Office website and on the intranet.

#### 4.6 Confidential Information

A higher level of authorisation to apply to the Magistrates Court is required in relation to RIPA activity when the subject of the investigation might reasonably expect a high degree of privacy, or where "confidential information" might be obtained. For the purpose of RIPA this includes:-

- Communications subject to legal privilege (see below);
- Communications between a member of parliament and another person on constituency matters;
- Confidential personal information (see below); and
- Confidential journalistic material (see below).

The authorising officer and the person carrying out the surveillance must understand that such information is confidential and is subject to a stringent authorisation procedure. **Authorisation can only be granted by the Chief Executive or in their absence by an officer acting as Head of Paid Service.**

**Legal privilege** is defined in Section 98 of the Police Act 1997 as:-

- communications between a professional legal adviser and his client, or any person representing his client which are made in connection with the giving of legal advice to the client.
- communications between a professional legal adviser and his client or any person representing his client, or between a professional legal adviser or his client or any such representative and any other person which are made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- items enclosed with or referred to in communications of the kind mentioned above and made in connection with the giving of legal advice, or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

Communications and items are not matters subject to legal privilege when they are in the possession of a person who is not entitled to possession of them, and communications and items held, or oral communications made, with the intention of furthering a criminal purpose are not matters subject to legal privilege.

If advice is required on this point, officers should contact the Monitoring Officer.

**Confidential personal information** is described at paragraph 4.28 of the Home Office Covert Surveillance and Property Interference Code of Practice.

**Confidential journalistic material** is described at paragraph 3.40 of the Home Office Covert Surveillance and Property Interference Code of Practice.

**Any officer contemplating RIPA activity where the above circumstances may apply must seek advice from the Monitoring Officer prior to making any application.**

#### **4.7 Social Media**

The use of the internet may be required to gather information prior to and/or during an operation, which may amount to directed surveillance. Whenever a public authority intends to use the internet as part of an investigation, they must first consider whether the proposed activity is likely to interfere with a person's Article 8 rights, including the effect of any collateral intrusion. Advice should be sought.

Any activity likely to interfere with an individual's Article 8 rights should only be used when necessary and proportionate to meet the objectives of a specific case. Where it is considered that private information is likely to be obtained, an authorisation (combined or separate) must be sought as set out elsewhere in this code. Where an investigator may need to communicate covertly online, for example, contacting individuals using social media websites, a CHIS authorisation should be considered.

## **5. Covert Human Intelligence Sources (“CHIS”)**

### **5.1 CHIS**

The Council is permitted to use CHIS subject to strict compliance with RIPA.

A CHIS is a person who establishes or maintains a personal or other relationship with a person for the covert purposes of facilitating:-

- (a) covertly using the relationship to obtain information or provide access to information to another person, or
- (b) covertly disclosing information obtained by the use of the relationship or as a consequence of the existence of such a relationship.

A RIPA authorisation and order from a magistrate is required for the above activity and should be obtained whether the CHIS is a Council officer or another person who is asked to be a CHIS on the Council's behalf. Authorisation for CHIS can only be granted if it is for the purposes of “preventing or detecting crime or of preventing disorder”.

Members of the public who volunteer information to the Council and those engaged by the Council to carry out test purchases in the ordinary course of business (i.e. they do not develop a relationship with the shop attendance and do not use covert recording devices) are not CHIS and do not require RIPA authorisation.

However, by virtue of Section 26(8) of RIPA, there may be instances where an individual, covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship. In such circumstances where a member of the public, though not asked to do so, gives information (or repeated information) about a suspect, then serious consideration should be given to designating the individual as a CHIS, particularly if the Council intends to act upon the information received. It is recommended that legal advice is sought in any such circumstances.

The Home Office Statutory CHIS Code of Practice can be found on the Home Office website and on the intranet.

## 5.2 Vulnerable Individuals/Juvenile CHIS

A vulnerable individual is a person who by reason of mental disorder or vulnerability, other disability, age or illness, is or may be unable to take care of themselves or protect themselves against significant harm or exploitation.

Additional requirements apply to the use of a vulnerable adult or a person under the age of 18 as a CHIS. In both cases **authorisation for an application to the Magistrates Court can only be granted by the Chief Executive or in their absence by an officer acting as Head of Paid Service. Any officer contemplating the use of a juvenile or a vulnerable person as a CHIS must seek advice from the Monitoring Officer prior to making the application.**

The use or conduct of a CHIS under 16 years of age **must not** be authorised to give information against their parents or any person who has parental responsibility for them.

In other cases authorisations should not be granted unless the special provisions contained in The Regulation of Investigatory Powers (Juveniles) Order 2000 are satisfied. This set out rules about parental consent, meetings, risk assessments and the duration of the authorisation.

