

**North East Derbyshire District Council**

**Standards Committee**

**11 March 2019**

**Review of Joint RIPA Policy**

**Report of the Joint Head of Corporate Governance and Monitoring Officer**

This report is public

**Purpose of the Report**

- To update the Committee on the use of RIPA powers in the last year.
- To advise the Committee of a review of the joint policy and procedures covering the Council's activities under the Regulation of Investigatory Powers Act 2000 (RIPA).
- To recommend a revised Joint RIPA Corporate Policy and Procedures be approved.

**1 Report Details**

- 1.1 The Regulation of Investigatory Powers Act (RIPA) 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. There are various criteria which must be met, including a 'seriousness threshold' for the use of directed surveillance, and any requests by the Council to use the RIPA powers must be approved by a Magistrate, under the current legislation.
- 1.2 Local authorities are sparing users of RIPA legislation and neither Bolsover nor North East Derbyshire District Councils have used them since the last update to Committee in July 2018. The last time RIPA powers have been used by either Council was in 2012.
- 1.3 The Council has been periodically inspected by the Office of Surveillance Commissioners. The last inspection was in 2015/2016. The Office of Surveillance Commissioners has been superseded by the Investigatory Powers Commissioner's Office (IPCO). Inspections of local authorities are scheduled for every three years so an inspection is due to take place during 2018/19, however a new method for inspections has also been introduced, making it likely that the next inspection will be a paper-based desktop review, rather than a visit by an inspector.
- 1.4 Since the last review, new Codes of Practice have been issued and some legislative changes have been made arising from the Investigatory Powers Act 2016 and the Regulation of Investigatory Powers (Juveniles) (Amendment) Order 2018.

- 1.5 Major changes to the procedure for applying for authorisation of the acquisition and disclosure of communications data were made by the Investigatory Powers Act 2016 however these changes have not yet been brought into force. A legal challenge to the legislation has been launched nationally and it is not anticipated that any changes will be brought into effect until this court case is resolved, later in 2019 or 2020. If the provisions were brought into force as they stand, the applications in respect of communications data would have to be submitted to the Investigatory Powers Commissioner rather than the Magistrates Court.
- 1.6 The legislative changes that have come into force include:
- A requirement to report errors to the Investigatory Powers Commissioner has been introduced. Relevant errors include where covert surveillance has taken place without due authorisation.
  - Amendment of the maximum duration of authorisation for the use of a covert human intelligence source who is under 18 years of old to increase the period from 1 month to 4 months
  - Introduction of a seriousness threshold for the applicable crime purpose for the acquisition and disclosure of communications data – the offence being investigated must be punishable by a maximum term of imprisonment of 12 months or more.
- 1.7 The Home Office has also issued amended guidance documents including the Code of Practice on Covert Surveillance and Property Interference and Code of Practice on Covert Human Intelligence Sources. Changes to the guidance, with more information and examples focuses on the following areas:
- Social Media and internet research
  - General Observation duties on the internet
  - Use of drones
  - Error Reporting
  - Covert Surveillance of CHIS
  - Changes to guidance to the role of Senior Responsible Officer
  - GDPR and related topics
  - Privileged information and confidential information
  - Disclosure requirements
  - Complaints
  - Non-RIPA surveillance
- 1.8 Where necessary amendments have been proposed to the Councils' RIPA policy as a consequence of the changes listed in the previous two paragraphs. The Codes of Practice are also available for officers to refer to via the Extranet. The amended policy is attached at **Appendix 1**.

### Training

- 1.9 Previous inspections have focused on the need for regular training and refreshers for officers involved in investigations as well as senior officers appointed as authorising officers and designated persons.

- 1.10 A training session has now been delivered for the Strategic Alliance Management Team, including those officers appointed as authorising officers and designated persons, and further training has been scheduled for officers in planning enforcement, licensing, environmental health and the benefits team will be scheduled over the next few months.

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

- 2.1 The review of the Joint RIPA Policy has proposed amendments to the policy to reflect changes in legislation and revised Codes of Practice that have been issued by the Home Office.

