

THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

CORPORATE POLICY AND PROCEDURES

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1. INTRODUCTION

1.1 Summary

The Regulation of Investigatory Powers Act 2000 ('RIPA') brought into force the regulation of covert investigation by a number of bodies, including local authorities. RIPA regulates a number of investigative procedures, the most of recent of which is the access to communications data. This document is intended to provide officers with guidance on the use of covert surveillance, including use of social networking and auction websites, Covert Human Intelligence Sources ('CHIS') and the obtaining and disclosure of communications data under RIPA.

It should be noted that these powers can only be used by officers of the council for the purpose of **preventing or detecting crime or of preventing disorder**.

Officers must take into account the Codes of Practice issued by the Home Office under RIPA. (RIPA and the Codes of Practice may be found at <http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/>)

The latest Code of Practice for Covert Surveillance also covers interference with property or with wireless telegraphy as governed by Part III of the Police Act 1997. It should be noted that Council officers are **not** permitted to undertake this type of activity.

1.2 Background

The Human Rights Act 1998 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, their home and 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 citizens' rights mentioned above, if such interference is:

- (a) in accordance with the law
- (b) necessary (as defined in this document); and
- (c) proportionate (as defined in this document)

RIPA provides a statutory mechanism for authorising certain types of surveillance. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA seeks to ensure both the public interest and the human rights of individuals are suitably balanced.

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. It is essential, therefore, that all involved with RIPA comply with this document and any further corporate guidance that may be issued, from time to time.

Each officer of the Council with responsibilities for the conduct of investigations, shall, before carrying out any investigation involving RIPA, undertake appropriate training to ensure that investigations and operations that he/she carries out will be conducted lawfully.

A **Senior Responsible Officer** will be appointed for the Council to ensure the integrity of the process within the Council and its compliance with RIPA; to have oversight of reporting of errors to the relevant oversight commissioner; responsibility for engagement with the Office of Surveillance Commissioners (OSC) when they conduct their inspections and where necessary, oversight of the implementation of any post-inspection action plan. The Senior Responsible Officer will also ensure that Members regularly review the Council's use of RIPA.

1.3 Review

RIPA and this document are important for the effective and efficient operation of the Council's actions with regard to surveillance. This document will, therefore be kept under yearly review by the Senior Responsible Officer and the outcomes of this review will be presented to the Senior Management Team.

Authorising Officers must bring any suggestions for continuous improvement of this document to the attention of the Senior Responsible Officer at the earliest possible opportunity.

1.4 Scope

RIPA covers the authorisation of directed surveillance, the authorisation of CHIS sources and the authorisation of obtaining communications data. Communications data includes information relating to the use of a postal service or telecommunications system but does not include the contents of the communication itself, contents of e-mails or interaction with websites. However, covert targeted monitoring of an individual's activities on a website such as facebook or ebay falls under the definition of directed surveillance.

An authorisation under RIPA will provide lawful authority for the investigating officer to carry out surveillance.

In terms of monitoring e-mails and internet usage, it is important to recognise the interplay and overlaps with the Council's e-mail and internet policies and guidance, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and the Data Protection Act 1998. RIPA forms should be used where **relevant** and they will only be relevant where the **criteria** listed on the forms are fully met.

2. GENERAL

2.1 Definition of Surveillance

'Surveillance' includes:

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication;
- (b) recording anything monitored, observed or listened to in the course of surveillance; and
- (c) surveillance by or with the assistance of a surveillance device.

Surveillance also includes the interception of postal and telephone communications where the sender or recipient consents to the reading of or listening to or recording of the communication. This is a form of directed surveillance.

2.2 Confidential Material

Particular care should be taken in cases where the subject of the investigation or operation might reasonably expect a high degree of privacy, or where confidential information is involved. Confidential information consists of matters subject to legal privilege, confidential personal information, confidential journalistic material and communications between an MP and a constituent.

Applications in which the surveillance is likely to result in the acquisition of confidential material will only be considered in exceptional and compelling circumstances with full regard to the proportionality issues this raises.

The Authorising Officer shall give the fullest consideration to any cases where the subject of the surveillance might reasonably expect a high degree of privacy, for instance in his or her home.

Where a likely consequence of surveillance would result in the acquisition of confidential material, the investigating officer must seek authority from the Chief Executive, or, in her absence, another statutory officer.

The use or conduct of a covert human intelligence source to obtain matters subject to legal privilege must be subject to prior **approval by the Surveillance Commissioner**.

3. DIRECTED AND INTRUSIVE SURVEILLANCE

3.1 Directed Surveillance

Directed surveillance is surveillance which is covert, but not intrusive, and undertaken:

- (a) for the purposes of a specific investigation or specific operation;
- (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under RIPA to be sought for the carrying out of the surveillance.

3.2 Intrusive Surveillance

That surveillance becomes intrusive if the surveillance:

- (a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle; or
- (b) is carried out without that device being present on the premises or in the vehicle, but is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle, or
- (c) is carried out in places ordinarily used for legal consultation, at a time when they are being used for such consultations

Therefore directed surveillance turns into intrusive surveillance if it is carried out involving anything that occurs on residential premises or any private vehicle and involves the presence of someone on the premises or in the vehicle or is carried out by means of a surveillance device OR when directed surveillance is carried out in places ordinarily used for legal consultation, at a time when they are being used for such consultations.

For intrusive surveillance relating to residential premises or private vehicles, if any device used is not on the premises or in the vehicle, it is only intrusive surveillance if it consistently produces information of the same quality as if it were.

Where surveillance is carried out by a device designed or adapted principally for the purpose of providing information about the location of a vehicle, the activity is directed surveillance.

Commercial premises and vehicles are therefore excluded from intrusive surveillance.

Currently, local authorities are not authorised to carry out intrusive surveillance.

4. IDENTIFYING DIRECTED SURVEILLANCE

Ask yourself the following questions, or follow the flowchart attached as [Appendix 2](#):

4.1 Is the surveillance covert?

Covert surveillance is any surveillance that is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.

