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Ofsted's directed surveillance policy

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Policy paper

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Our surveillance powers Ofsted will use directed surveillance authorised under the Regulation of Investigatory Powers Act 2000 (RIPA) to gather evidence of the commission of What surveillance is a criminal offence. Social media and websites Surveillance outside RIPA

> RIPA came into force in England and Wales in September 2000. The Act covers in detail the type of surveillance that certain public authorities, including

by other means.

Introduction

Ofsted, may carry out lawfully, and the circumstances in which it may be carried out. RIPA sets out:

Directed surveillance may be appropriate if we have exhausted all other

methods of gathering evidence or if we cannot gather the necessary evidence

 when we can carry out directed surveillance • who should authorise each use of the power • what use we can make of information gathered by directed surveillance

The aim of RIPA is to ensure that any use of investigatory powers by a public authority is compliant with the <u>Human Rights Act 1998</u>. In particular, RIPA ensures the right to the protection of private and family life under Article 8 of the European Convention. The European Convention made this a qualified right, meaning that it can be interfered with in order to protect the rights of

another or the wider public interest. Therefore, Ofsted may interfere with these

proportionate The Investigatory Powers Commissioner's Office (IPCO) oversees the use of

rights but only if the interference is:

• in accordance with the law

necessary

RIPA powers by public authorities. It carries out regular inspection of authorities for that purpose.

We take our statutory responsibilities seriously and will act in accordance with

the law. We will take necessary and proportionate action in relation to our RIPA powers.

or detect a crime. This power is available when Ofsted suspects that a person

has committed, or is committing, an offence under the Childcare Act 2006, the

Our surveillance powers We are authorised under RIPA to carry out directed surveillance only to prevent

search.

Care Standards Act 2000, the Adoption and Children Act 2002, section 96 of the Education and Skills Act 2008 or any associated regulations. Occasionally, it may be necessary for us to use directed surveillance to gather evidence to justify using other means of investigation, for example the right to enter and

You should read this policy along with:

• our social care compliance handbook • our early years compliance handbook • the codes of practice made under <u>section 71 of RIPA</u> on 15 August 2018

What surveillance is

Surveillance includes:

communications

recording any of the above

the subject is aware of it comes under the definition of overt surveillance. Overt surveillance does not require RIPA authorisation. RIPA authorises and regulates only our covert, directed surveillance. Section 26(2) of RIPA defines directed surveillance as surveillance that is:

• carried out for the purposes of a specific investigation or operation related

• likely to result in the obtaining of private information about a person or

• surveillance by or with the assistance of appropriate surveillance devices

Surveillance can be overt or covert. Any surveillance that is carried out where

monitoring, observing, listening to persons, watching or following their

movements, listening to their conversations and other similar activities or

• carried out in a way that is premeditated, rather than, for example, the chance observations of an inspector attending a setting to carry out an inspection

persons

• covert, but not intrusive

to the preventing or detecting of crime

directly connected with the investigation.

Before authorising directed surveillance, our authorising officer will consider whether there is a privacy risk to anyone beyond the subject that we are investigating. This is known as collateral intrusion. When possible, we will take

measures to avoid or minimise unnecessary intrusion into the lives of those not

Social media and websites If we are planning to gather information from social media and other websites as part of an investigation, we will consider whether authorisation of the

activity under RIPA is necessary. If authorisation is required, we will follow the

information on the internet. We will permit only staff who have been authorised

In some instances, we may use covert profiles or pseudonyms to gather

and have received suitable accredited training to use covert profiles or

pseudonyms. Surveillance outside RIPA powers RIPA does not give us the power to carry out surveillance generally; those

that we carry out is authorised and supervised in a way that ensures

carrying out other surveillance or require that we may only carry out

the same procedure as if they were seeking a RIPA authorisation.

**Obtaining RIPA authorisation** 

surveillance when authorised under RIPA.

compliance with the Human Rights Act 1998. RIPA does not prevent us

powers are either available under specific legislation or in relation to other

functions. RIPA provides a framework to ensure that any directed surveillance

There may be exceptional circumstances when it is necessary for us to carry out

covert surveillance that is not covered by RIPA. In these cases, staff will follow

Our staff must apply for, and obtain, written authorisation from an authorising

officer before carrying out directed surveillance. Staff who carry out directed

surveillance, authorising officers must have received approved training and be

surveillance must have received approved training and be familiar with the

There are trained authorising officers within our early years, social care and

consider a request to authorise directed surveillance in any remit unless

All applications for directed surveillance must include the following

• why – the reasons that directed surveillance is necessary and what crime it

• what – a detailed explanation of the information we expect to gain from the

when – the date we intend to start the directed surveillance and for how long

who – the identities, if known, of the person or persons who are to be the

unregistered schools remits. An authorising officer from a different remit must

requirements of the codes of practice. Similarly, to authorise directed

usual process for obtaining and granting a RIPA authorisation.

## urgency makes this impossible.

Making an application

will prevent or detect

directed surveillance

we need the surveillance

are not appropriate or sufficient.