## **3 Consultation and Equality Impact**

- 3.1 An Equality Impact Assessment has been completed in 2017, which concluded that there were no concerns raised and no actions to take. No amendments have been proposed that require a further assessment to be carried out.

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

- 4.1 The Council is recommended to review and update its RIPA policy regularly as failure to do so could result in the policy failing to comply with legislative changes and lead to unlawful investigatory actions taking place.

## **5 Implications**

### **5.1 Finance and Risk Implications**

- 5.1.1 Failure of the Council to adhere to the legal requirements of RIPA could lead to unlawful investigatory activity being undertaken, making the Council vulnerable to complaints, legal challenge and reputational damage and costs. It is important therefore that the policy is regularly reviewed and that officers receive sufficient training which will mitigate the likelihood of this risk occurring.

### **5.2 Legal Implications including Data Protection**

- 5.2.1 The legal implications are addressed within the policy.

### **5.3 Human Resources Implications**

- 5.3.1 None arising from this policy.

## **6 Recommendations**

- 6.1 That Standards Committee:

- (1) note the update provided on the use of the policy.
- (2) recommend the revised Joint RIPA Policy and Procedure document for approval by Cabinet, following consideration by the Strategic Alliance Joint Committee.

## 7 Decision Information

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| <p><b>Is the decision a Key Decision?</b><br/> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:<br/> <i>BDC: Revenue - £75,000</i> <input type="checkbox"/><br/> <i>Capital - £150,000</i> <input type="checkbox"/><br/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/><br/> <i>Capital - £250,000</i> <input type="checkbox"/><br/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p> | No                            |
| <p><b>Is the decision subject to Call-In?</b><br/> (Only Key Decisions are subject to Call-In)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No                            |
| <p><b>Has the relevant Portfolio Holder been informed</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Yes                           |
| <p><b>District Wards Affected</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | None Directly                 |
| <p><b>Links to Corporate Plan priorities or Policy Framework</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Demonstrating Good Governance |

## 8 Document Information

| Appendix No                                                                                                                                                                                                                                                                                     | Title                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| Appendix 1                                                                                                                                                                                                                                                                                      | Revised Joint RIPA policy and procedures document |
| <p><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)</p> |                                                   |
|                                                                                                                                                                                                                                                                                                 |                                                   |
| Report Author                                                                                                                                                                                                                                                                                   | Contact Number                                    |
| Donna Cairns<br>Senior Governance Officer (NEDDC)                                                                                                                                                                                                                                               | 01246 217045                                      |



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

## **CORPORATE POLICY AND PROCEDURES**

**Section: Introduction**

**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                                                       | Final (2019 Review)                                                           |
| Policy author                                                                                                       | Governance Manager                                                            |
| Location of policy – i.e. L-drive, shared drive                                                                     | S Drive                                                                       |
| Member route for approval                                                                                           | Strategic Alliance Joint Committee and Standards                              |
| Cabinet Member (if applicable)                                                                                      | Cllr D McGregor (BDC) and Cllr R Smith (NEDDC)                                |
| Equality Impact Assessment approval date                                                                            | July 2017                                                                     |
| Partnership involvement (if applicable)                                                                             | N/A                                                                           |
| Final policy approval route i.e. Executive/ Council /Planning Committee                                             | Cabinet / Executive                                                           |
| Date policy approved                                                                                                | Cabinet (NEDDC) –<br>Executive (BDC) –                                        |
| 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) |                                                                               |

## Section: Introduction

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*Page numbers to be revised*



## Section: Introduction

### 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                           |

### 1.1 Introduction

1.1.1 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.

1.1.2 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.

1.1.3 **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 242414. In her absence, advice should be sought from the Governance Team on 01246 217753.**

#### **Consequences of Failing to Comply with this Policy**

1.1.4 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 may be inadmissible.

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### 1.2 Background

1.2.1 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.

1.2.2 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**

1.2.3 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

1.2.4 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.

