

LONDON BOROUGH OF BARNET

COVERT SURVEILLANCE

POLICY

UPDATED JANUARY 2008

1. INTRODUCTION

"Surveillance plays a necessary part in modern life. It is used not just in the ~ targeting of criminals but as a means of protecting the public from harm and ~ preventing crime."

From the Foreword to the Home Office's Code of Practice on Covert Surveillance

- 1.1 Covert surveillance is 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. This document contains the Council's policy regarding covert surveillance. Deployment of overt surveillance, however, is increasingly commonplace in places to which the public has access and this Council has employed it in the form of CCTV monitoring of its offices, car parks and the town centres. CCTV monitoring is undertaken in accordance with the Council's Code of Practice for the operation of CCTV, a copy of this can be located on the [CCTV](#) homepage of Barnet Online.
- 1.2 Advances in technology make it increasingly possible for covert surveillance to be carried out other than by CCTV techniques. Interception of communications via the Internet and telephone is now technologically possible and covert surveillance includes observation with the naked eye. Covert surveillance includes not only the use of CCTV but also the interception of communications via e-mail, the Internet, telephone or post.
- 1.3 Covert surveillance is increasingly becoming the subject of legislative controls. The requirements of the Data Protection Act and the Human Rights Act that have to be borne in mind in overt surveillance need to be considered also in the area of covert surveillance. The Regulation of Investigatory Powers Act 2000 (RIPA) is also of relevance whenever covert surveillance of an identifiable or named person is carried out by a public authority carrying out an investigatory function. RIPA includes a local authority within the description of public authority.
- 1.4 Covert surveillance can be either
 - (a) intrusive, that is, carried out on any residential premises or in any private vehicle by an individual or a surveillance device on the premises or in the vehicle. Local authorities are not authorised to conduct intrusive surveillance or
 - (b) directed, that is, undertaken for the purposes of a specific investigation or operation and involving the observation of a person or persons in order to gather information about them.
- 1.5 The use of covert human intelligence sources (CHIS) is also regulated by RIPA. A CHIS is a person who establishes or maintains a relationship with someone in order to obtain information, to provide another person with access to information or to disclose information as a consequence of that relationship. The London Borough of Barnet does not authorise the use of a CHIS. Should

an officer consider the use of a CHIS as necessary, they must liaise with their with the Designated Person as set out in paragraph 2.3.5. If the use of a CHIS is deemed necessary by the Designated person, special arrangements will be made for their use in accordance with the Home Office Code of Guidance on Covert Human Intelligence Sources. The Codes of Practice relating to CHIS can be found at: <http://security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/human-cop?view=Binary>

2. RELEVANT LEGISLATION

2.1 The Data Protection Act 1998 (DPA)

2.1.1 The DPA provides eight principles to be observed to ensure compliance with the requirements of the Act. They provide that personal data, which includes personal data obtained from covert surveillance techniques, which must:

- (1) be fairly and lawfully obtained and processed;
- (2) be processed for specified purposes and not in any manner incompatible with those purposes;
- (3) be adequate, relevant and not excessive;
- (4) be accurate;
- (5) not be kept for longer than is necessary;
- (6) be processed in accordance with individuals' rights;
- (7) be secure;
- (8) not be transferred to non-European Economic Area countries without adequate protection

The Data Protection Act 1998 may be found at:
www.opsi.gov.uk/ACTS/acts1998/19980029.htm

2.2 The Human Rights Act 2000 (HRA)

2.2.1 The HRA gives effect to the rights and freedoms guaranteed under the European Convention on Human Rights (the convention). Article 8 of the Convention is relevant in the context of covert surveillance in that everyone has the right to respect for his/her private and family life, home and correspondence. It is now clear from decided cases that this right extends to activities of a professional or business nature and so includes employees. Article 6 of the Convention is relevant in the context of covert surveillance in that everyone has the right to a fair trial, including internal procedures or hearings, and fairness extends to the way in which evidence is obtained.

2.2.2 Consequently, there is to be no interference with the exercise of these rights by any public authority including a local authority, except where:

Such interference is in accordance with the law and is necessary in a democratic society in the interests of:

- national security
- public safety
- the economic well-being of the country
- for the prevention of disorder or crime
- for the protection of health or morals
- the protection of the rights and freedoms of others.

The Human Rights Act 1998 can be found at:

www.opsi.gov.uk/ACTS/acts1998/19980042.htm

2.3 **The Regulation of Investigatory Powers Act 2000 (RIPA)** (and associated Regulations)

2.3.1 RIPA and its associated regulations also follow the philosophy of recent legislation in trying to strike a balance between community responsibilities, including effective law enforcement, and individual rights and freedoms. The interception of communications is now permitted by a local authority if there is express or implied consent to the interception or where there is lawful authority for a specific purpose, namely:

- for the purposes of preventing or detecting crime or of preventing disorder.
- for the Interest of economic well-being
- in the interest of public safety
- for the purposes of protecting the public health

2.3.2 Directed covert surveillance that is likely to result in obtaining private information about a person is permitted by RIPA and its associated regulations **if** such surveillance has been authorised in the manner provided by the Act, the Home Office Code of Practice and the prescribed standard forms. Authorisation for directed surveillance can be granted by the Authorising Officer of a public authority only if it is:

- For the purposes of preventing or detecting crime or of preventing disorder.
- In the interests of public safety
- For the purpose of protecting public health
- For the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department

2.3.3 Single Point of Contact (SPOC). Each local authority must have its own SPOC, to whom applicants can submit their requests for communications data. This is to ensure there is a specific point of accountability in each authority requesting data for reasons connected with the HRA etc.

The SPOC for LBB is Intelligence and Performance Manager Ann Rafferty.

COMMUNICATIONS DATA

2.3.4 Designated Persons. Authorisations for correct surveillance and for requests for communications data will be dealt with by Designated Persons. The Designated Persons are the Deputy Director of Corporate Governance, Head of Legal and in their absence Divisional Manager Advocacy Team and Head of CAFT.

The Regulation of Investigatory Powers Act 2000 can be found at:
www.opsi.gov.uk/acts/acts2000/20000023.htm

The Acts Codes of Practice can be found at: www.homeoffice.gov.uk