

Regulation of Investigatory Powers Act 2000 Appendix B  
as amended by the Protection of Freedoms Act 2012

ripa,

“a Snooper’s Charter”



# Local Authority Good Practice on use of RIPA

- Understand what is meant by  
Directed Surveillance and Covert  
Human Intelligence sources

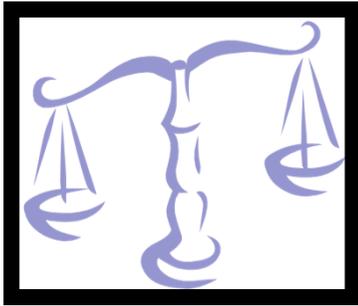
Make use of the Codes of Practice

Review our current activities in light of  
RIPA & the Crime Threshold

Become familiar with the Lewisham Policy document on RIPA

Make sure we understand our  
powers of Surveillance

Be aware of those officers who are able to authorise  
the use of RIPA surveillance powers for Lewisham



Every Local Authority  
must acknowledge and accept  
the **Balance** between  
“Respect for Privacy”

**“EVERYONE HAS THE RIGHT TO RESPECT FOR HIS PRIVATE AND FAMILY  
LIFE, HIS HOME AND HIS CORRESPONDENCE”**

(Art 8 HRA)

&

Whilst Art. 8 HRA is a qualified right, the situations where for example the right to privacy can be invaded - requires systematic safeguards and controls. It is within this context, such controls are provided for by the RIPA provisions & Protection of Freedoms Act 2012.

**The London Borough of Lewisham is a relevant ‘Public Authority’ to which RIPA & the Protection of freedoms act 2012 applies**

# Article 8 HRA

“There shall be no interference by a public authority with the exercise of this right except such as 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

•**THE PREVENTION OF CRIME OR DISORDER**

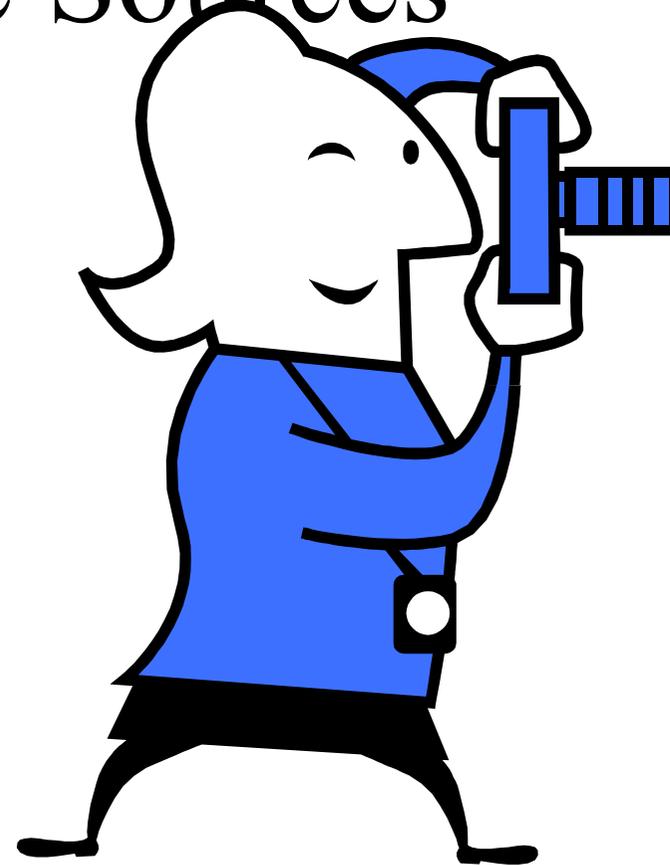
•THE PROTECTION OF HEALTH OR MORALS

•THE PROTECTION OF THE RIGHTS AND FREEDOMS OF OTHERS “

# Part II of R I P A (in force 25/9/00)

## Surveillance & Covert Human Intelligence Sources

- Directed
- [*Intrusive* \*\* (NOT lawful for Local Authorities – POLICE!!!!!!)]
- use of “Covert Human Intelligence Sources”