1.2.5 A flow chart attached at Appendix A to this policy sets out the process for covert directed surveillance and cover human intelligence sources (CHIS) in pictorial form.

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

1.2.6 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;

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- require safeguards for the conduct of the use of a CHIS.

### 1.2.7 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.

1.2.8 RIPA only applies to the Council's core functions – i.e. its statutory duties, and not staffing issues or contractual disputes.

1.2.9 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.

## 1.3 Policy Statement

1.3.1 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.

1.3.2 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 2.7 (in respect of handling confidential information) and 2.9 (in respect of using information sources who are vulnerable or juvenile persons) below.

1.3.3 The following information and documents are available on the Council's Extranet:-

- Links to Home Office Statutory Codes of Practice online
- Links to Office of the Surveillance Commissioners' Guidance Procedures online
- Links to RIPA forms online for covert surveillance; CHIS and acquisition and disclosure of communications data;
- Surveillance camera training;
- Corporate RIPA Training.

## **Section: Introduction**

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

- Appointing Authorising Officers (see 2.11);
- Appointing Designated Persons (see 3.4);
- 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.

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

## **1.4 Social Media**

1.4.1 The use of the internet may be required to gather information prior to and/or during an operation, which may amount to directed surveillance. Although information that individuals make publically available on the internet would not normally be classed as 'private information', the Office of the Surveillance Commissioners' Annual Report 2016 states that repeated visits to individual sites may develop into surveillance activity which would require authorisation. By virtue of conducting research online, rather than using other more 'overt' methods, there may be a perception that the investigation is intended to be covert. 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. Particular consideration should be paid to the likelihood of collateral intrusion through obtaining private information about others who have not given their consent. Advice should be sought as early as possible.

1.4.2 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.

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

1.5.1 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.

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- 1.5.2 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.
- 1.5.3 If officers have any concerns, they should seek advice about RIPA from the Monitoring Officer.
- 1.5.4 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.

## **1.6 Complaints**

- 1.6.1 Any person who believes they have been adversely affected by surveillance activity or other investigatory activity covered by RIPA by or on behalf of the Council may complain to the authority.
- 1.6.2 They may also complain to the Investigatory Powers Tribunal at:-

Investigatory Powers Tribunal  
PO Box 33220  
London  
SW1H 9ZQ

## **1.7 Monitoring of Authorisations**

- 1.7.1 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 Investigatory Powers Act Commissioner's Office when they conduct inspections; and
  - Where necessary, overseeing the implementation of any post-inspection plans recommended or approved by a Commissioner.
- 1.7.2 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.
- 1.7.3 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.

## **1.8 Error Reporting**

- 1.8.1 The Council is required to report 'relevant errors' to the Investigatory Powers Commissioner, which includes circumstances where the requirements of the RIPA legislation or guidance have not been met. Examples include:

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- Surveillance activity has taken place without lawful authorisation
- There has been a failure to adhere to the safeguards applicable to the use of a CHIS.

1.8.2 When any officer identifies that activity that should have been authorised under RIPA may have taken place, they must notify the Monitoring Officer immediately. The officer(s) involved in the investigation will be required to provide a report on all relevant circumstances including:

- Information on the cause of the potential error
- The amount of surveillance or property interference conducted
- Nature and amount of any material obtained or disclosed
- Details of any collateral intrusion (i.e. any third party information collected in addition to that of the subject of the investigation.)
- Whether any material has been retained or destroyed

1.8.3 The Monitoring Officer will determine whether a 'relevant error' has occurred. If required, the Monitoring Officer will also give advice on steps to be taken to avoid the error recurring.

1.8.4 If the Monitoring Officers establishes that a 'relevant error' has occurred, this must be reported to the Investigatory Powers Commissioner as soon as reasonably practicable and no later than 10 days after the error has been established. If additional time is required to ascertain the full facts of the error, an initial notification must be submitted with an estimated timetable of when the full report can be supplied.