If your activities are not hidden from the subjects of your investigation, you are not within the RIPA framework at all. In many cases, Officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about Council business openly (e.g. a market inspector walking through markets or visiting another residents home or business).

Similarly, surveillance will be overt if the subject has been told it will happen (e.g. where a noisemaker 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 or identifying themselves to the owner/proprietor to check that conditions are being met.

It should be noted that if the same outcome can be achieved by overt means then those means need to be fully explored in the first instance. Covert surveillance must only be undertaken when there is no less invasive way of achieving the outcome.

4.2 Is the surveillance for the purposes of a specific investigation or a specific operation?

Although, the provisions of the Act do not normally cover the use of overt CCTV surveillance systems or Automated Number Plate Recognition (ANPR) in car parks, since members of the public are aware that such systems are in use, there may be occasions when public authorities use overt CCTV systems and/or ANPR for the purposes of a specific investigation or operation. For example, if the CCTV cameras

are targeting a particular known offender. In such cases, authorisation for directed surveillance may be necessary.

4.3 Is the surveillance in such a manner that is likely to result in the obtaining of private information about a person?

Private information includes any information relating to a person's private or family life. The concept of private information should be broadly interpreted to include an individual's private or personal relationship with others. It includes an individual's business and family relationships. Family life itself should be treated as extending beyond the formal relationships created by marriage.

4.4 Is the surveillance otherwise than by way of an immediate response to events or circumstances where it is not reasonably practicable to get authorisation?

Directed surveillance does not include covert surveillance carried out by way of an immediate response to events or circumstances which, by their very nature, could not have been foreseen. For example, a police officer would not require an authorisation to conceal himself and observe a suspicious person that he came across in the course of a patrol.

However, if as a result of that immediate response, you undertake a specific investigation you will need authorisation.

5. INTERNET SITE MONITORING

Investigations using social networking sites on the internet such as Facebook, Netlog, Bebo and Myspace, or other open source sites such as Ebay, will fall into the definition of directed covert surveillance if:

- (a) The site is not being accessed by the Councils "corporate" registration but by using an individual account aimed at hiding the identity or presence of the investigator.
- (b) The site is being used to regularly monitor and record a person's activities, contents of postings or relationships.
- (c) The monitoring is likely to identify private information about the person and/or third parties.

If this is the case then a directed surveillance RIPA authorisation must be obtained which assesses the level of intrusion on the subject and the third parties they are interacting with, balanced against the seriousness of the investigation and potential benefit to the investigation of the activity being conducted.

If the nature of the activity involves establishing or maintaining any form of relationship with the subject, their colleagues or friends with a view to obtaining information, then this activity by a Council employee or someone acting on their behalf, requires authorisation to use a covert human intelligence source.

Use of a false identity for covert purposes is permissible if a RIPA authorisation is given. However, Council employees or someone acting on their behalf must not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without a) RIPA authorisation, b) the explicit consent of the person whose identity is to be used and c) giving consideration to the protection of the person whose identity is to be used. Again, use of overt access – telling

someone that the Council is intending to access their social media site – is to be preferred over covert surveillance. It would be expected that in most cases a general approval to access social media sites will be sought from groups where this activity is considered likely (for example benefit claim forms will refer to this practice).

6. COVERT HUMAN INTELLIGENCE SOURCES (CHIS)

6.1 Definition

A person is a source if:

- (a) they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- (b) they covertly use such a relationship to obtain information or to provide access to any information to another person; or
- (c) they covertly disclose information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

A source may include those referred to as agents, informants and officers working undercover.

A purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

A relationship is used covertly, and information obtained is disclosed covertly, if and only if it is used or disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

The use of a source involves inducing, asking or assisting a person to engage in the conduct of a source, or to obtain information by means of the conduct of such a source.

This covers the use of professional witnesses to obtain information and evidence. For example, it will include professional witnesses retained by Housing to pose as tenants to obtain information and evidence against alleged nuisance perpetrators.

The use or conduct of a source to obtain knowledge of matters subject to legal privilege must be subject to the **prior approval of the Surveillance Commissioner**.

Carrying out test purchases will not require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter). By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require authorisation as directed surveillance.

The Code of Practice states that the provisions of RIPA are not intended to apply in circumstances where members of the public volunteer information to the police or other authorities, as part of their normal civic duties, or to contact numbers set up to receive information (such as Crimestoppers, Customs Confidential, the Anti Terrorist

Hotline, or the Security Service Public Telephone Number). Members of the public acting in this way would not generally be regarded as sources.

However, a member of the public may in reality be a CHIS if they provide information covertly obtained in the course of, or as a result of, a personal or other relationship. If this information is acted on, a duty of care would be owed if they were at risk of reprisals. The consideration is the manner in which the information has been obtained (i.e. as a result of a relationship established or maintained for a covert purpose), not whether the informant has been tasked to obtain information for the Council.

An authorisation under RIPA will provide lawful authority for the use of a source.

6.2 Security and Welfare

Only the Chief Executive Officer or, in her absence, another Statutory Officer is able to authorise the use of vulnerable individuals and juvenile sources.

The Authorising Officer shall have regard to the special safeguards and provisions that apply to vulnerable individuals and juvenile sources, more particularly set out in the latest Home Office Covert Human Intelligence Source Code of Practice.

The Authorising Officer shall ensure that arrangements are in place for the proper oversight and management of sources, including appointing the following individual officers for each source:

A "**Handler**" who will have day-to-day responsibility for:

- dealing with the CHIS on behalf of the Council;
- directing the day to day activities of the CHIS;
- recording the information supplied by the CHIS; and
- monitoring the CHIS's security and welfare.

The Handler will usually be of a rank or position below that of the Authorising Officer.

A "**Controller**" who will be responsible for the management and supervision of the "handler" and general oversight of the use of the CHIS.

Officers using a source shall consider the safety and welfare of that source (even after cancellation of the authorisation), and the foreseeable consequences to others of the tasks they are asked to carry out. The Authorising Officer shall carry out a risk assessment before authorising the source.