# What is SURVEILLANCE?

Section 48(2) “Surveillance includes -

- Monitoring, observing, listening to persons, their movements, conversation, other activities or communications
- recording anything monitored, observed or listened to in the course of surveillance:
- and, surveillance by or with the assistance of a surveillance device”

- **Directed**

can be either  
**COVERT OR OVERT**



# LAWFUL COVERT SURVEILLANCE from 1<sup>st</sup> November 2012 by L/A's

- Only if Authorised (by Director, Head of Service, Service Manager or equivalent) AND
- Has received Judicial approval & the conduct is in accordance with both the Authorisation & judicial approval
- -see Appendix 11 of the Ripa documents on the Lewisham Council Intranet for a List of Authorising Officers for the purposes of Ripa.

# LAWFUL COVERT SURVEILLANCE FROM 1/11/12

- Authorised and Judicially approved
- To prevent or detect criminal offences that are either punishable , by a minimum of 6 months custodial sentence
- OR
- ARE RELATED TO THE UNDERAGE SALE OF ALCOHOL AND TOBACCO.

# FROM 1/11/2012

- So, Not for purpose of preventing disorder unless meets criminal threshold
- Is for more serious criminal cases – that therefore meet criminal threshold, provided necessary and proportionate, authorised by appropriate officer and has received prior Judicial approval
- Is for purpose of preventing or detecting specified criminal offences re: underage sale of alcohol and tobacco, provided necessity and proportionality tests met, authorised, and judicially approved.

# **PROTECTION OF FREEDOMS ACT 2012**

## **CRIME THRESHOLD TEST**

- From 1/11/2012 the Crime Threshold test comes into force **BUT** only applies to Directed Surveillance **NOT** CHIS or Comms Data

## **JUDICIAL/MAGISTRATE'S APPROVAL**

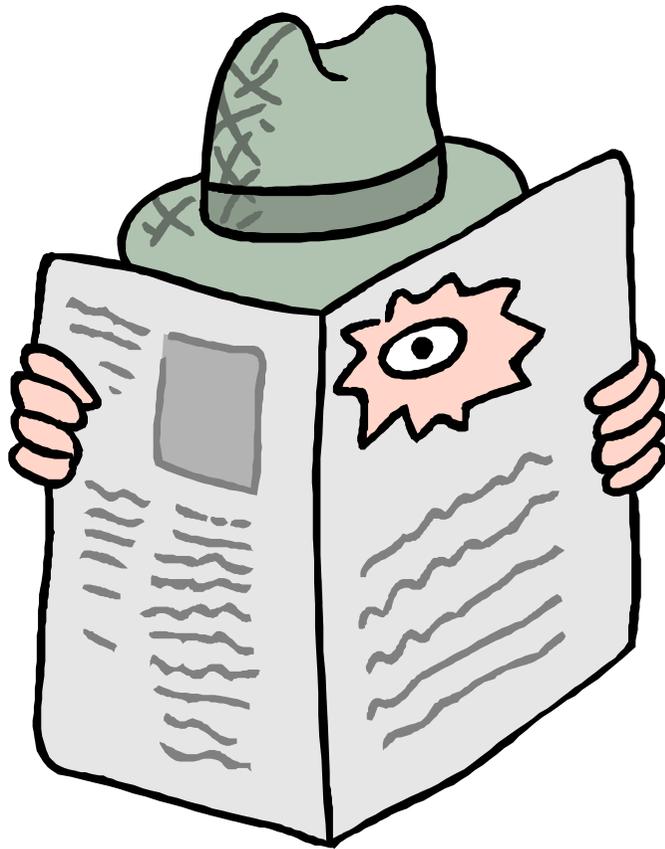
- From 1/11/2012 the Mandatory procedure for Magistrate's Approval for a RIPA Authorisation/Renewal **or** Comms Data

# **BACKGROUND**

## **REFRESHER/UPDATE**

- Local Authorities are ONLY permitted to undertake Directed Surveillance, CHIS or Comms Data requests if it is **FOR THE PREVENTION OR DETECTION OF CRIME**
- Non Criminal RIPA no longer permitted

# Covert Surveillance



- Section 26(9)(a) - This is surveillance carried out in such a way that the person(s) is not aware of it happening
- The Covert Surveillance Code of Practice applies (See the Council's intranet Ripa site)