1.8.5 The report to the Investigatory Powers Commission must contain the details set out at 1.8.2 as well as details of any steps taken to prevent recurrence of the error.

1.8.6 If an authorisation has been obtained on the basis of information provided by a third party that later turns out to be incorrect, but was relied upon in good faith, this error should also be notified to the Investigatory Powers Commissioner (although it does not constitute a 'relevant error' under the legislation).

1.8.7 The Home Office Guidance sets out what action Investigatory Powers Commissioner will take following notification of relevant errors, including determining whether it is a serious error and whether the person concerned should be notified.

1.8.8 The Council has a responsibility to report to the Inspector at the commencement of an inspection all activity which should have been authorised but was not. This is to confirm that any direction provided by the Commissioner has been followed.

## RIPA PART 2

### COVERT SURVEILLANCE AND THE USE OF COVERT HUMAN INTELLIGENCE SOURCES

#### 2.1 Types of Surveillance

2.1.1 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.\*

\*More detailed guidance on the use of surveillance devices, such as cameras, microphones, vehicle tracking and drones can be found in the relevant Home Office Code of Practice.

2.1.2 Indicators of whether investigatory activity will amount to surveillance include the formality and duration of the activity and the nature of what is being observed.

#### 2.2 Overt Surveillance

2.2.1 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.

#### 2.3 Covert Surveillance

2.3.1 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 2.4 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 2.5 below explains when covert surveillance is directed.

#### 2.4 Covert Intrusive Surveillance

2.4.1 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

## Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources

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.

### 2.5 Covert Directed Surveillance

2.5.1 This is surveillance that is:-

- Covert;
- Not intrusive;
- For the purposes of a specific investigation or operation;
- Likely to obtain private information\* 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 including professional and business relationships, home and correspondence (whether at home, in a public place or in the work place). Further information and examples of what is considered private information is contained at section 3 of the Home Office Code of Practice on Covert Surveillance and Property Interference.

### 2.6 Directed Surveillance Crime Threshold

2.6.1 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. (*Article 7A of Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010*)

2.6.2 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.

2.6.3 Whether or not the crime threshold is met should be kept under review during the course of the investigation. If the relevant criminal offence is downgraded and the threshold is no longer met, the authorisation for surveillance should be cancelled.

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

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



## Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources

### 2.7 Confidential Information

2.7.1 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).

2.7.2 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.**

2.7.3 **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.

2.7.4 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.

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

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

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

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

## **Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources**

### **2.8 Covert Human Intelligence Sources (“CHIS”)**

2.8.1 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.

2.8.2 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”.

2.8.3 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 attendant and do not use covert recording devices) are not CHIS and do not require RIPA authorisation.

2.8.4 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.

### **2.9 Safety and Welfare of CHIS**

2.9.1 The safety and welfare of the CHIS is paramount. Risk assessments should be carried out to determine the risk of tasking a CHIS and the activities being undertaken by the particular person appointed. The risk assessments should be regularly reviewed during the course of the investigation.

2.9.2 A single point of contact should be appointed for the CHIS to communicate with, who will be responsible for carrying out the risk assessments and taking all possible steps to ensure their safety and welfare. A senior officer should also have oversight of the arrangements and be regularly updated by officer acting as the single point of contact. Regular face-to-face meetings should occur with the CHIS rather than solely remote contact, such as telephone or email, although remote contact may be appropriate in addition.

## Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources

### 2.10 Vulnerable Individuals/Juvenile CHIS

- 2.10.1 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.
- 2.10.2 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.**
- 2.10.3 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.

### 2.11 CCTV

- 2.11.1 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.
- 2.11.2 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.
- 2.11.3 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.
- 2.11.4 CCTV systems cannot be used without prior production of an authorisation and such authorisations must be retained.

## Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources

### 2.12 Authorisation Procedures

**Authorisations given by Authorising Officers are subject to approval by the Magistrates Court (See para 2.15 below)**

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

**2.12.2 It is the responsibility of Authorising Officers to ensure that when applying for authorisation the principles of necessity and proportionality (see 2.13 below) are adequately considered and evidenced; and that reviews and cancellations of authorisations are carried out as required under this Policy (2.20 – 2.22 below).**

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

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

Chief Executive – Dan Swaine (01246 242401/217155)

Strategic Director – Lee Hickin (01246 217218)

Strategic Director – Karen Hanson (01246 217053)

Head of Finance and Resources – Dawn Clarke (01246 217658)

2.12.5 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). For Local Authorities they prescribe a “Director, Head of Service, Service Manager or equivalent”.

2.12.6 The Monitoring Officer designates which officers can be authorising officers. Only these officers can authorise directed surveillance and the use of CHIS. **All authorisations must follow the procedures set out in the Policy.** Authorising officers 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.

### 2.13 Authorisation Of Covert Directed Surveillance And Use Of A CHIS

2.13.1 RIPA applies to all covert directed surveillance and the use of CHIS 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 (para 2.11.4) authorising officer.

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

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### 2.14 Criteria For The Authorisation Of The Use Of RIPA Powers

2.14.1 Covert directed surveillance and/or the use of a CHIS can only be authorised if the authorising officer 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 for directed surveillance only, there is a crime threshold as described in paragraph 2.6 above;
- (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.

2.14.2 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.

2.14.4 When completing an application, officers must present the case in a fair and balanced way. In particular all reasonable efforts should be made to take account of information which support or weakens the case for the authorisation.

2.14.4 Authorising officers 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.

2.14.5 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

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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, particularly when considering the proportionality of the surveillance.

2.14.6 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.

### 2.15 Processing the authorisation

2.15.1 At the time of authorisation the authorising officer must set a date for review of the authorisation and review it on that date (see 2.19), prior to authorisation lapsing as it must not be allowed to lapse

2.15.2 The original completed application and authorisation form must be forwarded to the Monitoring Officer as soon as possible. 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.

### 2.16 Approval by Magistrates Court

2.16.1 Under the Protection of Freedoms Act 2012, there is an additional stage in the process for investigatory activities (covert directed surveillance and CHIS). After the authorisation form has been countersigned by the authorising officer, the Council is required to obtain judicial approval for either the authorisation or a renewal of an authorisation.

2.16.2 The Council has a protocol for the Magistrates' approval process, including out of hours procedures, which is held by the Governance Team.

2.16.3 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.

2.16.4 *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.*

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

2.16.6 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.**

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

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

2.17.2 This section provide that the authorisation shall not take effect until the Magistrates Court has made an order approving such authorisation. 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;
- The grant of the authorisation was not in breach of any restriction imposed by virtue of an order made under the following sections of RIPA:
  - 29(7)(a) (for CHIS),
  - 30(3) (for directed surveillance and CHIS).

#### **Summary of 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 the applicant, the Authorising Officer proceeds to court, accompanied by a member of the legal team wherever possible;
- 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.

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### 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.

### 2.17 Urgent Authorisations

2.17.1 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.

### 2.18 Application Forms

2.18.1 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

### 2.19 Duration of the Authorisation

2.19.1 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 four month if a juvenile CHIS is issued);

2.19.2 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



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authorised. This is a statutory requirement which means that all authorisations must be reviewed to decide whether to cancel or renew them.

### **2.20 Review of Authorisations**

- 2.20.1 As referred to at 2.11.2 and 2.14.1 authorising officers 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 if there is any doubt as to whether it should continue. Reviews should be recorded on the appropriate Home Office Form (see 2.18).
- 2.20.2 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.

### **2.21 Renewal of Authorisations**

- 2.21.1 If the authorising officer 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, considering the same criteria as for new applications (see 2.13 above). Renewed authorisations will normally be for a period of up to three months for covert directed surveillance or 12 months in the case of CHIS, one month in the case of juvenile CHIS. 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 2.18).

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

- 2.21.3 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.

