

HASTINGS BOROUGH COUNCIL

NON-RIPA SURVEILLANCE PROCEDURE

CORPORATE POLICY AND PROCEDURE

This policy was adopted by Hastings Borough Council at it Cabinet Meeting on 3rd
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Hastings Borough Council Non Ripa Surveillance Corporate Policy and Procedure
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A. Introduction

1. This Corporate Policy and procedure document has resulted from the change in the law in respect of Directed Surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA) and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2012
2. From the 1st November 2012 Directed Surveillance under RIPA will only apply to the detection and prevention of a criminal offence that attracts a penalty of 6 months imprisonment or more. This essentially takes out surveillance of disorder (unless it has 6 months custodial sentence) and most summary offences such as littering, dog fouling, lower level benefit fraud and anti-social behaviour from regulation.
3. This change does not mean that our enforcement officers cannot undertake such surveillance but because it is not now regulated by the Office of Surveillance Commissioners we need procedures in place to ensure that we can prove that we have given due consideration to necessity and proportionality, central tenets of European Law and the likely grounds of any challenge that we may receive.

B. General information on Human Rights

4. This Corporate Policy, Procedures and the Forms provided in this policy document are operative with immediate effect. It is essential therefore, that Chief Officers and Authorising Officers in their Departments take personal responsibility for the effective and efficient operation of this document in their Departments. The forms to be completed are an amended version of RIPA forms as used by the Home Office.
5. It will be the responsibility of Authorising Officers to ensure that their relevant members of staff are suitably trained so as to afford common mistakes appearing on forms for Directed Surveillance authorisations. List of authorised officers Appendix 1
6. Authorising officers will also ensure that staff who report to them follow this Corporate Policy and Procedure document and do not undertake or carry out any form of surveillance without first obtaining the relevant authorisations in compliance with this document.
7. Authorising Officers must also pay particular attention to Health and Safety issues that may be raised by any proposed surveillance activity. Under no circumstances should an Authorising Officer approve any form unless, and until s/he is satisfied that the health and safety of Council employees/agents are suitably addressed and/or risks minimised, so far as is possible and proportionate to/with the surveillance being proposed. A risk assessment should be undertaken. If an Authorising Officer is in any doubt he should obtain prior guidance on the same from Legal Services.
8. Coming across private and confidential information during surveillance must be given prior thought before any applications are authorised, as failure to do so may invalidate the admissibility of any evidence obtained. Furthermore, thought must be given before any forms are signed to the retention and disposal of any material obtained under a surveillance authorisation. Where there is any possibility of private and confidential information being obtained through covert surveillance, the application must be authorised by an Authorised Officer.
9. The Authorising Officer must ensure proper regard is had to necessity and proportionality before any applications are authorised. Stock phrases or cut and paste narrative must be avoided at all times as the use of the same may suggest that insufficient detail and consideration had been given to the particular circumstances of any person likely to be the subject of the claim. Any equipment to be used in any approved surveillance must also be properly controlled, recorded and maintained for audit purposes.
10. The Human Rights Act requires the Council and organisations working on its behalf, pursuant to Article 8 of the European Convention to respect the private and family life of citizens, his home and his correspondence. The European Convention did not however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances the Council may interfere in the citizen's right mentioned above, if such interference is:-
 - (a) in accordance with the law;
 - (b) necessary; and

(c) proportionate

11. If the correct procedures are not followed, evidence may be disallowed by the Courts, a complaint of maladministration could be made to the Ombudsman, and/or the Council could be ordered to pay compensation. Such action would not of course promote the good reputation of the Council and will undoubtedly be the subject of adverse press and media interest. It is essential that that all involved with surveillance comply with this document and any further guidance that may be issued from time to time by Legal Services.
12. A flowchart of the procedure to be followed for Non Ripa Directed Surveillance, appears at Appendix 2.

C. Types of Surveillance

13. Surveillance includes

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

Surveillance can be overt or covert.

Overt Surveillance

14. Most of the surveillance carried out by Hastings Borough Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. In many cases, officers will be going about Council business openly.

15. Similarly, surveillance will be overt if the subject has been told it will happen (e.g. where a noise maker is warned (preferably in writing) that noise will be recorded if the noise continues, or where an entertainment licence is issued subject to conditions, and the licensee is told that officers may visit without notice of identifying themselves to the owner/proprietor to check that the conditions are being met).

Covert Surveillance

16. Covert surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. It cannot however be necessary if there is reasonably available an overt means of finding out the information desired.

