

## East Ayrshire Council

### Procedure for Authorisation of Covert Surveillance

#### 1. Foreword

- 1.1 The use of surveillance to provide information is a valuable resource for the protection of the public and the maintenance of law and order. In order that local authorities and law enforcement agencies are able to discharge their responsibilities, use is made of unaided surveillance and surveillance devices. Where this surveillance is covert i.e. the subject of the surveillance is unaware that it is taking place, then it must be authorised to ensure that it is lawful. CCTV systems in the main will not be subject to this procedure as they are 'overt' forms of surveillance. However where CCTV is used as part of a pre-planned operation of surveillance then authorisation should be obtained.
- 1.2 Until October 2000 covert surveillance was not subject to statutory control in the UK. From that date a legal framework ensures that the use of surveillance is subject to an authorisation, review and cancellation procedure.

#### 2. Policy statement

- 2.1 In some circumstances, it may be necessary for East Ayrshire Council employees, in the course of their duties, to make observations of a person or person(s) in a covert manner, i.e. without that person's knowledge. By their nature, actions of this sort may constitute an interference with that person's right to privacy and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ('the right to respect for private and family life').
- 2.2 The Regulation of Investigatory Powers Act (2000 [RIPA] and the Regulation of Investigatory Powers (Scotland) Act (2000) [RIP (S) A] ('the Acts') together provide for the first time a legal framework for covert surveillance activities by public authorities (including local authorities) and an independent inspection regime to monitor these activities.
- 2.3 Whilst the Acts do not impose a requirement for local authorities to seek or obtain an authorisation, East Ayrshire Council employees will be expected to adhere to this authorisation procedure before conducting any covert surveillance.
- 2.4 Employees of East Ayrshire Council will **not** carry out intrusive surveillance within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000. This is surveillance of anything taking place on residential premises or in a private vehicle that involves the presence of an individual on the premises or in the vehicle or is

carried out by means of a surveillance device capable of providing information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the house.

### 3. Objective

3.1 The objective of this procedure is to ensure that all work involving directed surveillance by East Ayrshire Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Regulation of Investigatory Powers (Scotland) Act 2000 and the Scottish Executive's Code of Practice on the Use of Covert Human Intelligence Sources and the Code of Practice on Covert Surveillance.

### 3.2 Definitions

3.2.1 **Covert surveillance** means surveillance that is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is taking place.

3.2.2 **Authorising officer** is the person who is entitled to give an authorisation for directed surveillance in accordance with section 5 of the Regulation of Investigatory Powers (Scotland) Act 2000.

3.2.3 **Private information** includes information about a person relating to his private or family life.

3.2.4 **Residential premises** means any premises occupied or used, however temporarily, for residential purposes or otherwise as living accommodation.

3.2.5 **Private vehicle** means any vehicle that is used primarily for the private purpose of the person who owns it or of a person otherwise having the right to use it. This does not include a person whose right to use a vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey. A vehicle includes any vessel, aircraft or hovercraft.

### 4. Scope of the Procedure

4.1 This procedure applies in all cases where 'directed surveillance' is being planned or carried out. Directed surveillance is defined in the Code of Practice as surveillance undertaken "for the purposes of a specific investigation or operation" and "in such a manner as is likely to result in the obtaining of private information about a person."

4.2 This procedure does not apply to:

- Ad-hoc covert observations that do not involve the systematic surveillance of specific person(s)

- Observations that are not carried out covertly, or
- Unplanned observations made as an immediate response to events.

4.3 In marginal cases, or other situations where doubt may arise as to the applicability of these procedures, officers should obtain appropriate advice from their line-managers/authorising officers, or from Legal Services. In general, officers should always err on the side of caution, bearing in mind the consequences which can arise from carrying out unauthorised activity, specifically 'evidence' subsequently being ruled inadmissible by the Courts or the Council being sued by an aggrieved person who believes his legal rights have been infringed by the carrying out of such unauthorised activity.

## **5. Principle of Surveillance**

5.1 In planning and carrying out covert surveillance, East Ayrshire Council employees shall comply with the following principles.

### **5.2 Lawful purposes**

Directed surveillance shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Acts) namely:

- 5.2.1 For the purpose of preventing or detecting crime or the prevention of disorder;
- 5.2.2 In the interests of public safety;
- 5.2.3 For the purpose of protecting public health;
- 5.2.4 For any other purpose prescribed in an order made by the Scottish Ministers.

Employees carrying out surveillance shall not interfere with any property or harass any person.

### **5.3 Confidential material**

5.3.1 Applications where a significant risk of acquiring confidential material has been identified shall always require the approval of a Director or above, and should only ever be authorised following appropriate consultation with Legal Services.

5.3.2 Confidential material consists of:

- Matter subject to legal privilege (for example between professional legal advisor and client)
- Confidential personal information (for example relating to a person's physical or mental health) or
- Confidential journalistic material.