# OVERT SURVEILLANCE

This is obvious - apparent -  
persons(s) know of this and it is NOT  
covered by RIPA

# DIRECTED SURVEILLANCE

- S.26(2) - COVERT but NOT intrusive
- In a manner likely to obtain “**private information about an individual**” (includes any inf. re: his private or family life and whether or not that person is specifically targeted for purposes of the investigation) - (see Perry v UK “The protection of article 8 extends to personal information collected under compulsion by a public authority: *Perry v UK* Application 63737/00 17 July 2003.” (See *Amann v Switzerland* Feb 2000, in respect to Art. 8 it said “...respect for private life comprises the right to establish and develop relationships with other human beings... no reason why this should ... exclude activities of a professional or business nature”.)
- For a SPECIFIC Investigation or operation
- PLANNED, so that it is NOT as an immediate response to events which would otherwise make seeking authorisation unreasonable

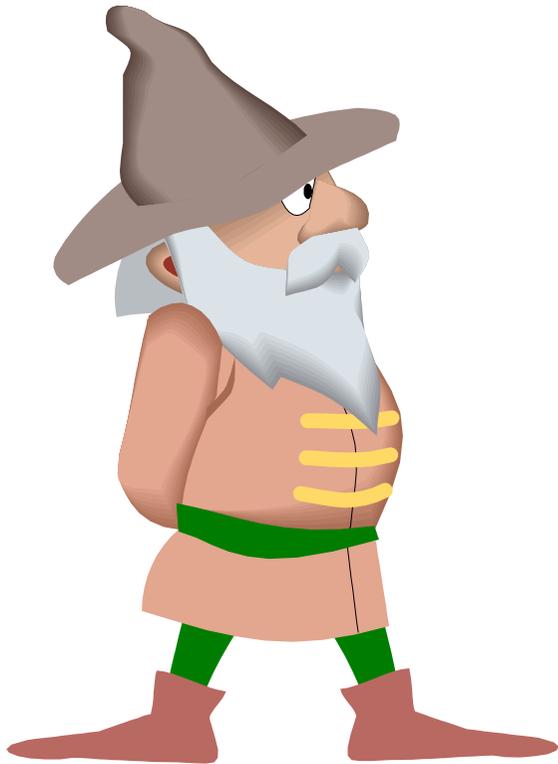
# INTRUSIVE SURVEILLANCE

s.26(3) RIPA - NB Authorisation for this may only be granted **TO THE POLICE**



- Covert surveillance Upon RESIDENTIAL Premises
- Or in a PRIVATE VEHICLE
- a person is present on the premises or vehicle or the surveillance is carried out using surveillance device
- (does Not include tracking devices)
- **IF IN ANY DOUBT, CHECK WITH LEWISHAM LEGAL SERVICES FIRST!!!!**

# CHIS - (Informants/ under cover officers)



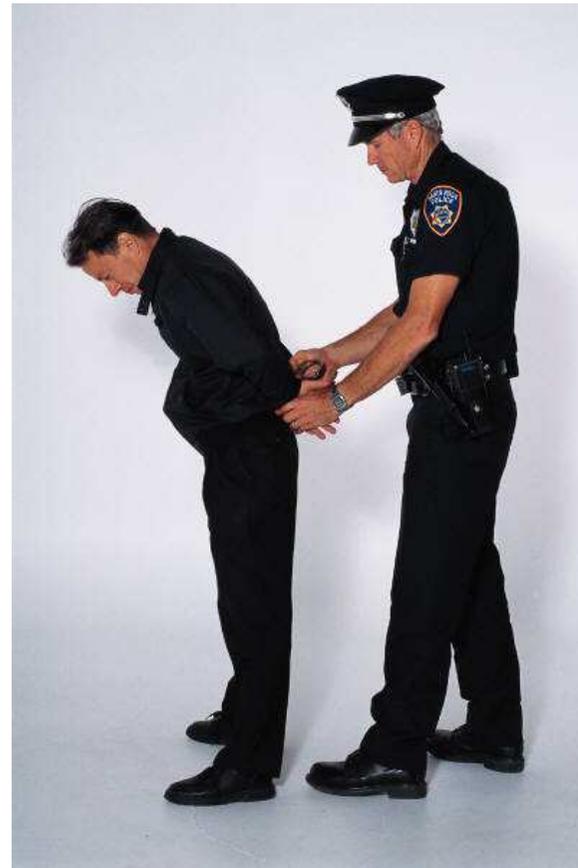
- S.26(8) – (a) – (c) CHIS establishes or **maintains a personal or ‘other’ relationship** to covertly:-
- obtain information or
- to provide access to any information to another person or
- he covertly discloses inf. Obtained by the use of such a relationship or as a consequence of such a relationship
- **The Covert Human Intelligence Sources Code applies** (see Ripa pages on the Intranet)
- Necessary & Proportionate to what is sought to be achieved and arrangements for overall management & control of the individual are in force. N.B Extra safeguards