7. COMMUNICATIONS DATA

7.1 Definition

This covers any conduct in relation to a postal service or telecommunications system for obtaining communications data and the disclosure to any person of such data. For these purposes, communications data includes information relating to the use of a postal service or telecommunications system but does not include the contents of the communication itself, content of emails or interaction with websites.

Communications data includes subscribers details, names and addresses and telephone numbers of those contacted, billing addresses, account information, web addresses visited etc. Two types of data (Customer Data or Service Data) are available to local authorities and, when making an application for obtaining or disclosing such data, the applicant must specify exactly which type of information is required from within each of the subscriber data and service use data sources.

(a) Part C - Customer data – (Subscriber data, RIPA s21(4)(c))

Customer data is the most basic. It is data about users of communication services.

This data includes:

- Name of subscriber
- Addresses for billing, delivery, installation
- Contact telephone number(s)
- Abstract personal records provided by the subscriber (e.g. demographic information)
- Subscribers' account information – bill payment arrangements, including bank, credit/debit card details
- Other services the customer subscribes to.

(b) Part B - Service data – (Service Use data, RIPA s21(4)(b))

This relates to the use of the service provider's services by the customer, and includes:

- The periods during which the customer used the service(s)
- Information about the provision and use of forwarding and re-direction services by postal and telecommunications service providers
- 'Activity', including itemised records of telephone calls (numbers called), internet connections, dates and times/duration of calls, text messages sent
- Information about the connection, disconnection and reconnection of services
- Information about the provision of conference calling, call messaging, call waiting and call barring telecommunications services
- Records of postal items, such as records of registered, recorded or special delivery postal items, records of parcel consignment, delivery and collection
- 'Top-up' details for prepay mobile phones – credit/debit card, voucher/e-top up details

A third type of data (part A - traffic data) defined in RIPA s21 (6) is not accessible to local authorities. This is data that is or has been comprised in or attached to a communication for the purpose of transmitting the communication.

8. AUTHORISATION PROCEDURE

8.1 General

Authorisation is required for the use of directed surveillance, for the conduct and use of sources and for the conduct in relation to a postal service or telecommunication system and the disclosure to any person of such data, hereto referred to as the “RIPA powers”.

Any officer who undertakes investigations (applicant) on behalf of the Council shall seek provisional authorisation in writing from an Authorising Officer in relation to any directed surveillance or for the conduct and use of any CHIS.

The Council’s list of current officers who would undertake investigations and as such would be considered the case investigating officers are listed in [Appendix 1](#). It would be these officers who would attend the magistrate’s court for the purpose of presenting RIPA cases to Justices of the Peace (JP) as it will be these officers who are best placed to answer any questions or clarify any points the JPs have on the application. However, the Authorising Officer’s considerations should always be clearly and fully recorded on the application form, and in usual and complex cases consideration should be given to the Authorising Officer attending the court as well.

Each provisional authorisation then needs to receive judicial approval before being acted upon.

Any officer wishing to engage in conduct in relation to a postal service and telecommunication system for obtaining communications data and the disclosure to any person of such data must also seek authorisation, the procedure and procedure of which differs slightly and is outlined in paragraph 8.6.

Authorising Officers will ensure that staff who report to them follow this guidance document and do not undertake or carry out any form of surveillance without first obtaining the relevant authorisations in compliance with this document.

The authorising officer should also ensure that they clearly set out what activity and equipment has been authorised in order that those conducting the surveillance are clear on what has been sanctioned (as per the R v Sutherland ruling).

8.2 Who can give Provisional Authorisations?

By law, the ‘Authorising Officer’ for local authority purposes is required to be a senior officer – at Chichester District Council these are given individual, express authority (see below). An Authorising Officer may grant a provisional authorisation but it does not take effect until it receives judicial approval (See paragraph 8.5). Please note that certain provisional authorisations, namely those relating to confidential information, vulnerable individuals and juvenile sources, can only be granted by the Chief Executive Officer, or, in her genuine absence, another statutory officer.

The Council’s Authorising Officer posts are listed in [Appendix 1](#). This appendix will be kept up to date by the Senior Responsible Officer as needs require. The Senior Responsible Officer has the delegated authority to add, delete or substitute posts.

It will be the responsibility of Authorising Officers who have been duly certified to ensure their relevant members of staff are also suitably trained as ‘applicants’ so as to avoid common mistakes appearing on forms for RIPA authorisations.

Training will be given, or approved by the Senior Responsible Officer, before Authorising Officers are certified to sign any RIPA forms. The Human Resources

department shall monitor training and keep a record to ensure that skills of authorising officers is maintained at the required level.

8.3 Grounds for Authorisation – the ‘necessary & proportionate’ test

An Authorising Officer has a number of obligations within the provisions of the Act, which must be met before using any of the RIPA powers.

An Authorising Officer shall not grant a provisional authorisation for the use of the RIPA powers unless he believes:

- (a) that a provisional authorisation is necessary and
- (b) the provisionally authorised investigation is proportionate to what is sought to be achieved by carrying it out

For local authority investigations, provisional authorisation for surveillance and CHIS is deemed “**necessary**” in the circumstances of the particular case if it is for the purpose of the **prevention or detection of crime(s) punishable by 6 months imprisonment or more**, or relates to the sale of alcohol or tobacco to underage persons, and if that objective could not be achieved without the information sought.

Conduct is not deemed “**proportionate**” if the pursuance of the legitimate aim listed above will not justify the interference if the means used to achieve the aim are excessive in the circumstances. Any conduct must meet the objective in question and must not be arbitrary or unfair nor must the impact on any individuals or group be too severe.

The conduct must also be the least invasive method of achieving the end and the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation must be assessed and taken into account (see Collateral Intrusion below).

Consideration must be given to the seriousness of the offence under consideration and whether it could be punishable on summary conviction or on indictment, by a maximum term of at least six months imprisonment (surveillance and CHIS authorisations).