## 6. CCTV

The installation and use of unconcealed CCTV cameras for the purpose of generally observing activity in a particular area is not surveillance requiring RIPA authorisation. There are specific provisions relating the use of CCTV cameras in public places and buildings. However, if CCTV cameras are being used in such a way that the definition of covert directed surveillance is satisfied, RIPA authorisation should be obtained.

For instance the use of town centre CCTV systems to identify those responsible for a criminal act immediately after it happens will not require RIPA authorisation. However, the use of the same CCTV system to conduct planned surveillance of an individual and record their movements is likely to require authorisation.

Protocols should be agreed with any external agencies requesting the use of the Council's CCTV system. The protocols should ensure that the Council is satisfied that authorisations have been validly granted prior to agreeing that the CCTV system may be used for directed surveillance.

CCTV systems cannot be used without prior production of an authorisation and such authorisations must be retained.

## 7. Acquisition and Disclosure of Communications Data

### 7.1 Communication Service Providers ("CSPs")

CSPs are organisations that are involved in the provision, delivery and maintenance of communications such as postal, telecommunication and internet service providers but also, for example, hotel or library staff involved in providing and maintaining email access to customers. The Council must obtain communications data from CSPs in strict compliance with RIPA.

## 7.2 Types of Communications Data

Communications data is the “who”, “where”, “when” and “how” of a communication such as a letter, phone call or email but not the content, not what was said or written. The Council is not able to use RIPA to authorise the interception or acquisition of the content of communications. There are three types of communication data:-

### Service Use Information

This is data relating to the use made by any person of a postal or telecommunications, internet service, or any part of it. For example itemised telephone call records, itemised records of connection to internet services, itemised timing and duration of calls, connection/disconnection/reconnection data, use of forwarding or re-direction services, additional telecom services and records of postal items.

### Subscriber information

This is information held or obtained by the CSP about persons to whom the CSP provides or has provided a communications service. For instance, subscribers of email and telephone accounts, account information including payment details, address for installing and billing, abstract personal records and sign up data.

### Traffic Information

This is data that is comprised in or attached to a communication for the purpose of transmitting it and which identifies a person or location to or from which it is transmitted. **The Council is not permitted to access traffic data.**

## 7.3 Authorisation and Notices

RIPA provides for acquisition and disclosure of communications data by two alternative means:-

- authorisation of a person within the Council to engage in specific conduct, in order to obtain communications data (a section 22(3) RIPA authorisation); and
- a notice issued to a CSP requiring them to collect or retrieve and then provide the communications data (a section 22(4) RIPA notice).

A Section 22(3) RIPA authorisation is appropriate where (for instance) there is an agreement in place between the Council and the relevant CSP regarding the disclosure of communications data which means a notice is not necessary (currently the Council does not have any such agreements in place); or the Council needs to identify an individual to whom communication services are provided but the relevant CSP is not yet known to the Council, making it impossible to issue a notice.

A Section 22(4) RIPA notice is appropriate where the Council receives specific communications data from a known CSP. A notice may require a CSP to obtain any communications data, if that data is not already in its possession. However, a notice must not place a CSP under a duty to do anything which is not reasonably practicable for the CSP to do.



As a local authority the Council must fulfil two additional requirements when acquiring communications data. Firstly, the request must be made through a SPoC at NAFA (see more about NAFA at 8.3(b) and 8.4). Secondly, the request must receive prior judicial approval.

Under Sections 23A and 23B of RIPA the Council must also obtain judicial approval for all requests for communications data. Judicial approval must be requested once all the Council's internal authorisation processes have been completed, including consultation with a NAFN SPoC, but before the SPoC requests the data from the CSP. The authorisation must be provided by a magistrate.

The Home Office Acquisition and Disclosure of Communications Data Code of Practice can be found on the Home Office website and on the intranet.

## **8 Authorisation Procedures**

### **8.1(a) Authorising Officers/Designated Persons be directed surveillance and CHIS**

Authorising Officers are responsible for assessing and authorising covert directed surveillance and the use of a CHIS.

Designated Persons fulfil a similar role in relation to applications to obtaining communications data, assessing and approving authorisations and notices.

**It is the responsibility of Authorising Officers and Designated Persons to ensure that when applying for authorisation the principles of necessity and proportionality (see 8.2 below) are adequately considered and evidenced; and that reviews and cancellations of authorisations are carried out as required under this Policy (8.8 – 8.10 below).**

Lists of authorising officers and designated persons are set out below. Any requests for amendments to the lists must be sent to the Monitoring Officer.