# Covert Surveillance and use of CHIS's

- RIPA is here to ensure that we can only **lawfully** carry out covert surveillance - whether
- “directed” or by using a “CHIS” that has been properly AUTHORISED, & this includes the need to obtain Judicial approval
- so as to safeguard the public from unnecessary invasions of their privacy

# HOW TO ENSURE THAT ALL OUR COVERT SURVEILLANCE IS **LAWFUL** - Follow Lewisham's Policy & Procedures Document

- All Covert directed surveillance, unless it's as a result of an immediate response to a situation, **MUST** be authorised and judicially approved prior to carrying out the surveillance.
- Where **URGENT**, authorisations may be given orally, but as soon as reasonably practicable afterwards, the authorisation must be recorded in writing (**see para 3.8 of the Council's Ripa Policy on the Intranet**) -



# The Officer Requesting Authorisation for Directed surveillance or use of a Chis, MUST consider

- Necessity
- Proportionality
- Collateral Intrusion (& the need to minimise this)
- The risks involved & how they're to be managed
- A plan of the operation
- Test Purchases
- For CHISA's ADDITIONALLY:-
  - There should be a person with responsibility for recording the use made of the Informant – special care should be taken when the Chis involves a Juvenile

**TO BE DOCUMENTED AS PART OF THE AUTHORISATION PROCESS:**

**NECESSITY:** Covert surveillance must be aimed to achieve legitimate objective  
invasion of privacy must be absolutely necessary to achieve it objective

**PROPORTIONALITY:** The use of covert directed surveillance or of a CHIS must be in  
proportion to the significance of the matter being investigated - so,  
type and duration of surveillance

**COLLATERAL INTRUSION:** Third Party information may be gathered as a result of the  
surveillance so the Officer must consider how such inf. will be  
handled and must plan to take reasonable steps so as to minimise  
the acquisition of inf. that is not directly necessary for the purposes  
of the proposed investigation

**PLUS< when using a CHIS:-** the Officer must ensure that proper arrangements are  
in place for the management of the Informant

**All of the above considerations must be documented & likelihood of  
obtaining “confidential information” as part of the Authorisation  
process including the associated RISKS, and a PLAN to deal with  
procedure to be followed if operatives become endangered**

# The Authorisation



- All Authorisations are given a unique ID number and a central record kept
- remain valid for 3 months - but should be cancelled if no longer required & should be reviewed monthly whilst valid
- CHIS authorisations remain valid for One year but should be cancelled if no longer required

# **TIME LIMITS**

## **DIRECTED SURVEILLANCE**

- 3 month's duration post Judicial Approval

## **CHIS**

- 1 month's duration post Judicial Approval if CHIS is 18
- 12 months if under 18

## **AUTHORISATIONS & NOTICES**

### **[Comms Data]**

- 1 month's duration post Judicial Approval<sup>22</sup>

# RENEWALS & CANCELLATIONS

## RENEWALS

- You **MUST** obtain Judicial Approval of your Renewal Form [See Later for procedure]
- This Judicial Approval **MUST** be requested **BEFORE** the expiration of the current authorisation
- Time **runs** from expiry date and time of original authorisation
- Renewals may be granted more than once if still necessary and proportionate
- Timetable the date of renewal to ensure it does not expire over a weekend/Bank Holiday
- Also factor in a little time to ensure can list

