

Counter Fraud Framework Manual 2016

Regulation of Investigatory Powers (RIPA) Policy Statement

Counter Fraud Framework – RIPA Policy Statement

Document Control

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Version History

Version number	Date	Author	Reason for New Version
Version 1 2013 Final Issued	May 2013	Clair Green	2013 Update
Version 2 2014	October 2014	Clair Green	Annual Review
Version 3 2016	April 2016	Clair Green	Policy review Separation of policies from procedures

1. Policy Statement

- 1.1 It is the policy of The London Borough of Barnet that all activity that could be authorised under the Regulation of Investigatory Powers Act 2000 will only be carried out if it is authorised in accordance with that Act, this policy and associated guidance.
- 1.2 Furthermore, Investigation Officers may only carry out Directed Surveillance (DS), use the services of a Covert Human Intelligence Source (CHIS) or seek to acquire Communications Data (CD) in accordance with this policy and associated procedural guidance.
- 1.3 The Council does not usually make use of CHIS. However, officers must bear in mind the possibility of a CHIS arising in circumstances where it was not contemplated. A member of the public volunteering information as part of their normal civic responsibility would not normally be considered to be a CHIS. However, if specific instructions are provided to that member of the public a CHIS situation may arise.
- 1.4 Investigation Officers may not apply for permission to carry out the activities covered by this policy unless they are familiar with the contents of this policy and associated procedural guidance. They are further instructed to have regard to the guidance contained within the statutory Codes of Practice published by the Secretary of State.
- 1.5 Before undertaking activities covered by this policy, the Council must be satisfied that it is undertaken either in connection with a “Core Function” (a function that only a public /regulated body can carry out, such as criminal investigation) or with an “Ordinary Function” (a function that any ordinary employer might have - such as the investigation of staff /false claims). As all surveillance is likely to intrude upon the subject’s privacy, the investigator must be able to justify that the breach of privacy is necessary, proportionate and lawful. It is also ESSENTIAL that the reasoning is documented and the correct authorisations gained, in order that the Council may be accountable for its actions.
- 1.6 Whilst the Regulation of Investigatory Powers Act is not available to use for investigations that do not form part of Council’s Core Functions, this does not preclude the Council’s investigators from using Directed Surveillance. In the event that an investigation into a non-Core Function requires the use of this technique, the investigator must apply in the same way, using the same forms, to the same Authorising Officer, endorsing the forms clearly in red ink, “NON-RIPA”.
- 1.7 Furthermore, there are some activities that, whilst being *Core Functions*, fall outside the scope of RIPA (due to the introduction of a test requiring the investigation to be in regard to matters that constitute a criminal offence carrying a sentence of six months unless certain specific offences are being investigated). In such cases, where there is a need to use the techniques covered by this policy, the investigator must apply, using the “NON-RIPA” process.
- 1.8 The use of overt CCTV is not normally considered to be Directed Surveillance and does not normally fall within the scope of this policy; where, however, targeted use is made of CCTV cameras, this may constitute Directed Surveillance and officers are instructed to follow this policy and associated procedures and processes under such circumstances.
- 1.9 The authoritative position on the Regulation of Investigatory Powers is, of course, the Act itself and any Officer who is unsure about any aspect of this Policy and Procedure Document should contact, at the earliest possible opportunity, Barnet Council’s RIPA Monitoring Officer for advice and assistance.
- 1.10 The Council shall ensure that Officers with responsibility for authorising or carrying out surveillance or accessing communications data are aware of their obligations to comply with

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the Act and with the Council's policy. Furthermore, Officers shall receive appropriate training and be appropriately supervised in order to carry out functions under the Act.