**Granting authorisations** 

extent of the suspected criminal offence

obtaining the information or evidence

why these are not appropriate or sufficient

information:

familiar with the requirements of the codes of practice.

subjects of the directed surveillance • how – the methods and equipment we will use, for example a camera, a listening device, cars or computers • the details of any potential collateral intrusion (that is, intrusion into the privacy of individuals who are not the subject of the directed surveillance), the justification for that intrusion and the steps that we will take to limit it

• the arrangements made to ensure that the surveillance remains covert

necessary information by any other means. An application for the authorisation

must demonstrate how using directed surveillance is proportionate, what other

means of obtaining the information we have tried or considered and why these

We will only use directed surveillance if it is not possible to obtain the

where – the location where the directed surveillance will take place

The authorising officer will consider the following 4 factors when determining whether the application for directed surveillance is appropriate and proportionate: how the size and scope of the operation is balanced against the gravity and

how and why the methods to be used will cause the least possible intrusion

for the person who is targeted and other individuals who may be affected

why the use of the power is appropriate and the only reasonable way of

what other means of obtaining the information have been considered and

The authorising officer will then balance the impact of carrying out directed

surveillance on individuals against our responsibility to prevent and detect

crime and to safeguard children and other service users. Proportionality also requires a demonstration that the methods and tactics that we use when carrying out any particular surveillance operation are the least intrusive possible.

criminal offence or offences

officer will provide details of the following:

why they are authorising the surveillance

• where the surveillance will take place

**Reviewing authorisations** 

• the length of time that the surveillance is authorised

covert surveillance

Authorising officers will only approve directed surveillance if they are satisfied that: it is an appropriate and proportionate response

• it is to obtain evidence that someone is committing or is likely to commit a

• those nominated to carry out the operation are trained appropriately in

necessary information for the authorising officer to reach a decision

all sections of the application form are complete and the form includes all

When approving a directed surveillance authorisation request, the authorising

We will keep a record of all applications for directed surveillance, including the

exact details of the approved authorisations, for at least 3 years from the date

that the operation ends. We will store these records securely, in line with our

The authorising officer will review each authorisation regularly to assess

whether it should continue or be cancelled. The review will consider the

• if the directed surveillance continues to meet the criteria set out in the

An application for renewal must be sent to the authorising officer who granted

the original authorisation. The authorising officer must read the original

authorising officer will check that the renewal application includes details

• any significant changes to the information in the previous authorised

• the proposed length of time for the additional directed surveillance

An application must be made to the authorising officer for the cancellation of

the directed surveillance once we have completed the operation or have

Only the authorising officer can cancel the authorisation. The authorising

officer must cancel the authorisation as soon as possible after the operation

has ended or as soon as they are satisfied that the directed surveillance no

All staff authorised to apply for authorisations or to carry out directed

Authorising officers must have received initial training from external expert

Her Majesty's Chief Inspector (HMCI), as our senior officer responsible for

RIPA, will attend an internal awareness event in relation to RIPA on a biannual

basis. HMCI and all authorising and surveillance officers will receive regular

Maintenance of records and retention of evidence

the frequency of reviews as prescribed by the authorising officer

the date and time of any instruction by the authorising officer

In line with the codes of practice, we will hold a central record of all

surveillance authorisations. We will make the record available to the relevant

commissioner or inspector from IPCO on request. We will retain a record for

We will ensure that there is continuity in respect of any surveillance material,

or may be relevant to any future criminal, regulatory or civil proceedings. We

such as logs or photographs, and store this material securely for as long as it is

may disclose the material to a court or tribunal and to other parties if the court

We will destroy surveillance material immediately once it is no longer required

The authorising officer is responsible for ensuring that the handling, storage

and retention of the products of surveillance are in line with this policy and the

codes of practice. They are also responsible for ensuring that we comply with

all data protection requirements, including the Data Protection Act 2018 and

If the authorised directed surveillance operation gathers evidence of criminal

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Services

offences other than those under investigation, the surveillance officer will

for a prosecution or in relation to regulatory/civil proceedings.

each authorisation for at least 3 years from the date on which the directed

We will store all information in line with our retention policy.

• a record of any renewal of an authorisation, the reason why the person

renewing an authorisation considered it necessary to do so, and the reasons,

a record of the result of each review of an authorisation

sources and will receive refresher training internally on a biannual basis.

decided not to continue with it for any reason. Authorisations must be

application along with the renewed surveillance application form. The

• if the directed surveillance remains proportionate

• if Ofsted can gather the evidence required in any other way

 what equipment may be used • why it is a proportionate response The authorising officer may include additional conditions for the conduct of the

directed surveillance.

retention policy.

application form

following:

about:

what they are authorising

• all evidence gathered by directed surveillance up to that point any additional information that may have a bearing on the decision including the extent of any collateral intrusion The authorising officer will also review the authorisation when the directed

Renewing authorisation

surveillance is complete.

application the reason it is necessary to continue directed surveillance • the value of continued directed surveillance to the investigation of the suspected offence, based on the evidence gathered so far

• the extent of any collateral intrusion to date

**Cancelling authorisation** 

cancelled and cannot be allowed to lapse.

Training and development

surveillance must have received approved training.

updates on changes to law and practice in this area.

longer meets the criteria.

We will maintain and retain the following: all applications for directed surveillance, including the outcome of the application • a record for the period for which the surveillance has taken place

if any, for not renewing an authorisation

• the reasons for cancelling an authorisation

surveillance operation ends.

or tribunal directs this.

secure the evidence and inform the relevant agency.

**Education and learning** 

**Environment and countryside** 

Passports, travel and living abroad

Housing and local services

**Employing people** 

Money and tax

the Law Enforcement Directive.

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Services and information

Births, deaths, marriages and care

Business and self-employed

Citizenship and living in the UK

otherwise stated

Childcare and parenting

Crime, justice and the law

Benefits

Yes

No

Coronavirus (COVID-19): guidance and support Check the new rules for January 2021

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