The authorising officers and designated persons for Bolsover and North East Derbyshire District Councils are as follows:

Chief Executive – Dan Swaine (01246 242401/217155)  
Executive Director – Operations – Bryan Mason (01246 242431/217053)  
Executive Director – Transformation – Paul Hackett (01246 242566/217543)

Schedule 1 of statutory instrument No 521 (2010) prescribes the rank or position of authorising officers for the purposes of Section 30(1) of RIPA (covert surveillance and CHIS). Schedule 2 of statutory instrument No 480 (2010) prescribes the rank or position of designated person for the purposes of Section 25(2) of RIPA (access to communications data). For Local Authorities they prescribe a "Director, Head of Service, Service Manager or equivalent".

The Monitoring Officer designates which officers can be authorising officers or designated persons. Only these officers can authorise directed surveillance, the use of CHIS and acquisition and disclosure of Communications data. **All authorisations must follow the**

**procedures set out in the Policy.** Authorising officers/designated persons are responsible for ensuring that they have received RIPA training prior to authorising RIPA activity. When applying for or authorising RIPA activity under the Policy, officers must also take into account the corporate training and any other guidance issued from time to time by the Monitoring Officer.

### **8.1(b) Single Point of Contact (SPoC)**

SPoCs are responsible for advising officers within the Council on how best to go about obtaining communications data, for liaising with CSPs, and advising whether applications and notices are lawful. As required under the latest Acquisition and Disclosure of Communications Data Code of Practice, the Council has engaged the National Anti-Fraud Network (NAFN). NAFN's SPoC services relate only to communications data. For information on using NAFA, see 8.4 below.

## **8.2 Authorisation of Covert Directed Surveillance and Use of a CHIS**

RIPA applies to all covert directed surveillance, use of CHIS and acquisition and disclosure of communications data whether by Council employees or external agencies engaged by the Council. Council officers wishing to undertake covert directed surveillance or use of a CHIS must complete the relevant application form and forward it to the relevant (see para 8.6) authorising officer. Authorisations or notices in relation to communications data should be referred to NAFN.

**Any potential use of RIPA should be referred to the Monitoring Officer for preliminary advice.**

Covert directed surveillance, use of a CHIS and acquisition and disclosure of communications data can only be authorised if the authorising officer/designated person is satisfied that the activity is:-

- (a) **in accordance with the law** i.e. it must be in relation to matters that are statutory or administrative functions of the Council. As such the Council is unable to access communications data for disciplinary matters.
- (b) **necessary** for the purpose of preventing or detecting crime or preventing disorder. This is the only ground available to the Council for authorising RIPA activity and there is a crime threshold for directed surveillance as described in paragraph 4.5 above; and
- (c) **proportionate** to what it seeks to achieve. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person as may be affected) against the need for the activity in investigative operational terms. Any conduct that is excessive as to the interference and the aim of the conduct, or is in any way arbitrary will not be proportionate. Serious consideration must be given to identifying the least intrusive method of obtaining the information required.

Applicants should ask the following types of questions to help determine whether the use of RIPA is necessary and proportionate:-

- why it is believed the proposed conduct and use is necessary for the prevention of crime or the prevention of disorder (as appropriate);
- how the activity to be authorised is expected to bring a benefit to the investigation;
- how and why the proposed conduct and use is proportionate to the intelligence dividend it hopes to achieve, having regard to the gravity and extent of the activity under investigation;
- how and why the methods to be adopted will cause the least possible intrusion to the subject/s i.e. interfere with their rights under the ECHR;
- what other reasonable methods of obtaining information have been considered and why they have been discounted.

Authorising officers/designated persons should not be responsible for authorising their own activities, i.e. those operations/investigations in which they are directly involved. However, it is recognised that in exceptional circumstances this may sometimes be unavoidable. The Monitoring Officer should be informed in such cases.

Particular consideration should be given to **collateral intrusion on or interference with the privacy of persons who are not the subject(s) of the investigation**. Collateral intrusion occurs when an officer undertaking covert surveillance on a subject observes or gains information relating to a person who is not the subject of the investigation. An application for an authorisation must include an assessment of the risk of any collateral intrusion or interference and measures must be taken to avoid or minimise it. This must be taken into account by the authorising officer/designated person, particularly when considering the proportionality of the surveillance.

Particular care must be taken in cases where **confidential information** is involved e.g. matters subject legal privilege, confidential personal information, confidential journalistic material, confidential medical information, and matters relating to religious leaders and their followers. In cases where it is likely that confidential information will be acquired, officers must specifically refer this to the Monitoring Officer for advice.

The activity must be authorised before it takes place.

At the time of authorisation the authorising officer/designated person must set a date for review of the authorisation and review it on that date (see 8.8).