Appointments

- 2.1 The Council appoints the Assurance Assistant Director to discharge the functions of the RIPA Monitoring Officer (RMO). She is instructed not to authorise any person listed in appendix one unless she is satisfied that that person has successfully completed appropriate training in the assessment and authorisation of applications under this policy.
- 2.2 The Council further instructs the RMO to maintain such records as may, from time to time, be required by legislation and the Council's policies and procedures.
- 2.3 The RMO is instructed to produce procedural guidance that will put into effect this policy.
- 2.4 The Council appoints the Director of Assurance to discharge the functions of the "Senior Responsible Officer (SRO)".
- 2.5 The Council uses a Gatekeeper to provide advice and assistance to both Authorising Officers and Investigating Officers.
- 2.6 The Gatekeeper will be a designated legal officer/s within the council's Shared Legal Service: Harrow and Barnet Public Law. In addition to providing advice, they are responsible for keeping abreast of updates and changes to RIPA, associated legislation, Codes of Practice and any Guidance issued. The Gatekeeper must notify the RMO and SRO of all changes, so that this Policy and all associated guidance may be kept up to date.
- 2.7 The Council appoints Authorising Officers and Designated Persons as detailed in appendix 1. (These appointments may be substituted, from time to time, in accordance with section 3 of the policy). However, even if a person is identified in the list that person is not authorised to sign any RIPA forms unless he has been certified by the RIPA Monitoring Officer to do so.
- 2.8 The Council hereby appoints all investigation officers and managers to make applications under this part (in accordance with s. 223(1) of the Local Government Act 1972), subject to their inclusion in the approved list by the RIPA Monitoring Officer. The Council authorises the RMO to appoint as many investigation officers and managers to make applications under this part as she sees fit. Those officers must be listed at appendix 1(a) and any additions to or deletions from that list must be notified to Members as part of the regular reporting protocols.
- 2.9 **Failure to follow the provisions of this policy (for example: carrying out surveillance without following the requirements of the policy) is gross misconduct and will normally lead to dismissal without notice.**

Oversight of Policy

- 2.10 Members shall have oversight of this policy. This function is delegated to the Audit Committee. The Constitution requires the Audit Committee to monitor the Council's Counter Fraud Framework and Policies and recommend their application across the Council
- 2.11 The Audit Committee shall receive a report on the use of RIPA regulated activity by officers of the Council every three months. This report will form part of the Corporate Anti-Fraud Team Quarterly update / Annual report.
- 2.12 The report to Members shall be produced by the RMO and presented to the Audit Committee (or to such other committee as the full Council shall nominate) by the RMO and/or the SRO. Members recognise that it would not be proper for them to be seen

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to have any influence on outcomes. In order to protect them from any wrongful allegations, they will **at no time** be able to direct or be given details of on-going investigations.

- 2.13 Alongside this report, the RMO and/or SRO will report details of ‘Non-RIPA’ surveillance in precisely the same fashion.
- 2.14 Following that report, the Audit Committee may make such recommendations as they deem necessary relating to the policy, and may give such directions as they deem necessary to Assurance Assistant Director in order to ensure that the Council’s policy is followed.
- 3 Members recognise that it would not be proper for them to be seen to have any influence on individual surveillance authorisations. Their function is, with reference to the reports, to satisfy themselves that Barnet Council’s policy is robust and that it is being followed by all officers involved in this area of work. In order to protect them from any wrongful allegations, Members are **not able** to direct investigations or be given details of on-going investigations. However it is acknowledged that there may be some instances where it is appropriate and necessary to share some details with relevant Members, however this will be at the discretion of the Assurance Assistant Director.

4 Adoption of Policy and Amendments

- 4.1 This policy was adopted by the London Borough of Barnet on 19 April 2016. It replaces any previous policy.
- 4.2 The RMO is instructed to make any changes that are necessary to this and any associated documents in order to ensure that they comply with changes to primary legislation and with codes of practice. Changes to the policy made under this section must be reported to Members in the next quarterly report.
- 4.3 Authorising Officers and Investigation Officers must bring to the attention of the RMO and/or SRO any suggestions for continuous improvement of this Document.
- 4.4 The RMO is authorised to amend the list of Authorising Officers in the following circumstances :
- 4.4.1 If an Authorising Officer is replaced in their substantive post, the new holder of the post may be added to the list, subject to the training requirement being satisfied.
- 4.4.2 If an Authorising Officer fails to attend training or does not meet the required standard, they may be suspended or removed from the list and replaced by another officer of equivalent rank who has attended training and met the appropriate standard.
- 4.4.3 In the case of reorganisation, the RMO may substitute officers of similar rank, always providing that the number of Authorising Officers will not exceed the number approved by Members.

Help and Advice

If you have any questions about this policy, please contact RMO / Assurance Assistant Director on 0208 359 7791.