

Surveillance under the Human Rights Act 1998 Policy and Procedure

Surveillance under the Human Rights Act 1998 Policy Statement

Where the City of Wolverhampton Council conducts investigations, which involve the potential surveillance or monitoring of an employee, a Human Rights Act (HRA) authorisation is raised. The HRA process follows the key principles of the Data Protection Act and RIPA, including considerations of necessity and proportionality. This enables management to demonstrate that their actions do not infringe the human rights of employees or others.

Legislative Background

The infringement of rights under the Human Rights Act 1998 (HRA), particularly those rights conferred by Article 8 regarding privacy is only lawful where public authorities can show that it is necessary to protect the public interest and the level of infringement is proportionate to the public interest issue concerned. The Regulation of Investigatory Powers Act (RIPA) 2000 provides a framework within which public authority enforcement services can undertake covert investigations lawfully.

The Covert Surveillance and Property Interference Code of Practice paragraph 3.35 identifies that surveillance involving the 'ordinary functions' which are undertaken by all authorities, for example, employment and contractual arrangements do not require RIPA authorisation. These "ordinary functions" are covered by the Data Protection Act 2018 and the Information Commissioner's Employment Practices Code.

RIPA only applies to 'Core Functions' which are particular to a specific authority. These generally include activities undertaken under particular statutory powers, specifically those involving serious crimes the Council has powers to investigate and prosecute where on conviction an individual would be liable for a custodial sentence of 6 months or more.

The Council as a telecommunications system provider is also permitted under the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 to monitor the use of telephone, email and Internet access systems provided to employees for use in transacting the Council's business.

Human Rights Act Authorisations

The monitoring of employees working activities by managers to ensure compliance with the Council's legal, financial and personnel procedures generally falls outside the requirements of RIPA 2000 but is more properly to be considered in line with the provisions of the Data Protection Act 1998 (DPA) and the related Information Commissioners (ICO) Employment Practices Code; Part 3 Monitoring at Work.

This is because such monitoring activities, involving the collection of Personal Data are normal functions of management. They are governed by the terms of employment and Human Resources rules and can be justified by reference to conditions for processing contained at Schedules 2 & 3 of the DPA.

This includes investigations conducted on behalf of managers, for example, by services areas such as Audit Services. In the event that external investigators are commissioned by the Council to undertake such work, this activity will be defined in suitable contractual relationships and any surveillance undertaken will need to be authorised in line with this procedure.

Where the Council conducts investigations, which involve the potential surveillance or monitoring of an employee an HRA authorisation is raised. The HRA authorisation follows the key principles of RIPA, including considerations of necessity and proportionality. This enables management to demonstrate that their actions do not infringe the human rights of employees and provides a defensible justification of those actions if challenged subsequently

Engagement with IPCO

Independent oversight of RIPA legislation and its use in public authorities historically came under the Office of Surveillance Commissioner for Directed Surveillance and Covert Human Intelligence Sources and Inspection of Communication Commissioners Office for Communications Data.

The Investigatory Powers Act implemented changes to the oversight regime creating one body, the Investigatory Powers Commissioners Office (IPCO). Their purpose is to oversee how powers are used, taking account of public interest and ensuring investigations are conducted in accordance with the law. The commissioners collect statistics and conduct routine audits of the local authority.

Surveillance under the Human Rights Act 1998 Procedure

Authorising Officers

Authorising Officers for HRA applications are the Head of Audit Services, Director of Finance (Section 151 Officer) and Chief Operating Officer / Monitoring Officer. Details are listed below.

The principal duty of Authorising Officers is to ensure that the authorisation requested is necessary to address the issue concerned and that the level of intrusion is proportionate when balanced against the public interest in addressing the issue. Authorising Officers should not be directly involved in the activities that they are authorising.

HRA Co-ordinator

A HRA Co-ordinator (identified below) shall exercise effective oversight and quality control of the Central HRA Record. They will be responsible directly to the Head of Audit Services. The HRA Co-ordinator will identify when reviews, renewals and cancellations of authorisations are due and will ensure that the Central HRA Record of Authorisations is updated promptly.

The HRA Co-ordinator will be responsible for the issue of a sequential Unique Reference Number for each Authorisation. This shall be obtained by the Applicant from the HRA Co-ordinator prior to an application being made to an Authorising Officer.

Standard HRA Forms

All HRA activity must be authorised in writing by an Authorising Officer, using Standard Forms.

Central HRA Record

A Central HRA Record of Authorisations, Reviews, Renewals and Cancellations is maintained by Audit Services. These records are retained for a period of at least three years from the end of an Authorisation.

Management of surveillance of employee activity

Management surveillance of officers suspected of conduct amounting to a disciplinary breach should be based on considerations of necessity and proportionality. No surveillance activities of

this type are to be undertaken before authorization has been gained for that particular activity to proceed.