The original completed application and authorisation form must be forwarded to the Monitoring Officer as soon as possible. In the case of a section 22(4) RIPA notice requiring disclosure of communications data a copy of the notice must be attached to the application form. The Monitoring Officer will maintain a central register of the Council's RIPA activity and a unique reference number will be allocated to each application.

### **Approval by Magistrates Court**

Following changes under the Protection of Freedoms Act 2012, there is now an additional stage in the process for all three investigatory activities (covert directed surveillance, CHIS and Communications Data). After the authorisation form has been countersigned by the authorising officer/designated person, the Council is required to obtain judicial approval for either the authorisation or a renewal of an authorisation.

The Council has a protocol for the Magistrates' approval process, attached as **Appendix B**.

The magistrate will have to decide whether the Council's application to grant or renew an authorisation to use RIPA should be approved and it will not come into effect unless and until it is approved by the Magistrates Court.

A separate application should be completed when the Council is requesting judicial approval for the use of more than one of the surveillance techniques (i.e. Directed Surveillance, CHIS and Communications Data) at the same time.

It should be noted that only the initial application and any renewal of the application require magistrates' approval.

There is no requirement for officers presenting authorisations to the Magistrates Court to be legally qualified but they do need to be authorised by the Council to represent it in court. **Generally the applicant should be accompanied to Court by the authorising officer and a member of the legal team.**

### **The Role of the Magistrates Court**

The role of the Magistrates Court is set out in Section 23A RIPA (for communications data) and Section 32A RIPA (for directed surveillance and CHIS).

These sections provide that the authorisation, or in the case of Communications Data, the notice, shall not take effect until the Magistrates Court has made an order approving such authorisation or notice. The matters on which the Magistrates Court needs to be satisfied before giving judicial approval are that:-

- There were reasonable grounds for the local authority to believe that the authorisation or notice was necessary and proportionate;
- In the case of a CHIS authorisation, that there were reasonable grounds for the local authority to believe that:
  - arrangements exist for the safety and welfare of the source that satisfy Section 29(5) RIPA;
  - the requirements imposed by Regulation of Investigatory Powers (Juveniles) Order 2000 were satisfied;
- The local authority application has been authorised by an authorising officer or designated person (as appropriate);
- The grant of the authorisation or, in the case of communications data, notice was not in breach of any restriction imposed by virtue of an order made under the following sections of RIPA:
  - 25(3) (for communications data),
  - 29(7)(a) (for CHIS),
  - 30(3) (for directed surveillance and CHIS).

### **The procedure for applying for covert directed surveillance or use of a CHIS is:**

- Applicant obtains preliminary legal advice from Monitoring Officer;
- Applicant completes an application;

- Monitoring Officer quality checks the completed application before organising it to go to the Authorising Officer;
- Approval is sought from the Authorising Officer;
- Authorising Officer completes authorisation form in long-hand;
- Monitoring Officer organises paperwork for court and Authorising Officer proceeds to court;
- If approval given, applicant organises the covert directed surveillance or use of a CHIS to take place;
- Original copy of application lodged with Governance Team.

### **8.3 Additional Requirements for Authorisation of a CHIS**

A CHIS must only be authorised if the following arrangements are in place:-

- There is a Council officer with day-to-day responsibility for dealing with the CHIS and a senior Council officer with oversight of the use made of the CHIS;
- A risk assessment has been undertaken to take account of the CHIS security and welfare;
- A Council officer is responsible for maintaining a record of the use made of the CHIS;
- Any adverse impact on community confidence or safety regarding the use of a CHIS has been considered taking account of any particular sensitivities in the local community where the CHIS is operating; and
- Records containing the identity of the CHIS will be maintained in such a way as to preserve the confidentiality or prevent disclosure of the identity of the CHIS.

### **8.4 Authorisation of Acquisition and Disclosure of Communications Data**

The rules on the granting of authorisations for the acquisition of communications data are slightly different from directed surveillance and CHIS authorisations and involve three roles within the Council. The roles are:-

- Applicant
- Designated Person
- Single Point of Contact

#### **Applicant**

This is the officer involved in conducting an investigation or operation who makes an application in writing for the acquisition of communications data. The application form must:-

- Set out the legislation under the operation or investigation is being conducted. This must be a statutory function of the Council for the prevention or detection of crime or preventing disorder;
- Describe the communications data required i.e. the telephone number, email address, the specific date or period of the data and the type of data required. If the data will or may be generated in the future, the future period is restricted to no more than one month from the date on which the authorisation is granted.
- Explain why the conduct is necessary and proportionate.

- Consider and describe any meaningful collateral intrusion. For example, where access is for “outgoing calls” from a “home telephone” collateral intrusion may be applicable to calls made by family members who are outside the scope of the investigation. The applicant therefore needs to consider what the impact is on third parties and try to minimise it.