Careful consideration needs to be made by authorising officers of all of these points using the list below:

- (a) is the size and scope of the operation balanced by the gravity and extent of the perceived crime or offence?
- (b) is it clear how and why the methods to be adopted will cause the least possible intrusion on the subject and others?
- (c) is the activity an appropriate use of the legislation and the only reasonable way, having considered all alternatives, of obtaining the necessary result?
- (d) has evidence been provided of other methods considered and why they were not implemented?

Such consideration needs to be demonstrated on the authorisation form in the relevant parts. Authorising Officers must exercise their minds every time they are asked to sign a form. They must never sign or rubber stamp the form without thinking about their personal and the Council’s responsibilities. Any boxes not needed on the form/s must be clearly marked as being ‘not applicable’ or a line put through the same. Great care must also be taken to ensure accurate information is used and

inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and retained for future audits.

So far as possible, Authorising Officers should not be responsible for authorising investigations or operations in which they are directly involved.

8.4 Collateral Intrusion

Before provisionally authorising investigative procedures, the Authorising Officer shall 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). The investigating officer shall take measures, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.

An application for a provisional authorisation shall include an assessment of the risk of any collateral intrusion. The Authorising Officer shall take this into account, when considering the proportionality of the use of the RIPA powers.

Where an operation unexpectedly interferes with the privacy of individuals who were not the subject of the investigation or covered by the authorisation in some other way, the investigating officer should inform the Authorising Officer.

8.5 Judicial Approval of Provisional Authorisations and Renewals

The judicial approval mechanism is in addition to the existing authorisation process under the relevant parts of RIPA as outlined in the Codes of Practice. The current local authority process of assessing necessity and proportionality, completing the RIPA authorisation / application form and seeking approval from an authorising officer will remain the same.

The Council is only able to grant a “provisional” authorisation or renewal to make use of any of the RIPA powers. All provisional authorisations and renewals must be approved by the Magistrates Court before the use of the RIPA power in the investigation commences.

The Council must apply to the local Magistrates Court for judicial approval of an authorisation or a renewal of an authorisation. The Council does not need to give notice of the application to the person(s) subject to the application or their legal representatives. If the Magistrates Court refuse to approve the application, they may also make an order quashing the provisional authorisation.

An additional procedure note on ‘**How to apply to the Magistrate’s Court for RIPA Approval**’ has been produced which lays out the local arrangements in place and format of the court application. All applications to the Magistrate’s Court will need to be made through the legal department.

The local authority will provide the JP with a copy of the original RIPA provisional authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the JP and **should contain all the information that is relied upon**.

The local authority will provide the JP with a partially completed judicial application form containing a brief summary of the circumstances of the case. This is

supplementary to and does not replace the need to supply the provisionally authorised RIPA authorisation or renewal as well.

The Magistrates will consider the provisionally authorised application or renewal, and will need to satisfy themselves that:

- a) At the time of provisional authorisation, there were reasonable grounds for believing that the tests of necessity and proportionality were satisfied in relation to the authorisation, and that those grounds still exist;
- b) That the person who granted provisional authorisation was an appropriately designated person;
- c) The provisional grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under RIPA; and
- d) Any other conditions provided for by an order made by the Secretary of State were satisfied.

The applicant in liaison with legal services is responsible for tabling the application IN WRITING for judicial approval in the Magistrates Court before the use of the RIPA powers commence. The order section of the application form will be completed by the JP and will be the official record of the JP's decision. The local authority will need to obtain judicial approval for all initial RIPA authorisations / applications and renewals and the local authority will need to retain a copy of the judicial application order form after it has been signed by the JP. There is no need for the JP to consider either cancellations or internal reviews.

The hearing is a 'legal proceeding' and therefore the local authority officers need to be formally designated to appear and present evidence or provide information as required by the JP. A solicitor or barrister appointed by the Legal Practice Manager will fulfil this role.

8.6 Special Procedure for Communications Data

The Data Retention and Investigatory Powers Act 2014 (DRIPA) removes the authority of accredited Council Officers to directly approach telecommunication service providers to obtain data under RIPA.

Applications for the obtaining and disclosure of communications data can now only be made through the National Anti-Fraud Network (NAFN) via their secure website (www.nafn.gov.uk). Reference should be made to the process map at [Appendix 3](#) for guidance as to the process to be followed.

It is the responsibility of Chichester District Council to obtain both provisional authorisation and judicial approval of an application before NAFN are requested to obtain the required communications data. However, NAFN will carry out the Single Point of Contact "SPoC" role which includes:

- (a) where appropriate, assessing whether access to the communications data is reasonably practical for the postal or telecommunications operator;
- (b) advising applicants and authorising officers on the practicalities of accessing different types of communications data from different postal or telecommunications operators;
- (c) providing safeguards for authentication;

- (d) assessing the cost and resource implications to both the authorisation and postal or telecommunications operator.

Applications to obtain communications data should be made on the interim form at [Appendix 4](#) and submitted in the first instance to the Authorising Officer for feedback. This summary should be used as a record for the Central Monitoring records.

The formal application should then be entered on the NAFN website where it will be provisionally reviewed by a NAFN SPOC before forwarding to an Authorising Officer set up on within the website. If satisfied that the proposed investigation is both necessary and proportionate, the Authorising Officer will complete the relevant parts of the application form. The relevant documents will then be retrieved from the NAFN application for presentation for judicial approval. If accepted the NAFN application will be updated with the approval information and the SPoC who will then liaise with the postal / telecommunications company. Any communications data obtained will be provided through the NAFN website.

Communications data, and all copies, extracts and summaries of it must be handled and stored securely. The requirements of the Data Protection Act 1998 and the principles of the Criminal Procedure and Investigations Act 1996 must be strictly followed.

8.7 Urgency

Urgent authorisation authorisations are no longer available in relation to the use of the RIPA powers. Advice on obtaining early Court hearings, or out of hours court hearings, can be given by the Legal department.