Monitoring of the use made of Telephone, Email and Internet systems provided by the Council for business use by employees is permitted under the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

These regulations allow the Council to monitor the usage of the Council's telecommunications systems by employees including the interception of the content of communications. This power is essential to ensure that the Council complies with its legal and contractual obligations to employees to avoid harassment at work and its financial obligations to ensure that employees do not use publicly funded facilities for personal use or gain.

Authorisation Criteria

Officers requesting authorisation must satisfy the Authorising Officer that the action is proportionate to the nature of the matter under investigation and is necessary to achieve a legitimate aim, they must provide sufficient justification and intelligence to support the application.

Officers must also indicate why it is judged that in each case other non-surveillance activities could not achieve the same result, thus justifying further the use of surveillance

Authorising Officers **shall** satisfy themselves that the activities proposed are **necessary and proportionate** before issuing an authorisation and **must** explain the reasons for their belief in the Authorising Officers Comments section of the relevant authorisation form.

A balance between the level of intrusion and the public interest must be **manifestly** demonstrated and support the activity's necessity.

Proportionality: this involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. The following elements of **proportionality** should therefore be considered:

- Balancing the size and scope of the proposed activity against the gravity and extent of the perceived offence;
- Explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others who may not be the subject of proposed surveillance;
- Considering whether the activity is a reasonable way, having considered all reasonable alternatives to conducting surveillance, of obtaining the necessary result;

Evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

Duration of Authorisations

All authorisations granted will be valid for three months. The authorisation will be valid from the date the authorising officer has approved the application.

Review of Authorisations

All authorisations shall have review frequencies set by the Authorising Officer on authorisation.

The HRA Co-ordinator shall ensure review frequencies are met and that the Review and Renewal of Authorisation form is completed and authorised in a timely manner.

Officers authorised to undertake activities shall report any change of circumstances affecting the authorisation to the Authorising Officer as soon as possible.

Renewal of Authorisations

Authorising Officers shall assess the outcomes of the previously authorised activity and shall only grant renewal of an authorisation where it continues to be necessary and proportionate. A Review and Renewal of Authorisation form shall be completed and authorised.

Where investigating officers seek renewal of authorisations the full authorisation file shall be presented to the Authorising Officer.

Officers authorised to undertake activities shall report any change of circumstances affecting the authorisation to the Authorising Officer as soon as possible.

A renewal must be authorised prior to the expiry of the original authorisation but will run from the expiry date and time of the original authorisation. Authorisations may be renewed more than once if still considered necessary and proportionate and approved by the Authorising Officer.

Cancellation of Authorisations

Authorising Officers conducting reviews shall consider the continued necessity for the authorisation and cancel it if appropriate. Officers authorised to undertake activities shall report any change of circumstances affecting the authorisation to the Authorising Officer as soon as possible. A Cancellation of Authorisation form shall be completed and authorised.

Once a particular authorization has been cancelled, no further surveillance is to be undertaken in that matter.

If further work is required, a new request for authorization must be made and approved.

Maintenance of Authorisation Records

Original Authorisations shall be typed using the HRA templates held by Audit Services.

- All original Authorisations shall be submitted to the HRA Co-ordinator in Audit Services, within one week of being signed. These will be filed in a Central HRA Record and be available for inspection by authorising officers, inspectors and others with a legitimate need to know.
- All records and Authorisations shall be retained for 3 years from the conclusion of the Authorisation.
- The HRA Co-ordinator shall ensure that the Head of Audit Services is kept informed of all Authorisations and any quality control issues that are identified.

Surveillance under the Human Rights Act 1998 Documents

- Initial Human Rights Act Authorisation Form - Appendix 1
- Review and Renewal of Human Rights Act Authorisation Form – Appendix 2
- Cancellation of Human Rights Act Authorisation Form – Appendix 3

Details of Authorising Officers

Peter Farrow - Head of Audit Services

Tel: (01902) 554460

e-mail: peter.farrow@wolverhampton.gov.uk

Claire Nye – Director of Finance (S151 Officer)

Tel: (01902) 550478

e-mail: claire.nye@wolverhampton.gov.uk

David Pattison – Chief Operating Officer/Monitoring Officer

Tel: (01902) 553840

e-mail: David.Pattison@wolverhampton.gov.uk

Details of HRA Co-ordinator

Mark Wilkes – Client Lead Auditor

Tel: (01902) 554462

e-mail: mark.wilkes@wolverhampton.gov.uk

Appendix 1

CITY OF
WOLVERHAMPTON
COUNCIL

Unique Number	Reference	
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INITIAL AUTHORISATION OF SURVEILLANCE

HUMAN RIGHTS ACT 1998

Public Authority	City of Wolverhampton Council, Civic Centre, St Peters Square, Wolverhampton		
Name of Applicant		Service	
Investigating Officer (if different from applicant)			
Investigation Reference Number / Name			