Directed Surveillance

17. Directed Surveillance is surveillance which:-

- Is covert; and
- Is not intrusive surveillance (see definition below – the Council **must not** carry out any intrusive surveillance or any interference with private property)
- Is not carried out in an immediate response to events which would otherwise make seeking authorisation under the act unreasonable, e.g. spotting something suspicious and continuing to observe it; and
- It is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual (whether or not that person is specifically targeted for purposes of an investigation)

18. Private Information in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that Covert Surveillance occurs in a public place or on a business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged Surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others that he/she comes into contact, or associates with.
19. Similarly, although overt town centre CCTV cameras do not formally require authorisation, if the cameras are to be directed for a specific purpose to observe particular individuals, authorisation will be required. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others.
20. For the avoidance of doubt, only those Officers designated and certified to be Authorised Officers for the purpose of surveillance can authorise an application for Directed Surveillance **if and only if** the authorisation procedures detailed in this document are followed. If an Authorising Officer had not yet been certified for the purposes of surveillance s/he cannot carry out or approve/reject any action set out in this Corporate Policy and Procedures Document.
21. Intrusive Surveillance cannot be carried out by the Council

Tracking Devices – Tracking Rubbish

22. Tracking devices to be used in or on skips can be authorised by Authorising Officers provided that the tracking device is disguised as refuse and is not physically attached/affixed to the skip. In the event of there being a requirement that a vehicle tracking device be used and that to install such a device interfered with property not owned by the Council, authorisation will need to be obtained from the police under the Police Act 1997. In either case officers are required to contact Legal Services before authorisation is given.

Necessity and Proportionality

23. Obtaining an authorisation under the non Ripa surveillance policy and procedure will only ensure that there is a justifiable interference with an individual's Article 8 rights if it is necessary and proportionate for these activities to take place. The 2000 Act first requires that the person granting an authorisation believe that the authorisation is necessary in the circumstances of the particular case for directed surveillance. Once necessity is established then proportionality must be considered.
24. The following elements of proportionality should be considered:
 - balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
 - explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;

- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
 - evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented
25. In other words this involves the balancing the intrusiveness of the activity on the target subject and others who might be affected by it or against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances – each case will be judged on and be unique on its merits – or if the information which is sought could be reasonably be obtained by other less intrusive means. All such activity must be carefully managed to meet the objective in question and must not be arbitrary or unfair. Extra care should also be taken over any publication of the product of the surveillance.
26. It is important that when setting out the proportionality of the surveillance, that the applications include clear statements of the other reasonably possible methods of obtaining the desired information and the reasons why they have been rejected. This approach will apply, equally, to arguments for the necessity of surveillance. It is therefore crucial that the Authorising Officer give particular attention to necessity and proportionality and expresses his own view rather than those explanations given by the applicant.

Collateral Intrusion

27. Before authorising surveillance the Authorising Officer should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion). Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.
28. Those carrying out the surveillance should inform the Authorising Officer if the investigation or operation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation. When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised or a new authorisation is required.

Retention and destruction of product surveillance

29. 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 period and subject to review.
30. There is nothing which prevents material obtained from properly authorised surveillance from being used in other investigations. Authorising Officers must ensure therefore, that they follow the procedures for handling, storage and destruction of material obtained through the use of covert surveillance. Authorising Officers must also ensure compliance with the appropriate data protection requirements.

D. Authorisation Procedures

31. Directed Surveillance can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation. Appendix 2 provides a flow chart of processes from application/consideration to recording of information and the storage/retention of data obtained.

Authorising Officers

32. Forms can only be signed by Authorising Officers see Appendix 1. The Chief Legal Officer will keep this list up to-date and add, delete or substitute names on request as the service demands.
33. Authorisations are separate from delegated authority to act under the Council's scheme of delegation and internal departmental schemes of delegation. All authorisations for Directed surveillance are for specific investigations only, and must be reviewed, renewed or cancelled once the specific surveillance is complete or about to expire. The authorisations do not lapse with time.

Training Records

34. Appropriate training has been given to Authorising Officers and Enforcement personnel. The training is an ongoing programme as and when the service requires. The list of Authorised Officers is kept on the central register at Legal Services. See Appendix 1.

Application Forms

35. Only the surveillance forms set out in this document and available on the Council's website are permitted to be used. Any other forms used will be rejected by the Authorising Officer and/or Legal Services.

Forms Directed Surveillance

36. See Appendix 2:-

Non RIPA DS 1	Application for Authorisation to carry out Directed Surveillance
DS2	Review of a Directed Surveillance Authorisation
DS3	Renewal of a Directed Surveillance Authorisation
DS4	Cancellation of Directed Surveillance Authorisation

Grounds for Authorisation

37. Now that Directed Surveillance which does not meet the crime threshold under RIPA there are no statutory grounds. However, it is proposed that

surveillance forms are authorised by Hastings Borough Council only on the grounds of preventing or detecting crime or disorder.