8.8 Standard Forms

All authorisations must be in writing.

The local authority will provide the JP with a partially completed judicial application form that will also contain a brief summary of the circumstances of the case. This is supplementary to and does not replace the need to supply the provisionally authorised RIPA authorisation or renewal as well.

Standard forms for seeking use of the RIPA powers are provided at [Appendix 4](#). The authorisation shall be sought using the standard forms as amended from time to time.

9. ACTIVITIES BY OTHER PUBLIC AUTHORITIES

The investigating officer shall make enquiries of other public authorities e.g. the police whether they are carrying out similar activities if he considers that there is such a possibility in order to ensure that there is no conflict between the activities of this Council and those other public authorities.

10. JOINT INVESTIGATIONS

When some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this document and the forms in it must be used (as per normal procedure) and the agency advised or kept informed, as necessary, of the

various requirements. They must be made aware explicitly what they are authorised to do.

When some other agency (e.g. police, Customs & Excise, Inland Revenue etc):

- (a) wish to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures and, before any officer agrees to allow the Council's resources to be used for the other agency's purposes, he must obtain the details and purpose of the surveillance and evidence of the RIPA authorisation and any required judicial approval for the purposes of protecting the Council and the use of its resources.
- (b) wish to use the Council's premises for their own RIPA action, the officer should, normally, co-operate with the same, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. In such cases, the Council's own RIPA forms should not be used as the Council is only assisting and not being involved in the RIPA activity of the external agency.

In terms of (a), if the police or other agency wish to use the Council's resources for general surveillance, as opposed to specific RIPA authorisations, an appropriate letter requesting the proposed use, remit, duration, details of who will be undertaking the general surveillance and the purpose of it must be obtained from the police or other agency before any Council resources are made available for the proposed use.

11. DURATION, RENEWALS AND CANCELLATION OF AUTHORISATIONS

11.1 Duration

Authorisations must be reviewed in the time stated and cancelled once no longer needed. Authorisations last for:

- (a) 12 months from the date of the judicial approval for the conduct or use of a source
- (b) three months less a day from the date of the last judicial approval for directed surveillance
- (c) one month from the date of judicial approval for communications data, or earlier if cancelled under Section 23(8) of the Act.

However, whether the surveillance is carried out/conducted or not in the relevant period, does not mean that the authorisation is spent. Authorisations should not be allowed to expire; they should be reviewed, or cancelled if no longer required.

11.2 Reviews

The Authorising Officer shall undertake regular reviews of authorisations to assess the need for the surveillance to continue. At a minimum these should be carried out monthly from the start date. The results of a review should be recorded on the central record of authorisations. Where the surveillance provides access to confidential information or involves collateral intrusion the officer should conduct frequent reviews.

Standard review forms for directed surveillance and CHIS are attached at [Appendix 4](#).

11.3 Renewals

Authorisations may be renewed more than once, if necessary, and the renewal should be kept/recorded as part of the central record of authorisations

Authorisations can be renewed in writing shortly before the maximum period has expired. An authorisation cannot be renewed after it 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. The renewal will begin on the day when the authorisation would have expired provided the necessary judicial approval has been obtained.

A further requirement in relation to renewal of covert human intelligence sources, is that judicial approval will only be granted if the Magistrates are satisfied that a review has been carried out, which considers:

- the use made of the source in the period since authorisation was granted (or the last renewal); and
- the tasks given to the source during that period, and the information obtained from the conduct or use of the source;

and for the purposes of making an Order, the Magistrates have considered the results of that review.

The Authorising Officer who granted or last renewed the authorisation must cancel it if he is satisfied that the investigative procedure no longer meets the criteria upon which it was authorised.

Standard renewal forms for the authorisation of directed surveillance and CHIS are attached at [Appendix 4](#).

11.4 Cancellations

An Authorising Officer shall cancel a notice or authorisation as soon as it is no longer necessary, or the conduct is no longer proportionate to what is sought to be achieved. The duty to cancel a notice falls on the authorising officer who issued it.

In the case of a notice issued in respect of communications data, the relevant postal or telecommunications operator will be informed of the cancellation.

Standard cancellation forms for communications data, directed surveillance and CHIS are attached at [Appendix 4](#).

When completing the cancellation form care should be taken to record when the activity ceased, what value the surveillance had been to the investigation and what evidence “products” had been obtained.

12. RECORDS

The Council must keep a detailed record of all provisional and judicially approved authorisations, reviews, renewals, cancellations and rejections in departments and a

Central Register of all such forms will be maintained and contain the following information:

- (a) a central register reference number for each authorisation
- (b) a unique reference number for the authorisation (URN) - this is usually the investigation or operation case reference
- (c) the type of authorisation or notice
- (d) the date the provisional authorisation or notice was given;
- (e) name and rank/grade of the authorising officer;
- (f) whether the investigation or operation is likely to result in obtaining confidential information;
- (g) whether the provisional authorisation was granted by an individual directly involved in the investigation;
- (h) the date that judicial approval was received or refused;
- (i) if the authorisation or notice is renewed, when it was provisionally renewed and who authorised the renewal, including the name and rank/grade of the authorising officer, and the date that judicial approval was obtained;
- (j) the date the authorisation or notice was cancelled;
- (k) the outcomes of the use of the powers.

The title of the investigation or operation, including a brief description and names of subjects will only be recorded on the central register by way of a hyperlink to the application form. The content of the hyperlink is restricted and can only be accessed by those with the appropriate authority.

The record will be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners (OSC) or Communications Commissioner's Office (IOCCO).

These records will be retained for a period of at least three years from the ending of the authorisation. A record will be kept of the dates on which the authorisation notice is started and cancelled.

12.1 Maintaining the Central Record of all Authorisations

The Legal Practice Manager, on behalf of the Senior Responsible Officer shall hold and monitor the centrally retrievable record of all provisional and judicially approved authorisations. This will be held in the legal secure filing system.

