

Eastbourne Borough Council: Covert Surveillance Policy

Introduction

1. By enforcing the laws designed to protect individuals, businesses and the environment, and to safeguard public resources, Eastbourne Borough Council ('the Council') seeks to ensure a fair and safe community for all.
2. Most organisations and individuals appreciate the importance of abiding by the law and the Council's best endeavours are directed at helping those people meet their legal obligations without unnecessary expense and bureaucracy.
3. The Council has certain statutory responsibilities and enforcement action may be necessary to protect the areas for which the authority is responsible and/or the public purse.
4. The Regulation of Investigatory Powers Act ('RIPA') and related legislation provides a regulatory framework for certain types of covert surveillance carried out by local authorities. While enforcement action may on occasion be served by undertaking covert surveillance to gather evidence of illegal activity, the Council is aware of the human rights concerns which require it to exercise its powers only where in accordance with the law, in situations where covert surveillance is a necessary and proportionate response of last resort.
5. The law requires that public authorities should only have recourse to the powers available to them in respect of covert surveillance where stringent criteria have been met. Covert surveillance is a last resort to be deployed only where its use is proportionate on the particular facts and where other investigative options are considered insufficient in the particular situation.
- 6. With this in mind, the Council has adopted a policy of not normally conducting covert surveillance but of doing so only as a last resort, where all other investigative options have been deemed insufficient. While each situation will be considered on its own merits and all relevant factors will be taken into account, covert surveillance will be considered only where deemed to be a proportionate response of last resort.**

Policy and procedure

7. All covert surveillance - whether using the powers given to local authority under RIPA or not - shall be undertaken in accordance with this document and with regard to up to date and relevant law.

8. The Council shall ensure that covert surveillance is only undertaken where it complies fully with all applicable laws, including the following statutes and associated legislation:
 - Human Rights Act 1998
 - Regulation of Investigatory Powers Act 2000
 - Protection of Freedoms Act 2012
 - Data Protection Act 1998
9. The Council shall in addition have regard to relevant official guidance and Codes of Practice, particularly those issued by the Home Office, the Office of the Surveillance Commissioners (OSC), the Security Camera Commissioner and the Information Commissioner. When making application for RIPA authorised surveillance, officers of the Council will use the most up to date forms issued by the Home Office and available on their website.
10. Council officers will also have recourse to other guidance and resources which have been approved by the Senior Responsible Officer in consultation with the Lawyer to the Council. While said materials may be protected by copyright, they will be made available internally to all enforcement officers on the Council's intranet. Enforcement officers are required to contact the Lawyer to the Council or the Senior Responsible Officer for RIPA with any questions or requests for guidance on this topic.
11. The following guiding principles shall form the basis of any covert surveillance activity undertaken by the Council:
 - Covert surveillance shall only be undertaken where it is deemed absolutely necessary to achieve the desired aims.
 - Covert surveillance shall only be undertaken where it is proportionate to do so and in a manner that it is proportionate.
 - Adequate regard shall be had to individuals' rights and freedoms, including those who are not the target of the covert surveillance.
 - All authorisations to carry out covert surveillance shall be granted by appropriately trained and designated Authorising Officers ('AOs').
 - Covert surveillance regulated by RIPA shall only be undertaken after obtaining judicial approval in accordance with the requirements of the law.

Training and Review

12. All Council officers undertaking or authorising covert surveillance shall be appropriately trained to ensure that they understand their legal obligations and the framework in which their decisions are made.
13. This policy shall be reviewed annually by the Senior Responsible Officer, in consultation with the Lawyer to the Council, in the light of

the latest legal developments and changes to official guidance and codes of practice.

14. The operation of this policy shall be overseen by the Council's Audit and Governance Committee, which shall receive regular Reports on this policy and its implementation.

Conclusion

15. While the effective enforcement of criminal and regulatory legislation is vital, the Council will only conduct covert surveillance as a last resort, where stringent criteria have been met.
16. Adherence to this policy will ensure that where situations arise wherein the Council does elect to invoke the protection afforded by RIPA, it will do so proportionately and in such a way as to involve minimal intrusion into others' lives. This will ensure that any legal challenge to the Council's covert surveillance activities is avoided.
17. Any questions relating to this policy, and any queries regarding the procedure, forms, guidance materials and/or law to be deployed in following it, should be addressed to the officers named below:

Julian Osgathorpe, Deputy Chief Executive

Victoria Simpson, Lawyer to the Council and Monitoring Officer

Dated ..

Note: Eastbourne Borough Council acknowledges with thanks the input of Ibrahim Hasan, Solicitor and Director of Act Now Training Ltd., in the development of this policy.