## **Designated Person**

This is the person who considers the application. A designated person’s role is the same as an authorising officer’s role in relation to directed surveillance and CHIS authorisations. The designated person assesses the necessity for any conduct to obtain communications data taking account of any advice provided by the single point of contact (SPoC). If the designated person believes it is necessary and proportionate in the specific circumstances, an authorisation is granted or a notice is given.

### Single Point of Contract (SPoC)

The accredited SPoCs at NAFN scrutinise the applications independently, and provide advice to applicant officers and designated persons ensuring the Council acts in an informed and lawful manner.

### **The procedure for applying for acquisition of communications data:**

- Applicant obtains preliminary legal advice from Monitoring Officer;
- Applicant officer creates an application using the Cycomms Web Viewer on the NAFN website;
- SPoC Officer at NAFA triages and accepts the application into the Cyclops system;
- SPoC Officer uses Cyclops to update the application details and completes the SPoC report;
- Approval is sought from the Designated Person (DP);
- If approval given, Monitoring Officer organises paperwork for court and DP proceeds to court;
- SPoC receives signed court documents and sends requests to Communications Service Provider (CSP);
- SPoC receives results back from CSP and returns results to Applicant;
- Applicant accesses the Web Viewer and downloads results;
- Original copy of application lodged with Governance Team.

## **8.5 Urgent Authorisations**

By virtue of the fact that an authorisation under RIPA is not approved until signed off by a Magistrates Court, urgent oral authorisations are not available.

## **8.6 Application Forms**

Only the RIPA Forms listed below can be used by officers applying for RIPA authorisation.

### **(a) Directed Surveillance**

- Application for Authority for Directed Surveillance
- Review of Directed Surveillance Authority
- Cancellation of Directed Surveillance
- Renewal of Directed Surveillance Authority

### **(b) CHIS**

- Application for Authority for Conduct and Use of a CHIS
- Review of Conduct and Use of a CHIS
- Cancellation of Conduct and Use of a CHIS
- Renewal of Conduct and Use of a CHS

### **(c) Acquisition and Disclosure of Communications Data**

- Application for a Section 22(4) RIPA Notice
- Notice under Section 22(4) RIPA requiring Communications Data to be Obtained and Disclosed

## **8.7 Duration of the Authorisation**

Authorisation/notice durations are:-

- for covert directed surveillance the authorisation remains valid for three months after the date of authorisation;
- for a CHIS the authorisation remains valid for 12 months after the date of authorisation (or after one month if a juvenile CHIS is issued);
- a communications data notice remains valid for a maximum of one month.

Authorisations should not be permitted to expire, they must be either renewed or cancelled when the activity authorised has been completed or is no longer necessary or proportionate in achieving the aim for which it was originally authorised. This is a statutory requirement which means that all authorisations must be reviewed to decide whether to cancel or renew them.

## **8.8 Review of Authorisations**

As referred to at 8.2 authorising officers/designated persons must make arrangements to periodically review any authorised RIPA activity. Officers carrying out RIPA activity, or external agencies engaged by the Council to carry out RIPA activity, must periodically review it and report back to the authorising officer/designated person if there is any doubt as to whether it should continue. Reviews should be recorded on the appropriate Home Office Form (see 8.6).

A copy of the Council's notice of review of an authorisation must be sent to the Monitoring Officer as soon as possible to enable the central record on RIPA to be authorised.

## **8.9 Renewal of Authorisations**

If the authorising officer/designated person considers it necessary for an authorisation to continue they may renew it for a further period, beginning with the day when the authorisation would have expired but for the renewal. They must consider the matter again taking into account the content and value of the investigation and the information so far obtained. Renewed authorisations will normally be for a period of up to three months for covert directed surveillance, 12 months in the case of CHIS, one month in the case of juvenile CHIS and one month in the case of a communications data authorisation or notice. Authorisations may be renewed more than once, provided they are considered again and continue to meet the criteria for authorisation. Applications for the renewal of an authorisation for covert directed surveillance or CHIS authorisation must be made on the appropriate form (see 8.6). The reasoning for seeking renewal of a communications data authorisation or RIPA notice should be set out by the applicant in an addendum to the application form which granted the initial authorisation.

**All renewals will require an order of the Magistrates Court in accordance with the requirements in para 8.2 above.**

A copy of the Council's notice of renewal of an authorisation must be considered by the Monitoring Officer before it is made and all original copies lodged with the Governance Team together with a copy of the Magistrates Court order renewing the authorisation to enable the central record on RIPA to be updated.