### **2.22 Cancellation of Authorisations**

- 2.22.1 The person who granted or last renewed the authorisation must cancel it when they are satisfied that the covert directed surveillance or CHIS no longer meets the criteria for authorisation. Cancellations must be made on the appropriate Home Office Form (see 2.18).
- 2.22.2 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.

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

2.23.1 Those carrying out the covert surveillance should inform 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.

### **2.24 Records and Documentation**

#### **Departmental Records**

2.24.1 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.

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

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

2.24.3 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 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 2.15) send notification of every renewal, cancellation and review on the Council's notification forms (see 2.19 – 2.22).

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

- remind authorising officers 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 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.

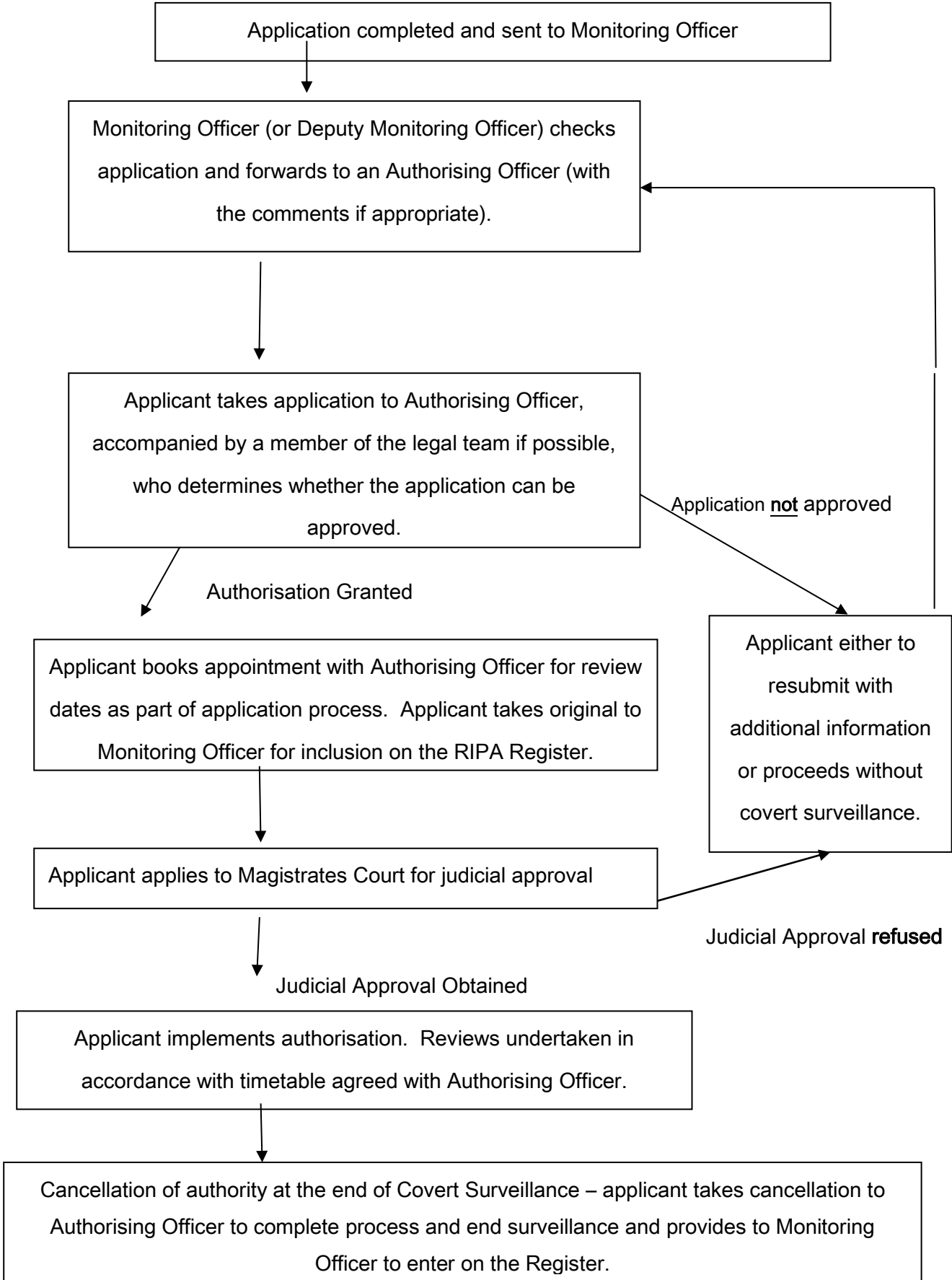
### **2.25 Surveillance products**

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- 2.25.1 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.
- 2.25.2 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.
- 2.25.3 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.
- 2.25.4 Material obtained through the use of directed surveillance or CHIS containing personal information will be protected by the Data Protection Act 2018 (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.
- 2.25.5 Dissemination, copying and retention of material must be limited to the minimum necessary for authorised purposes. See section 9 of the Home Office Code of Practice for more detail of the safeguards that must be in place. Particular protection must be given to confidential or privileged information.

**Section: Covert Surveillance And The Use Of Covert Human Intelligence Sources**

**APPENDIX A - RIPA PROCESS**



## Section: Acquisition and Disclosure of Communications Data

### RIPA PART 1 – CHAPTER 2 ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

#### 3.1 Permitted Purposes for Acquisition and Disclosure of Communications Data

- 3.1.1 Local authorities are only permitted to acquire communications data for the purposes of preventing or detecting serious crime. Other purposes are permitted for other public bodies.
- 3.1.2 A ‘serious crime’ is an offence that is punishable by a maximum term of imprisonment of 12 months or more.

#### 3.1 Communication Service Providers (“CSPs”)

- 3.1.1 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.

#### 3.2 Types of Communications Data

- 3.2.1 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