## 6. The Authorisation Process

- 6.1 Applications for directed surveillance will be authorised at the level prescribed by the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000. For the purposes of East Ayrshire Council generally this will be no lower than third tier level. For public authorities there are no substitutes of lower grade prescribed to authorise 'urgent' cases in contrast, for example, to the police. It will be the responsibility of each Director to identify all authorising officers within their Department and to communicate this information to all relevant employees. All lists of authorising officers should be regularly reviewed, at least annually, to ensure they remain current and accurate.
- 6.2 Authorising officers within the meaning of this procedure should avoid authorising their own activities.
- 6.3 Authorisations should always be in writing. However, in urgent cases a third tier level Manager or Head of Service or above may approve applications orally.
- 6.4 All applications for directed surveillance authorisations will be made on form EAC/auth/ds. The applicant in all cases should complete this. In urgent cases where the authorising officer has verbally granted the authorisation, this should be recorded on the form or, if that is not possible, in the applicant's notebook or diary. This should be done by the person to whom the authorising officer spoke (normally the applicant) but should later be endorsed by the authorising officer.
- 6.5 All applications for directed surveillance renewals will be made on form EAC/ren/ds. The applicant in all cases should complete this where the surveillance requires to continue beyond the previously authorised period (including previous renewals).
- 6.6 Where authorisation ceases to be either necessary or appropriate the authorising officer or appropriate deputy will cancel an authorisation using form EAC/can/ds.
- 6.7 Forms, codes of practice and supplementary material will be available from the Council Intranet and will be maintained by the Trading Standards Section of the Community Services Department.
- 6.8 Any person giving an authorisation for the use of directed surveillance must be satisfied that:
- Account has been taken of the likely degree of intrusion into the privacy of persons other than those directly implicated in the operation or investigation ('collateral intrusion'). Measures must be taken, wherever practicable to avoid unnecessary intrusion into the lives of those affected by collateral intrusion.
  - The authorisation is necessary.
  - The authorised surveillance is proportionate.
- 6.9 **Necessity**  
Surveillance operations shall only be undertaken where there is no reasonable and effective alternative way of achieving the desired objective(s).

#### **6.10 Effectiveness**

Surveillance operations shall be undertaken only by suitable trained or experienced employees, or under their direct supervision.

#### **6.11 Proportionality**

The use of surveillance shall not be excessive i.e. it shall be in proportion to the significance of the matter being investigated.

#### **6.12 Authorisation**

All directed surveillance shall be authorised in accordance with this procedure.

### **7. Time Periods – Authorisations**

7.1 Oral applications expire after 72 hours. If required they can be renewed for a further period of 3 months if renewed in writing.

7.2 Written authorisations expire 3 months beginning on the day from which they took effect.

### **8. Time Periods – Renewals**

8.1 If at any time before an authorisation would expire (including oral authorisations) the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, it may be renewed in writing for a further period of 3 months beginning with the day on which the previous authorisation ceases to have effect. Applications should only be made shortly before the authorisation is due to expire.

8.2 Any person entitled to authorise may renew authorisations. They may be renewed more than once, provided they continue to meet the criteria for authorisation.

### **9. Review**

9.1 The Authorising Officer shall review all authorisations at intervals of not more than one month. Details of the review and the decision reached shall be noted on the original application.

### **10. Cancellation**

10.1 The authorising officer or appropriate deputy must cancel an authorisation if he/she is satisfied that the directed surveillance no longer satisfies the criteria for authorisation.

## **11. Monitoring**

- 11.1 Each service or discrete location within Services must maintain a record of all applications for authorisation (including refusals), renewals, reviews and cancellations. The most senior authoriser in that Service or at that location will maintain the monitoring sheet form EAC/ms/ripsa.

## **12. Security and Retention of Documents**

- 12.1 Documents created under this procedure are highly confidential and shall be treated as such. Services shall make proper arrangements for their retention, security and destruction, in accordance with the requirements of the Data Protection Act 1998 and the Code of Practice.
- 12.2 The Head of Administration and Legal Services will maintain the Central Register of Authorisations. Authorising officers shall notify, and provide copies to, the said officer of the grant, renewal or cancellation of any authorisations and the name of the Applicant Officer within no more than 2 working days to ensure the accuracy of the Central Register.
- 12.3 The Authorising Officer shall retain the original Authorisation and Renewal forms until cancelled. On cancellation, the original Application, Renewal and Cancellation forms shall be forwarded to the Head of Administration and Legal Services with the Authorising Officer retaining a copy.
- 12.4 The Authorising Officer shall retain the copy forms for at least one year after cancellation. The Head of Administration and Legal Services will retain the original forms for at least five years after cancellation. In both cases these will not be destroyed without the authority of the authorising officer if practicable.

## **13. Oversight**

- 13.1 The Office of Surveillance Commissioners (OSC) provides independent oversight of the use of the powers contained within the Regulation of Investigatory Powers (Scotland) Act 2000. This oversight includes inspection visits by Inspectors appointed by the OSC.

## **14. Complaints**

- 14.1 The Regulation of Investigatory Powers Act 2000 (the 'UK Act') establishes an independent Tribunal. This has full powers to investigate and decide any cases within its jurisdiction. A leaflet titled 'Investigatory Powers Tribunal: Regulation of Investigatory Powers Act 2000' sets out the complaints procedure. This is available from the Council Intranet and includes a form for a person to complain to the Tribunal.