## **8.10 Cancellation of Authorisations**

The person who granted or last renewed the authorisation must cancel it when they are satisfied that the covert directed surveillance, CHIS or communications data authorisation or notice no longer meets the criteria for authorisation. Cancellations must be made on the appropriate Home Office Form (see 8.6). In relation to a Section 22(4) notice to a CSP, the cancellation must be reported to the CSP by the designated person directly or by the SPoC on that person's behalf.

A copy of the Council's notice of cancellation of an authorisation must be sent to the Monitoring Officer within one week of the cancellation to enable the central record on RIPA to be updated.

## **8.11 What happens if the surveillance has unexpected results?**

Those carrying out the covert surveillance should inform the authorising officer if the investigation unexpectedly interferes with the privacy of individuals who are not the original subjects of the investigation or covered by the authorisation. In some cases the original authorisation may not be sufficient to cover the activity required or information likely to be gathered and in such cases, consideration should be given as to whether a separate authorisation is required.

## **9. Records and Documentation**

### **9.1 Departmental Records**



Applications, renewals, cancellations, reviews and copies of notices must be retained by the Council in written or electronic form, and physically attached or cross-referenced where they are associated with each other. These records will be confidential and should be retained for a period of at least five years from the ending of the authorisation. Where it is believed that the records could be relevant to pending or future court proceedings, they should be retained and then destroyed five years after last use.

In relation to communications data, records must be held centrally by the SPoC. These records must be available for inspection by ICCP and retained to allow the Investigatory Powers Tribunal, established under Part IV of the Act, to carry out its functions.

## **9.2 Central Record of Authorisations, Renewals, Reviews and Cancellations**

A joint central record of directed surveillance, CHIS and access to communications data authorisations is maintained by the Monitoring Officer at the District Council Offices, Mill Lane, Wingerworth for both Bolsover and North East Derbyshire District Councils.

The central record is maintained in accordance with the requirements set out in the Home Office Codes of Practice. In order to keep the central record up-to-date authorising officers/designated persons must, in addition to sending through the Home Office application, authorisation form and Magistrates Court order as soon as possible following the authorisation being approved by the Magistrates Court (see 8.2) send notification of every renewal, cancellation and review on the Council's notification forms (see 8.9 – 8.11).

Using the information on the central record the Monitoring Officer will:-

- remind authorising officers/designated persons in advance of the expiry of authorisations;
- remind authorising officers of the need to ensure surveillance does not continue beyond the authorised period;
- remind authorising officers/designated persons to regularly review current authorisations;
- on the anniversary of each authorisation, remind authorising officers/delegated persons to consider the destruction of the results of surveillance operations.

## **9.3 Surveillance products and communications data**

Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable further period, commensurate to any subsequent review.

Particular attention is drawn to the requirements of the Code of Practice issued under the Criminal Procedure and Investigations Act 1996. This requires that material which is obtained in the course of a criminal investigation and which may be relevant to the investigation must be recorded and retained.

There is nothing in RIPA which prevents material obtained from properly authorised surveillance from being used in other investigations. The Council will ensure that adequate arrangements are in place for the handling and storage of material obtained through the use of covert surveillance to facilitate its use in other investigations.

Material obtained through the use of directed surveillance, CHIS or acquisition of communications data containing personal information will be protected by the Data Protection Act 1998 (DPA) and in addition to the considerations above must be used, stored and destroyed in compliance with the appropriate requirements of the DPA and the Council's Data Protection, Information Security and Records Management Policies.

## **10. Training & Advice and Departmental Policies, Procedures and Codes of Conduct**

### **10.1 Training & Advice**

The Monitoring Officer will arrange regular training on RIPA. All authorising officers, designated persons and investigating officers should attend at least one session every two years and further sessions as and when required.

Training can be arranged on request and requests should be made to the Governance Team. In particular training should be requested for new starters within the Council who may be involved in relevant activities.

If officers have any concerns, they should seek advice from RIPA from the Monitoring Officer.

### **10.2 Departmental Policies, Procedures and Codes of Conduct**

Where in practice, departments have any policy, procedures or codes of practice in relation to RIPA that are different from or in addition to this Code, they must immediately seek advice from the Monitoring Officer.

## **11. Complaints**

Any person who believes they have been adversely affected by surveillance activity by or on behalf of the Council may complain to the authority.