Details of application

<p>1. The level of authority required by the Human Rights Act 1998 to authorise surveillance</p> <p>The Head of Audit Services or the Section 151 Officer will normally be an appropriate level of authority for observations relating to work undertaken in Audit Services.</p>
<p>2. Describe the purpose of the specific operation or investigation; include details of premises, vehicles and equipment that may be used.</p>
<p>3. The identities, where known, of those to be subject of the Surveillance</p> <p>Name(s):</p> <p>Address(es):</p> <p>Date of Birth:</p> <p>Other information as appropriate:</p>
<p>4. Explain the information that it is desired to obtain as a result of the Surveillance.</p>
<p>5. Explain why this Surveillance is <u>Necessary</u></p>
<p>6. Explain why the surveillance is <u>Proportionate</u> to what it seeks to achieve.</p>
<p>7. Overview of the investigation's objectives: Explain why the information could not be obtained in any other way. Attach Operation Brief if surveillance details known.</p>
<p>8. Collateral intrusion: INDICATE ANY POTENTIAL FOR COLLATERAL INTRUSION ON PERSONS OTHER THAN THOSE TARGETED AND STATE HOW IT WILL BE MINIMISED:</p>

9. Health & Safety Risk Assessment**10. Applicant's Details**

Applicants Name:

Position:

Telephone Number:

Date:

Signature:

Authorising Officer:

11. Authorising Officer's Statement of what Surveillance has been authorised. State why authorised activity is necessary and proportionate. If application is refused state grounds for refusal.

12. Authorisation

I hereby **authorise / refuse** the operation as detailed above. This written authorisation will **cease** to have effect at the end of a period of 3 months unless renewed (see separate form for renewals).

Name		Position			
Signature		Date Granted		Time Granted	
Review Frequency		Expiry Date		Expiry Time	
Date of first review:					

Appendix 2

CITY OF
WOLVERHAMPTON
COUNCIL

Unique Reference Number	
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REVIEW AND RENEWAL OF SURVEILLANCE AUTHORISATION

HUMAN RIGHTS ACT 1998

Public Authority	City of Wolverhampton Council, Civic Centre, St Peters Square, Wolverhampton		
Name of Applicant		Service	
Investigating Officer (if different from applicant)			
Investigation Reference Number / Name			
Date of Authorisation or Last Renewal		Expiry date of Authorisation or Last Renewal	
Review Number			

Details of Review

1. Review number and dates of any previous reviews	
Review Number	Date
2. Summary of investigation / operation to date, including the results of previous reviews, what private information has been obtained and the value of the information so far obtained:	
3. Detail any significant changes to the information as listed in the original authorisation as it applies at the time of the renewal.	
4. Detail the reasons why it is <u>necessary</u> to continue with the Surveillance.	
5. Details why the Surveillance is still <u>proportionate</u> to what it seeks to achieve.	
6. Detail any incidents of collateral intrusion and the likelihood of any further incidents of collateral intrusions occurring.	

7. Give details of any Confidential information acquired or accessed and the likelihood of acquiring confidential information.
8. Applicant's Details
Applicants Name:
Position:
Telephone Number:
Date:
Signature:

Authorising Officer:

9. Authorising Officer's Comments, including whether or not the Surveillance should continue.																
10. Authorising Officers Statement																
I hereby agree that the Surveillance investigation / operation as detailed above <i>*[Should Continue / Should Not Continue]</i> until the <i>*[next review / renewal / It should be cancelled immediately]</i> .																
I hereby <i>*[Authorise / Do Not Authorise]</i> the RENEWAL of the Directed Surveillance investigation/operation as detailed above. The renewal of this authorisation will last for 3 months. This authorisation will be reviewed frequently to assess the need for the authorisation to continue.																
*Delete as applicable																
<table border="1"> <tr> <td>Name</td> <td></td> <td>Position</td> <td></td> </tr> <tr> <td>Signature</td> <td></td> <td>Date</td> <td></td> </tr> <tr> <td>Renewal from Date</td> <td></td> <td>Renewal from Time</td> <td></td> </tr> <tr> <td>Date of next review:</td> <td colspan="3"></td> </tr> </table>	Name		Position		Signature		Date		Renewal from Date		Renewal from Time		Date of next review:			
Name		Position														
Signature		Date														
Renewal from Date		Renewal from Time														
Date of next review:																

Appendix 3

CITY OF
WOLVERHAMPTON
COUNCIL

Unique Reference Number	
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CANCELLATION OF SURVEILLANCE AUTHORISATION

HUMAN RIGHTS ACT 1998

Public Authority	City of Wolverhampton Council, Civic Centre, St Peters Square, Wolverhampton		
Name of Applicant		Service	
Investigating Officer (if different from applicant)			
Investigation Reference Number / Name			

Details of Cancellation

1. Explain the reason(s) for the cancellation of the authorisation
2. Explain the value of the Surveillance in operation.

Authorising Officer:

3. Authorising Officers Statement			
I hereby authorise the cancellation of the Surveillance investigation / operation as detailed above.			
Name		Position	
Signature		Date	
Cancellation from Date		Cancellation from Time	