Applicants and Authorising Officers are responsible for filling out the Central register for each application whether approved or not within 1 week of the judicial approval review, cancellation or rejection. They should also ensure that a copy of all applications, magistrates approvals, reviews, renewals and cancellation forms are passed to the Legal Practice Manager to be placed into the Central Register.

Once an authorisation has been cancelled the applicant or authorising officer must update the Central Register for the outcome of the use of the RIPA powers in relation to their investigation.

12.2 Records maintained in the Department

The Authorising Officer shall maintain the following documentation, which need not form part of the centrally retrievable record:

- (a) the original signed application and a copy of the provisional authorisation or notice if applicable together with a copy of any order of judicial approval or

- refusal, as well as any supplementary documentation and notification given by the Authorising Officer;
- (b) a record of the period over which the surveillance has taken place;
 - (c) the frequency of reviews prescribed by the Authorising Officer;
 - (d) an original signed record of the result of each review of the authorisation or notice;
 - (e) the original signed renewal of an authorisation or notice, together with the supporting documentation submitted when the renewal was requested;
 - (f) the date and time when any instruction was given by the Authorising Officer.

Each form must have a URN and a Central Register number. The cross-referencing of each URN takes place within the form for audit purposes. Rejected forms will also have URNs.

12.3 Other Record of Covert Human Intelligence Sources

Proper records must be kept of the authorisation and use of a source. An Authorising Officer must not grant a provisional authorisation for the use or conduct of a source unless he believes that there are arrangements in place for ensuring that there is at all times a person with the responsibility for maintaining a record of the use made of the source.

The records shall contain the following information:

- (a) the identity of the source;
- (b) the identity, where known, used by the source;
- (c) any relevant investigating authority other than the Council;
- (d) the means by which the source is referred to within each relevant investigating authority;
- (e) any other significant information connected with the security and welfare of the source;
- (f) any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source;
- (g) the date when, and the circumstances in which, the source was recruited;
- (h) the identities of the persons who, in relation to the source;
 - i. hold day-to-day responsibility for dealing with the source and for the source's security and welfare
 - ii. have a general oversight of the use made of the source (not to be the person identified in (h) (i))
 - iii. have responsibility for maintaining a record of the use made of the source
- (i) the periods during which those persons have discharged those responsibilities;
- (j) the tasks given to the source and the demands made of him in relation to his activities as a source;
- (k) all contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
- (l) the information obtained by the conduct or use of the source;
- (m) any dissemination of information obtained in that way; and

- (n) in the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.

12.4 Checks on the Integrity of the Process

The Legal Practice Manager will carry out a regular review of forms that are open for a long time or need a cancellation form completing, and will identify any links from forms to the Central Register that are missing.

The Senior Responsible Officer will carry out a periodic sample check of the quality of RIPA authorisations, renewals and cancellations that feed into the report prepared for the Audit and Governance Committee. The results of this review will be recorded on the Central Register and will be used to identify any guidance or individual or corporate training needed.

The Audit and Governance Committee will consider internal reports on the use of the 2000 Act to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose.

13. RETENTION AND DESTRUCTION

Material obtained from properly authorised surveillance or a source may be used in other investigations. Arrangements shall be in place for the handling, storage and destruction of material obtained through the use of covert surveillance, a source or the obtaining or disclosure of communications data. Authorising Officers must ensure compliance with the appropriate data protection requirements and any relevant Corporate Procedures relating to the handling and storage of material.

Where the product of surveillance could be relevant to pending or future proceedings, it should be retained in accordance with established disclosure requirements for a suitable period and subject to review.

14. CONSEQUENCES OF IGNORING RIPA

RIPA states that if authorisation confers entitlement to engage in a certain conduct and the conduct is in accordance with the authorisation, then **it shall be lawful for all purposes.**

Where there is interference with the right to respect for private and family life guaranteed under Article 8 of the European Convention on Human Rights, and where there is no other source of lawful authority, the consequence of not obtaining an authorisation under RIPA may be that the action is unlawful by virtue of section 6 of the Human Rights Act 1998.

Officers shall seek an authorisation where the directed surveillance, the use of a source or the obtaining or disclosure of communications data is likely to interfere with a person's Article 8 rights to privacy by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. Obtaining an authorisation will ensure that the action is carried out in accordance with law and subject to stringent safeguards against abuse.

15. SCRUTINY OF INVESTIGATORY BODIES

The Office of Surveillance Commissioners (OSC) and Interception of Communications Commissioner's Office (IOCCO) have been established under RIPA to facilitate independent scrutiny of the use of RIPA powers by the investigatory bodies that are subject to it. The Commissioners will inspect Councils to ensure compliance with RIPA and can audit/review the Council's policies and procedures, and individual authorisations. Further detail can be found at www.surveillancecommissioners.gov.uk.

The Investigatory Powers Tribunal has been established under RIPA to deal with complaints from members of the public about the use or conduct by public authorities of these powers. The Tribunal is separate from the OSC. The Council expects its officers to co-operate fully with these bodies and to bring forward any proposals for improvement that may follow on from an inspection report or a Tribunal hearing.