They may also complain to the Investigatory Powers Tribunal at:-

Investigatory Powers Tribunal  
PO Box 33220  
London  
SW1H 9ZQ

## **12. Monitoring of Authorisations**

The Monitoring Officer, Sarah Sternberg, is the senior responsible officer in relation to RIPA and is responsible for:-

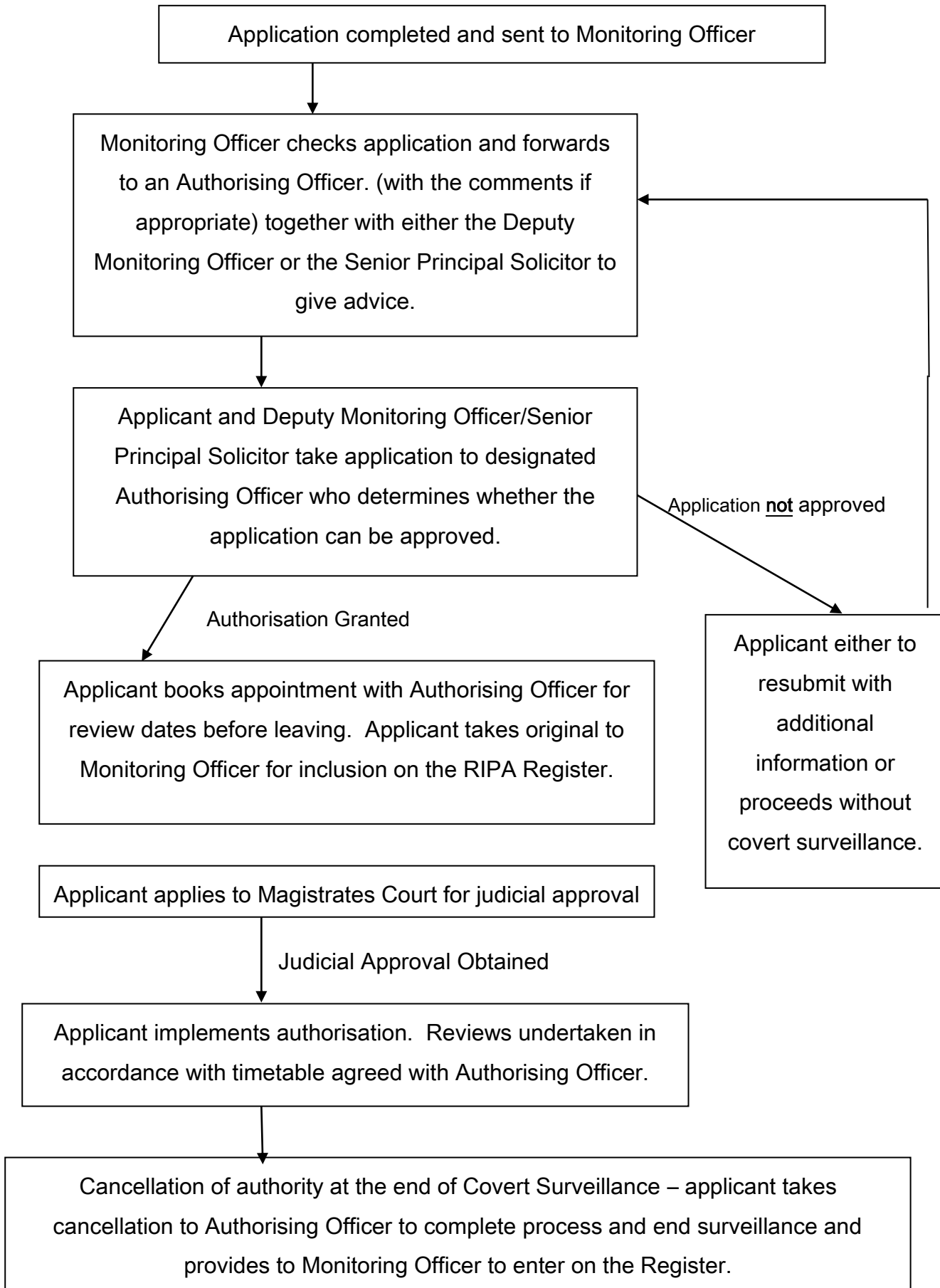
- The integrity of the process in place to authorise directed surveillance, the use of CHIS and the acquisition and disclosure of communications data;

- Compliance with Part II of RIPA and this Policy;
- Engagement with the Commissioners of the OSC and ICCO when they conduct inspections; and
- Where necessary, overseeing the implementation of any post-inspection plans recommended or approved by a Commissioner.

The Monitoring Officer is also required by law to ensure that the Council does not act unlawfully and will undertake audits of files to ensure that RIPA is being complied with and will provide feedback to the authorising officer/designated person where deficiencies in the RIPA process are noted.

The Monitoring Officer will invite the Standards Committee to review the Council's RIPA Policy on an annual basis and to recommend any changes to the Council's Policy or Procedures and will also provide members with an annual update on use.