- 3.2.2 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

- 3.2.3 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

- 3.2.4 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.**

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### 3.3 Authorisation and Notices

3.3.1 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).

3.3.2 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.

3.3.3 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.

3.3.4 As a local authority the Council must fulfil two additional requirements when acquiring communications data. Firstly, in accordance with the Home Office Acquisition and Disclosure of Communications Data Code of Practice, the request must be made through a qualified Single Point of Contact (see more at [3.5](#) and [3.9](#)). Secondly, the request must receive prior judicial approval.

3.3.5 Under Sections 23A and 23B of RIPA the Council must 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.

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

### 3.4 Authorisation Procedures

**Authorisations given by Designated Persons are subject to approval by the Magistrates Court (See para 3.10 below)**

3.4.1 Designated Persons are responsible for considering applications for obtaining communications data, assessing and approving authorisations and notices.

**3.4.2 It is the responsibility of Designated Persons to ensure that when applying for authorisation the principles of necessity and proportionality (see 3.8.2 and 2.13) are adequately considered and evidenced; and that reviews and**

## Section: Acquisition and Disclosure of Communications Data

**cancellations of authorisations are carried out as required under this Policy (3.14 – 3.17 below).**

3.4.3 The list of designated persons is set out below. Any requests for amendments to the lists must be sent to the Monitoring Officer.

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

Joint Chief Executive Officer – Dan Swaine (01246 242401/217155)

Joint Strategic Director – Lee Hickin (01246 217218)

Joint Strategic Director – Karen Hanson (01246 217053)

Joint Head of Finance and Resources – Dawn Clarke(01246 217658)

3.4.5 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”.

3.4.6 The Monitoring Officer designates which officers can be designated persons. Only these officers can authorise the acquisition and disclosure of Communications data. **All authorisations must follow the procedures set out in the Policy.** 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.

### 3.5 Authorisation of Acquisition and Disclosure of Communications Data

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

3.5.2 RIPA applies to all acquisition and disclosure of communications data whether by Council employees or external agencies engaged by the Council. Authorisations or notices in relation to communications data should be referred to NAFN.