**IF IN DOUBT ADVICE MUST BE SOUGHT FROM
THE SENIOR RESPONSIBLE OFFICER**

APPENDIX 1

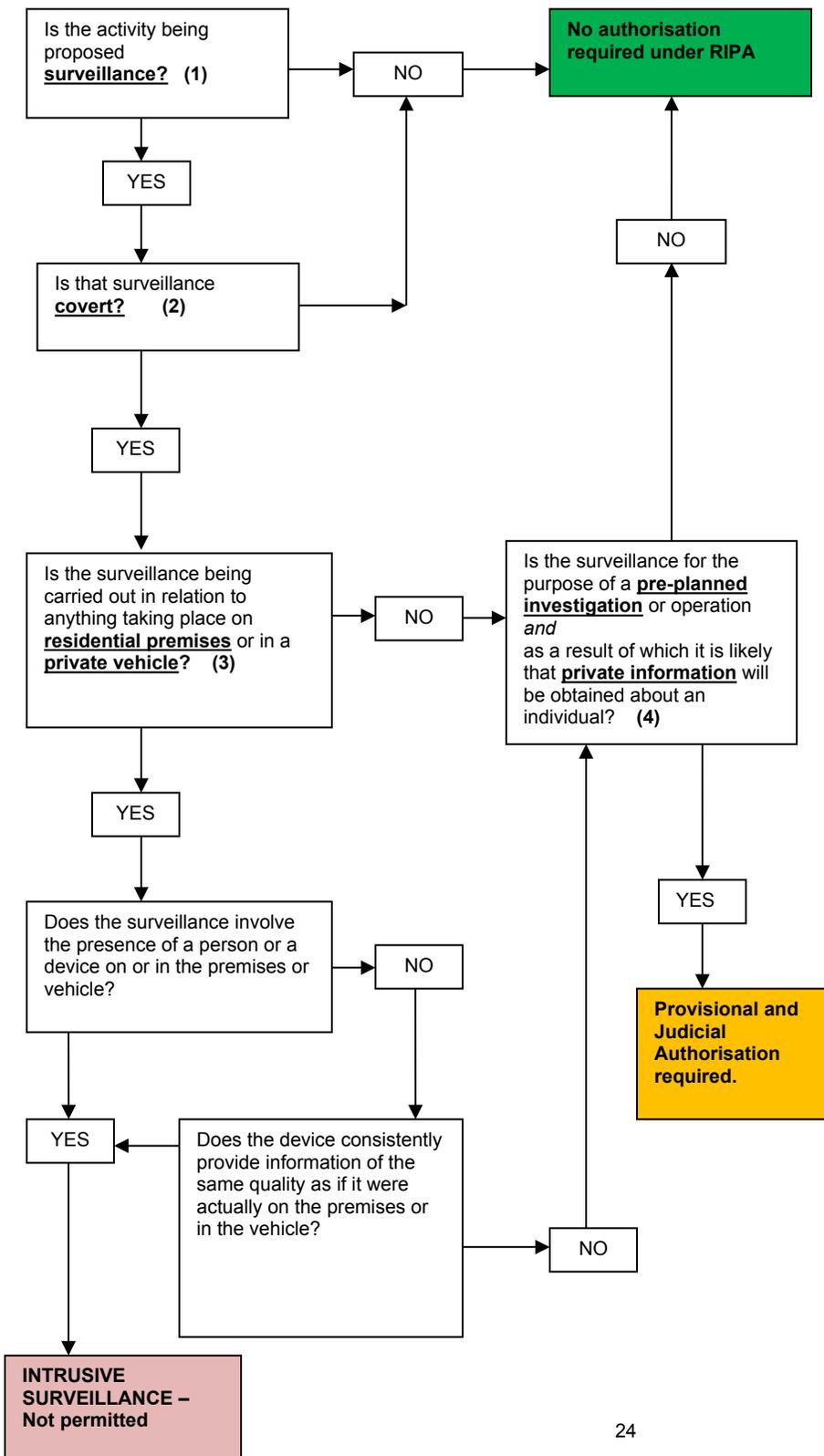
Officer Appointments to Roles in the Policy

Last updated February 2015

Title	Appointed Officers	Role
Senior Responsible Officer	John Ward	<p>Ensure the integrity of the process within the Council and its compliance with RIPA, including carrying out a periodic sample check of the quality of RIPA authorisations, renewals and cancellations.</p> <p>Carry out an annual review of the corporate policy.</p> <p>Have oversight of the completion of annual returns to the relevant oversight commissioner.</p> <p>Engage with the oversight commissioners when they conduct their inspections and where necessary, oversee the implementation of any post-inspection action plan.</p> <p>Have oversight of reporting of errors to the relevant oversight commissioner</p> <p>Ensure that Members regularly review the Council's use of RIPA.</p>
Authorising Officer (Surveillance/ CHIS) Designated Person (Communications Data)	Diane Shepherd Steve Carvell Paul Over	<p>Review applications for considerations of: lawfulness, necessity, proportionality, collateral intrusion and approve or reject them.</p> <p>Act as applicant/handler as long as a different authorising officer approves the application.</p>
Higher level authoriser	Diane Shepherd	Approve applications involving confidential material (surveillance) or the use of vulnerable individuals and juvenile sources (CHIS)
Applicant (Surveillance, Communications Data) Handler (CHIS)	Ian Brightmore David Stewart Nicholas Bennett	<p>Complete application forms 1-4 (surveillance, CHIS)</p> <p>Complete NAFN Communications Data application</p> <p>Attend magistrates court to obtain judicial approval</p>

APPENDIX 2

DIRECTED SURVEILLANCE FLOW CHART



(1) Surveillance includes: monitoring, observing, listening to persons, their movements, their conversations or their other activities or communications. It includes recording anything monitored, observed or listened to in the course of surveillance, and surveillance by or with the assistance of a surveillance device

(2) Covert is defined as surveillance which is carried out in a manner calculated to ensure that the person(s) who are subject to it are unaware that it is or may be taking place

(3) Residential premises: occupied or used by a person, however temporarily, for residential purposes or otherwise as living accommodation including hotel rooms – but not communal areas – e.g. a hotel lounge.

