

THE REGULATION OF INVESTIGATORY POWERS ACT 2000

POLICY

1. The Regulation of Investigatory Powers Act 2000 (RIPA) is concerned with the regulation of surveillance by public authorities in the conduct of their legitimate business. Surveillance is an essential part of modern life but has not until now been the subject of formal statutory control. RIPA was enacted in 2000 to regularise that position and to ensure that in conducting surveillance public authorities have regard to The Human Rights Act 1998 and in particular to Article 8 of the European Convention on Human Rights (ECHR) – the right to a private and family life.
2. The use of surveillance is an interference with rights protected by Article 8 of the ECHR and is prima facie a violation of those rights unless the interference is in accordance with the law, is in pursuit of one or more of the legitimate aims established by Article 8(2) and is “necessary in a democratic society”.
3. The GLA has approved a plan for tackling fraud and corruption, which covers reporting and investigation. However in exceptional circumstances the Organisation may wish to use surveillance techniques. RIPA defines categories of Public Authorities regulated by the Act together with acts of surveillance which must be subject to a formal written procedure for both authorisation and conduct.
4. The Greater London Authority is defined as a Public Authority to which the Act applies by virtue of S.1 of the Local Government Act 1999. The forms of surveillance that it is entitled to authorise are covert directed surveillance and the use of covert human intelligence sources (informants).
5. Covert directed surveillance means surveillance so carried out that the persons subject to the surveillance are unaware that it is or may be taking place. A person is a covert human intelligence source if s/he develops a relationship with another person in order to covertly obtain information or to provide access to information to a third party or to covertly disclose information obtained by the use of such a relationship and the other person is unaware that the purpose of the relationship is one of the above.
6. By virtue of the Regulation of Investigatory Powers (Prescription of Officers, Ranks and Positions) Order 2000 the appropriate level of Authorising Officer is the “Assistant Chief Officer” or the “Officer Responsible for the Management of an Investigation”. Within the GLA this includes the Chief Executive, the Director of Finance and Performance and the Director of Corporate Services. When dealing with a Mayoral function, the authorising Officer will first obtain the consent of the Mayor before authorisation is given. When dealing with an Assembly function the Chair and Deputy of the Assembly must be consulted. No covert directed surveillance or use of covert human intelligence sources should be undertaken without obtaining an authority.
7. Covert surveillance that is properly authorised will, as long as it is carried out in accordance with the terms of the authorisation, be legitimate. The authorisation will provide a defence to a challenge under the Human Rights Act 1988.

8. The GLA envisages that it will use both covert directed surveillance and covert human intelligence sources only in the most exceptional circumstances. Investigations requiring the use of covert directed surveillance or covert human intelligence sources may only be undertaken by officers of the Internal Audit Division or by specialist investigators engaged by the Authority.
9. Authorisation to conduct covert directed surveillance or to use covert human intelligence sources will, if appropriate, be given after legal advice has been taken. The officer with responsibility for the overall implementation of RIPA will be the person holding the statutory position of the Director of Finance and performance who will keep a central record of all authorisations. The Head of Law and Monitoring Officer will provide legal advice and exercise, where necessary, in her role as Monitoring Officer.
10. An authorisation to conduct covert surveillance and/or to use a covert human intelligence source may only be given by the Authorising Officer where s/he believes that the authorisation is necessary for a specific statutory reason as defined by sections 27-29 of the Act and where the Authorising Officer is satisfied that all other means of obtaining evidence have been exhausted. The authorisation will be "necessary" if the covert surveillance is "for" one of the statutory reasons for example in the interests of public safety and if there is no other means available to the investigating officers.
11. If the Authorising Officer is satisfied that the action is necessary s/he must then go on to consider whether the form and level of proposed surveillance is proportionate to the desired outcome. The term "proportionate" is used here in the context of the Human Rights Act, which requires interference with a human right to be kept to the absolute minimum. Where there is interference it should be measured against the desired outcome. Interference with human rights is only acceptable where the matter being investigated is significant and it is in the public interest to achieve an outcome.
12. In determining whether an interference is proportionate the Authorising Officer must have regard to issues such as collateral intrusion and the obtaining of confidential information. Collateral intrusion is interference with the human rights of persons other than the subject. The Authorising Officer must weigh the extent to which the human rights of third parties are infringed and whether such infringement is both necessary and proportionate in the context of the issue being investigated.
13. Authorising Officers must also assess the extent to which confidential information about the subject will come into the Authority's possession as a result of the investigation. Such information may be relevant to the investigation but protected for example as a result of legal professional privilege or it may be irrelevant but sensitive information for example medical records.
14. Once again the Authorising Officer is required to weigh the impact of such a situation arising against the objectives of and purposes for the investigation. The public interest element must outweigh the subjects own and any collateral privacy rights in order to make the use of covert surveillance justifiable at all but the public interest will need to be substantial in order for the use to be considered proportionate.

15. Finally the Authorising Officer should give due consideration to the impact on the community of the use of covert surveillance methods. In particular the officer should have regard to community confidence. The officer should ask themselves if the circumstances of the investigation were to become public what the reaction of the community is likely to be and whether and to what extent the Authority would feel able to justify the use of its chosen methods.
16. All requests for an authorisation to conduct covert surveillance should be submitted by the applicant officer to the Authorising Officer in writing using the forms attached in Appendix 2 to this policy note and completed in compliance with the checklist attached as Appendix 1. Such authorisations should be regularly reviewed in compliance with the legislation and the reasons for extending or terminating them should be recorded in writing on the appropriate forms contained within Appendix 2. Any authorisation forms should be kept by the Authorising Officer during the period of the authorisation and returned to the Director of Finance & Performance following the cancellation of the authorisation, who will keep a central record of all authorisations.
17. This procedure is a public document and is available for inspection on the Authorities website www.london.gov.uk.
18. Complaints by members of the public, surveillance subjects or others which relate to any aspect of the surveillance may be dealt with in one of two ways.
 - i. By means of the GLA normal complaints procedure.
 - ii. By virtue of a complaint to the Investigatory Powers Tribunal, PO Box 3320, London SW1H 9ZQ (Tel: 020 2723 4514).

These procedures are mutually exclusive and it is the complainants choice whether or not to make a complaint to the Authority, to the Tribunal or both.