# NECESSARY & PROPORTIONATE

- Directed Surveillance, CHIS and Comms  
Data requests **STILL** must be  
**NECESSARY**
- Ground → **Prevention or Detection of  
Crime**
- Directed Surveillance, CHIS and Comms  
Data requests **STILL** must be  
**PROPORTIONATE**
- **NOW need Judicial Approval as well**

# PROPORTIONATE

- Will not be proportionate if it is excessive in the overall circumstances of the case
- No activity should be considered proportionate if the information which is sought could be reasonably obtained from other less intrusive means
- Following elements of proportionality should be considered:-
  - ❑ Balancing the size and scope of the proposed activity against the gravity and

# PROPORTIONATE (Contd)

- ❑ 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

# COLLATERAL INTRUSION

- Before authorising applications for DS, the AO should also take into account the risk of obtaining private information about persons who are NOT subjects of the surveillance i.e. children of suspect and/or partner of suspect e.g. photographs → pixelate faces of children & partner

# CRIME THRESHOLD TEST

- From 1/11/2012 Crime Threshold test will apply to all Authorisations or Renewals for Directed Surveillance only NOT CHIS or Comms Data
- LA's **ONLY** permitted to authorise use of Directed Surveillance under RIPA to Prevent or Detect Criminal Offences that are either:-
- A) Punishable whether on summary conviction or indictment by a maximum term of at least **6 months** imprisonment  
**OR**

# **IMPACT ON INVESTIGATIONS**

- Identify at the **OUTSET** whether you are investigating a criminal offence[s]
- **If YES** → Identify the offences by offence type **and** Statute i.e. Theft – Theft Act 1968
- If uncertain of offences → contact Prosecution Team [Sarah or Petra or Viv.]
- Ensure you specify offence[s] **AND** statute on RIPA Application Form or Renewal → shows AO and Magistrate that considered and satisfied Crime Threshold Test

# **AUTHORISATION/RENEWAL** **BY AUTHORISING OFFICER**

- Same procedure as before → submit Application Form/Renewal/Authorisation or Notice to Authorising Officer [AO]
- Granted if **Necessary & Proportionate**
- Form Signed and dated by AO
- **NO LONGER VALID FROM POINT OF DATE & TIME OF SIGNATURE**
- Now need Judicial Approval to activate

# Authorisations continued

## FORMS & ancillary matters

Application for Directed Surveillance Authorisation form

Cancellations of Authorisation forms

Review of a Directed Surveillance authorisation form

Application for a Renewal of a Directed Surveillance form

(PLUS similar forms expressly for use CHIS)

WHENEVER AN AUTHORISATION IS GIVEN OR RENEWED  
THE LOCAL POLICE & OTHER LOCAL  
AGENCIES SHOULD BE INFORMED - so as to ensure that the  
planned covert surveillance does not in fact jeopardise an existing  
activity.

# The Authorising Officer

- Refer to Lewisham's Policy & Procedures Document
- Only those Senior Officers authorised
- UNLESS, LIKELY TO OBTAIN CONFIDENTIAL INFORMATION >Chief Executive or Executive Director



## JUDICIAL APPROVAL PROCEDURE

- Not lawful **UNTIL** Judicial Approval has been granted post 1/11/2012

## PROCEDURE

- Contact Court Manager Bromley Magistrates' Court [**0208 272 9105**]
- SPOCs to be identified ]
- request a **listing** for an **Application for Judicial Approval** for a RIPA Application/Renewal/Notice or Authorisation
- *Notice period – factor in 5 working days before granted*

# **JUDICIAL APPROVAL**

## **APPLICATION FORM - ANNEX B**

- Form **Annex B**
- Officer complete **Page 1 of 2**
- **Work through form**
- **NB Summary of Details** → please note that all this information **MUST** be contained in the RIPA Application/Renewal/Notice/Authorisation
- Cannot just be on Annex B Form as will **NOT** be granted
- Cannot just be in Oral Evidence as will **NOT** be granted

# PROCEDURE AT BROMLEY MAGISTRATES COURT

## LISTING

- Once spoken with Court Manager / for Judicial Approval, Application will be given a listing @ WMC
- Hearing take place in **Applications Court from 9.30am**