## APPENDIX A - RIPA PROCESS



## **APPENDIX B - RIPA applications process for Derbyshire Magistrates Court- non-police applicants**

### **Urgent application (for service within next 24 hours)**

- Applicant telephones the court of application (see below for contact details) to agree the time when the application can be made.
- Admin will contact the duty Clerk or available Legal Advisor (LA) to agree a suitable time and venue. Buxton – if no Legal Advisors available the applicant will be instructed to contact Chesterfield Court.
- Having agreed a time and venue for the application to be made the applicant will email the information and application to the relevant court generic email account. The Subject of the email must read 'Urgent or Non urgent application. The section under which the application is being made and if known the date of the application'.

### **Non urgent application**

- Applicant will email the Information, application and completed pro-forma to the court of application. Note: non availability of the applicant must be recorded to ensure accurate listing.
- Admin will email the pro-forma to the Duty Clerk or available LA for consideration and guidance on listing. The Subject of the email must read 'Urgent or Non urgent application. The section under which the application is being made'.
- Legal Advisor will liaise with Listings to agree the listing of the application and complete the second part of the pro forma with the details of when, where and how long the application will take. The LA will confirm the arrangement by e-mailing the completed forma to them.
- Administration will email the applicant to confirm date, time and court room of where the application will be heard and the need to bring paper copies of the Information and application; one copy of the Information and three copies of the application. Note at no stage will admin print copies of the Information or Warrant.
- Admin will maintain the generic email box by moving the pending application to a sub file, Monday to Friday for the day of the week when the application will be heard. The subject header of the email will be amended to include the date and time of the application.
- On the date of application the Duty Clerk or available LA will check the generic mail box for any application to be heard on the day. This will become a standing agenda item for team meetings to ensure that applications are not missed.

### **Bulk Applications**

- Applicant to ring the court of application to advise how many applications are required. Thereafter the local authority will be required to submit the application as above.

### **Applications where special circumstances apply**

- Applicant telephones the court of application to advise that application is to be made.
- The administrator will identify the Legal Advisor who will take responsibility for the application(s)

- Local authority to email the information and application to the identified Legal Advisor's personal mail box.

### **Upon arrival at Court**

- The applicant/authorising officer will bring one paper copy of the information and 3 paper copies of the application to Court and pass to the Legal Advisor.
- Upon issue of the application the applicant/authorising officer will be given 3 copies of the application in readiness for execution.

### **After issue**

- Legal advisor will pass the Information to the administration for retention and notation. Documents will be filed in date of application order. The electronic copy of the email should be deleted from the generic email box.
- Following approval the applicant/authorising officer is required to cancel or renew the application within 3 months for directed surveillance and 12 months for CHIS (1 month if under 18) all other instances via internal mail addressed to Admin Team Leader. There is an expectation that the local authority will monitor the returns to the issuing court of the respective application within the prescribed time limits to comply with regulations.
- Upon approval of the application the admin team will update the spreadsheet and file the application with the information.
- In the event of the warrants not being returned to Court within the prescribed timescales, admin will write to the applicant.

### **Out of hours applications**

In relation to urgent applications which cannot be dealt with in office hours, Legal Advisers may be contacted at home. The following numbers are for this purpose only and should not be used for any other enquiries. They must not be disseminated to any other party.



### **Governance and Access to generic mail boxes**

Access to any Search warrant data or documentation must be treated as highly confidential.

Contact details of the recipient Courts

| Court                 | Generic email address  | Telephone    |
|-----------------------|--|--------------|
| Buxton & Chesterfield | <a href="mailto:DB-Chf-HPSearchWarrants@hmcts.gsi.gov.uk">DB-Chf-HPSearchWarrants@hmcts.gsi.gov.uk</a> | 01246 224040 |
| Derby                 | <a href="mailto:DB-DbySearchWarrants@hmcts.gsi.gov.uk">DB-DbySearchWarrants@hmcts.gsi.gov.uk</a>       | 01332 333047 |

The following will have access to the Search Warrant generic email boxes

| Buxton and Chesterfield   | Derby  |
|---|--|
| All Legal Advisors<br>Emma Mottram<br>Pauline Salt<br>Rachel Spencer<br>Helen Damarell<br>Alistair Cooper | All Legal Advisors<br>Jane Griffiths<br>Dawn Maguire<br>Jane Brearley<br>Sharon Lambert<br>Emma Young<br>Lynda Binch<br>Andrew Goode |

- The team Leader responsible for Listing will review the mail box on a monthly basis and report any anomalies to the Operations Manager and Deputy Clerk to the Justices without delay.
- At no stage will the admin be asked to print a copy of the Information or Warrant

Record retention (subject to modification in accordance with HMCTS Records management schedule) – currently:-

|                   |                        |
|-------------------|------------------------|
| RIPA applications | Destroy after 6 years. |
|-------------------|------------------------|