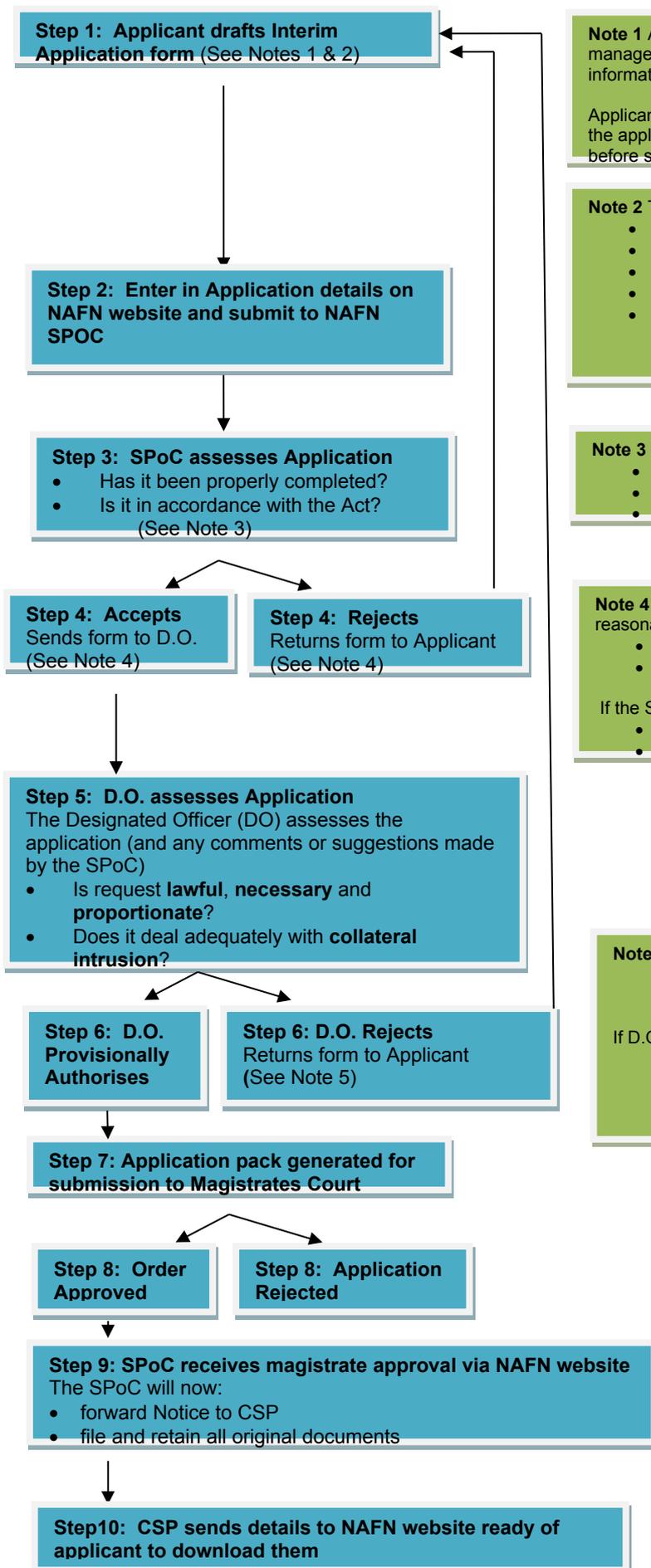
Private vehicle: which is used primarily for the private purpose of the owner or a person having the right to use it – but not, e.g. a minicab.

(4) Pre-planned investigation: surveillance is not planned if it is conducted as an immediate response to events or circumstances the nature of which it would not be reasonably practicable for authority to be sought.

Private information: includes any information relating to a person's private or family life. This must be interpreted broadly to include an individual's relationship with others. It will include information about a person's associations, lifestyle, finances etc. It is immaterial whether the person about whom the information will be gathered is the subject of the investigation.

Note: Before provisionally authorising any directed surveillance investigation, the Authorising Officer (AO) must clearly indicate in the authorisation form itself that the AO does believe that the proposed investigation is both **necessary** for preventing or detecting crime or preventing disorder **and** that the investigation is **proportionate** to what it is sought to achieve. The AO must also show that any potential **collateral intrusion** has been taken into account and that reasonable steps are proposed to minimise such intrusion.

Flowchart of Application Process for Communications Data



Note 1 Applicant should discuss proposed application with line manager to try to find alternative options for obtaining the information required.

Applicant may also wish to discuss content, scope and aims of the application and type of application with the **NAFN** SPoC before submitting the application

Note 2 The application should include:

- The purpose for which the data is required
- The nature of the enquiry
- Details of the data required
- The timescale in which the data is needed
- A statement clearly setting out:
 - ❖ why request is **necessary**
 - ❖ why request is **proportionate**
 - ❖ steps to be taken to minimise **collateral intrusion**

Note 3 The SPoC will:

- ensure application is practical and lawful
- advice on most appropriate route
- assess cost and resource implications

Note 4 If the SPoC **accepts** that the application is justified and reasonably practicable, s/he:

- will submit the application to the DO for approval
- include any appropriate additional information/comments for consideration by DO

If the SPoC **rejects** the application, s/he will:

- return the application to the applicant
- specify in writing reason(s) for rejection

Note 5 If D.O. **authorises** the application, s/he will:

- Approve online
- document any discussions conducted in reaching the decision

If D.O. **rejects** the application, s/he will:

- return the application to the applicant
- specify in writing reason(s) for rejection
- save a copy of rejected application + reason(s) to the Council's Central Monitoring Records

KEY

Applicant: Officer making the application
D.O.: Designated Officer who provisionally authorises the Application
SPoC: Single Point of Contact between FBC and CSP
CSP: Communications Service Provider

RIPA Forms

The following links can be used to locate the template of the latest forms to use.

Directed Surveillance

- a. [Directed Surveillance Authorisation - RIPA 1](#)
- b. [Directed Surveillance Review - RIPA 2](#)
- c. [Directed Surveillance Renewal - RIPA 3](#)
- d. [Directed Surveillance Cancellation - RIPA 4](#)

Covert Human Intelligence (CHIS)

- a. [CHIS Application - CHIS 1](#)
- b. [CHIS Review - CHIS 2](#)
- c. [CHIS Renewal - CHIS 3](#)
- d. [CHIS Cancellation - CHIS 4](#)

Application for judicial approval to obtain or disclose communications data, to use covert human intelligence source or to conduct directed surveillance

[Judicial Approval Application Form](#)

[Accompanying Witness Statement](#)

Communications Data

[Template to prepare for application via NAFN](#)

Link to National Anti-Fraud Network site - <https://secure.nafn.gov.uk/>