## What do I take?

- **Original** Application/Renewal/Notice/Authorisation (Officer keep for files and inspections) and copies
- **2 Copies** of part completed **Judicial Application Approval Form [Annex B]**
- **Copy** of your **LB. Lewisham Authorisation** to make this Application

# APPLICATION PROCEDURE

- Take Oath or Affirm: Identify yourself by name, post and employer
- Introduce the Application for Judicial Approval for RIPA Authorisation/Renewal OR Comms Data Notice or Authorisation
- Introduce that you are the officer who has made the application to the AO
- Identify that the Application/Renewal etc. was granted by LBL's Authorising Officer [Name] on [Date] and give the rank

# APPLICATION PROCEDURE

## (Contd)

- State that you wish to **obtain Judicial Approval** for the Application/Renewal for Directed Surveillance or CHIS under **S38 Protection of Freedoms Act 2012 OR** Notice or Authorisation for Comms Data under **S37 Protection of Freedoms Act 2012**
- Inform Magistrate that you have partly completed **Form Annex B page 1**

# **FACTORS CONSIDERED BY MAGISTRATE**

- Are there **reasonable grounds** for the LA to **believe** that the authorisation/renewal or notice was **necessary AND proportionate**?
- Do there **remain reasonable grounds** for believing that these requirements are satisfied at the time of the application to the Magistrate?
- Has the Application/Renewal been authorised by an appropriate designated person?
- Authorisation made in accordance with any applicable legal restrictions e.g. Crime Threshold Test met.
- In the case of a CHIS that there were reasonable grounds for believing that arrangements exist for the safety and welfare of the source **AND** that there remain reasonable grounds for believing that these requirements are satisfied at the time when the Magistrate is considering the matter

# OUTCOMES

## 3 POSSIBLE OUTCOMES

1. **Box 1** → Application **Granted** → **effective from that time**
2. **Box 2** → **Refuse** to grant or renew the authorisation/notice  
[can then reapply when gap/error corrected]
3. **Box 3** → **Refuse** the grant or renewal AND **quash** the authorisation/notice

**NB** Can only quash if the Applicant has had at least 2 business days from the date of refusal in which to make representations

## **OUTCOMES (Contd)**

- If granted – **dated and timed** so know when time limit runs from

## **FORMS**

- Magistrate keep one copy of **Annex B Form** and provide officer one copy
- Magistrate keep one copy of Application Form/Renewal/Notice/Authorisation

# PROCEDURE POST COURT

- Provide Copy of Authorisation/Renewal to Lindsay Weinstein **AND** Copy of Annex B Form within **14 days** of Judicial Approval
- If Notice or Authorisation → provide this AND Form B to **SPOC** who will retain with records
- SPOC will have to provide CSP with Form B
- **Timetable Review & Renewal**
- If do not renew before time limit will automatically expire

# Confidential Information

Includes:-

matters subject to legal privilege,

confidential personal information

confidential journalistic material

Therefore must always obtain an higher level of Authorisation

namely:-

The Chief Executive or an Executive Director

# FAILURE TO COMPLY WITH RIPA

- May render the Council liable to a civil claim for damages
- Any evidence obtained as a result of surveillance is likely to be
- inadmissible in criminal proceedings
- Risk of action by the Office of Surveillance Commissioners

# Examples

- Use of CCTV generally in street - overt
- The following of an individual with CCTV - covert (but may be immediate response)
- Housing Benefit officers following a claimant home to his workplace - covert - CCTV in Housing estates/shopping areas//football stadiums - overt
- following an owner of a dog that just fouled on the pavement - overt
- Opening a bin bag that you have just found on the street is immediate and does not require RIPA compliance
- Test Purchases – recent Guidance suggests Directed and also poss. CHIS

**• Responding to a Complaint of noise nuisance is immediate and no need for RIPA authorisation, UNLESS the officer plans a re-visit to carry out observations**

**• COVERT uses could include investigations**

- for Employee misuse of Council equipment/working whilst off sick, or
- Use of surveillance for recovering council properties - to see if illegally sub-let or for nuisance investigations
- for Benefit fraud, trading standards, environmental enforcement

• returning to the scene of an earlier incident in the hope of catching the criminal -is covert

**• INTRUSIVE SURVEILLANCE - CAN ONLY BE AUTHORISED TO THE POLICE - so ask police if needed**