3.5.3 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

### 3.6 Applicant

3.6.1 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:-

## Section: Acquisition and Disclosure of Communications Data

- Set out the legislation under which the operation or investigation is being conducted. This must be a statutory function of the Council for the prevention or detection of serious crime;
- 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.

### 3.7 Designated Person

- 3.7.1 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.
- 3.7.2 The Designated Person must refer the criteria set out at paragraph 2.13, as the same principles of necessity and proportionality apply to the use of cover directed surveillance and CHIS.**
- 3.7.3 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.
- 3.7.4 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 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 designated person, particularly when considering the proportionality of the surveillance.
- 3.7.5 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.



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3.7.6 At the time of authorisation the designated person must set a date for review of the authorisation and review it on that date (see 3.14), prior to authorisation lapsing as it must not be allowed to lapse.

3.7.7 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.

### 3.8 Single Point of Contact (SPoC)

3.8.1 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.

3.8.2 More details on NAFN are available at [www.nafn.gov.uk](http://www.nafn.gov.uk)

### 3.10 Approval by Magistrates Court

3.10.1 Under the Protection of Freedoms Act 2012, there is an additional stage in the process for the acquisition of communications data. After the authorisation form has been countersigned by the designated person, the Council is required to obtain judicial approval for either the authorisation or a renewal of an authorisation.

3.10.2 The Council has a protocol for the Magistrates' approval process, including out of hours procedures, which is held by the Governance Team.

3.10.3 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.

3.10.4 *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.*

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

3.10.6 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 designated person and a member of the legal team.**

### 3.11 The Role of the Magistrates Court

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3.11.1 The role of the Magistrates Court is set out in Section 23A RIPA (for communications data).

3.11.2 These sections provide that the notice, shall not take effect until the Magistrates Court has made an order approving such 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;
- The local authority application has been authorised by a designated person;
- The grant of the notice was not in breach of any restriction imposed by virtue of an order made under sections 25(3) (for communications data) of RIPA:

### **Summary of 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 NAFN 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 the applicant and the DP proceeds to court, accompanied by a member of the legal team wherever possible;
- 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.

## **3.12 Urgent Authorisations**

3.12.1 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.

## **3.13 Application Forms – Acquisition and Disclosure of Communications Data**

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

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

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### **3.14 Duration of the Authorisation**

- 3.14.1 A communications data notice remains valid for a **maximum of one month**.
- 3.14.2 Notices 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 notices must be reviewed to decide whether to cancel or renew them.

### **3.15 Review of Authorisations**

- 3.15.1 As referred to at 3.8.6, 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 designated person if there is any doubt as to whether it should continue. Reviews should be recorded on the appropriate Home Office Form (see 3.13).
- 3.15.2 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.

### **3.16 Renewal of Authorisations**

- 3.16.1 If the 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 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. 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.
- 3.16.2 All renewals will require an order of the Magistrates Court in accordance with the requirements in para 3.10 above.**
- 3.16.3 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.

### **3.17 Cancellation of Authorisations**

- 3.17.1 The person who granted or last renewed the authorisation must cancel it when they are satisfied that the 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.

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3.17.2 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.

### **3.18 What happens if the acquisition of communications data has unexpected results?**

3.18.1 Those involved in the acquisition of communications data should inform the designated person 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.

### **3.19 Records and Documentation**

#### **Departmental Records**

3.19.1 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.

3.19.2 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.

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

3.19.3 A joint central record of 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.

3.19.4 See paragraph 2.24 for more information on the central records, which also applies relation to covert surveillance and CHIS.

### **3.20 Communications data related to pending of future proceedings**

3.20.1 Where the communications data acquired 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.

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- 3.20.2 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.
- 3.20.3 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 RIPA to facilitate its use in other investigations.
- 3.20.4 Material obtained through acquisition of communications data containing personal information will be protected by GDPR and the Data Protection Act (DPA) and in addition to the considerations above must be used, stored and destroyed in compliance with the appropriate requirements of the GDPR/DPA and the Council's Data Protection, Information Security and Records Management Policies.