Assessing the Application Form

38. Before an Authorising Officer signs a form, s/he must:-

(a) Follow the procedures as laid down in this . If you are in any doubt please contact Legal Services

(b) Satisfy his/herself that an authorisation is:-

(i) **In accordance with the law**

(ii) **Necessary** in the circumstances of the particular case on the grounds mentioned in paragraph (enter) above; **and**

(iii) **Proportionate** to what it seeks to achieve.

(c) In assessing whether or not the proposed surveillance is proportionate consider whether there are any other non-intrusive means to meet the required aim, if there are none, whether the proposed surveillance is no more than necessary to achieve the objective, as **the least intrusive method will be considered proportionate by the Courts.**

(d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (Collateral Intrusion). Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion as the matter may be an aspect of determining proportionality.

Completing the Application Form

39. All forms must be given a unique reference number. Legal Services will issue the unique reference number.. A date for review of the authorisation should be set. The review should take place on that date using the relevant form. A copy of every form/notice and documents in support must be sent to Legal Services for the Central Register within one week of the relevant authorisation, review, renewal, cancellation or rejection.

Duration

40. Again there is now no specified time for duration but it is proposed to keep to the times provided for under RIPA for consistency. Forms must be reviewed in the time stated, renewed and/or cancelled once it is no longer needed. The authorisation to carry out/conduct the surveillance lasts for a maximum of three months (from authorisation) for Directed Surveillance. **In other words the Forms do not expire, they have to be reviewed, renewed and/or cancelled once they are no longer required.**

41. Authorisations should be renewed before the maximum period in the authorisation has expired. The Authorising Officer must consider the matter afresh including taking into account the benefits of the surveillance to date, and any collateral intrusion that has occurred. An authorisation cannot be

renewed after it has expired. In such event a fresh authorisation will be necessary.

E. Record Management

42. A Central Register of all Authorisations, Reviews, Renewals and Cancellations and Rejections will be maintained and monitored by the Chief Legal Officer in regard to Non RIPA Directed Surveillance. Authorised Officers will be required to send the Chief Legal Officer a copy of all forms with immediate effect – within one week of authorisation.
43. The Council will retain records for a period of at least three years from the ending of the authorisation. The documents to be stored will include:-
- A copy of the Forms together with any supplementary documentation and notification of the approval given by the Authorising Officer
 - A record of the period over which the surveillance has taken place
 - The frequency of reviews prescribed by the Authorising Officer
 - A record of the result of each review of the authorisation
 - A copy of any renewal of any authorisation, together with the supporting documentation submitted when the renewal was requested
 - The date and time when any instruction was given by the Authorising Officer
 - The Unique Reference Number (URN) for the authorisation

F. Internet Searches

44. Any investigative search on the Internet must be carried out by searching on the Councils (ask Mark Bourne) Whilst this exercise falls in a non-Ripa category investigations of this type do require the application of the principles of necessity and proportionality and the recognition that collateral intrusion is likely. It may be necessary to conduct a privacy impact assessment. To assist officers in carrying out this kind of surveillance it is required that the form at Appendix 10 is completed. This form should be kept with the working papers of the investigation.

45. Officers are required to comply with the Document Retention policy when destroying data collated in this way. If officers have any questions regarding the use of the intranet and social media please contact the Chief Legal Officer.

G. Concluding Remarks of the Chief Legal Officer

46. Where there is an interference with the right to respect for private life and family guaranteed under Article 8 of the European Convention on Human Rights, and where there is no other source of lawful authority for the interference, or if it is held not to be necessary or proportionate to the circumstances, the consequences of not obtaining or following the correct authorisation procedure set out in this document, may be that the action (and the evidence obtained) will be held to be unlawful by the Courts pursuant to Section 6 of the Human Rights Act 1998. Challenges could also occur under Article 8 of the European Convention on Human Rights
 47. Obtaining an authorisation and following this document, will ensure, therefore, that the action is carried out in accordance with the law and subject to stringent safeguards against abuse of anyone's human rights.
 48. Authorising Officers will be suitably trained and they must exercise their minds every time they are asked to consider a form. They must never sign or rubber stamp form(s) without thinking about their own personal and the Council's responsibilities.
 49. Any boxes not needed on the form(s) must be clearly marked as being 'Not Applicable' N/A or a line put through the same. Great care must also be taken to ensure accurate information is used and is inserted in the correct boxes. Reasons for any refusal of an application must be kept on the form and the form retained for future audits.
1. For further advice and assistance on Non Ripa surveillance please contact the Council's Chief Legal Officer

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