REGULATION OF INVESTIGATORY POWERS ACT 2000 POLICY
["The RIPA Policy"]

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CONTENTS:

Foreword:

Melton Borough Council only carries out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. It recognises its obligation to comply with the Regulation of Investigatory Powers Act 2000 ["RIPA"] when such an investigation is for one of the purposes set out in the Act and has produced this guidance document to assist officers undertaking this type of work "Investigating Officers".

Applications for authority:

A Chief Officer authorised by the Council ("Authorising Officer") will consider applications for authorisation in accordance with RIPA. A list of Chief Officers who are also Authorising Officers can be found at Appendix 1 of this policy. Any incomplete or inadequate application forms will be returned to the applicant for amendment. The Authorising Officer shall in particular ensure that:-

- There is a satisfactory reason for carrying out the surveillance;
- Any directed surveillance passes the "serious crime" threshold;
- The covert nature of the investigation is necessary;
- Proper consideration has been given to collateral intrusion;
- The proposed length and extent of the surveillance is proportionate to the information being sought;
- The Chief Executive Officer's and/or Monitoring Officer's authorisation is sought where confidential / legal / clerical / parliamentary / journalistic / medical / spiritual welfare issues are involved;
- The authorisations are reviewed and cancelled;
- Records of all authorisations are sent to the Legal & Governance Manager for entry onto the Central Register.

Once authorisation has been obtained from the Authorising Officer, the Authorising Officer or their nominee (e.g. the Investigating Officer) will attend the Magistrates' Court in order to obtain Judicial approval for the authorisation. See flowchart at Appendix 2.

Training:

Each Authorising Officer shall be responsible for ensuring that relevant members of staff within their Directorate are aware of the Act's requirements and trained accordingly.

Central register and records:

Legal Services shall retain the Central Register of all authorisations issued by Melton Borough Council.

The Monitoring Officer will monitor the content of the application forms and authorisations to ensure that they comply with the Act.

Senior Responsible Officer ("SRO"):

The Senior Responsible Officer is a role required by the Investigatory Powers Commissioner's Office (the "IPCO") with oversight of the Council's use of RIPA powers.

The SRO is the Council's Monitoring Officer and will only act as an Authorising Officer in exceptional circumstances to avoid any conflicts with the SRO role.

RIPA Co-ordinating Officer

The RIPA Co-ordinating Officer has responsibility for day-to-day RIPA management and any administrative processes observed in obtaining an authorisation and advice thereon. This role is performed by the Legal & Governance Manager.

Policy

DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCE

1. **Purpose**

The purpose of this guidance is to explain

- the scope of RIPA – Part II;
- the circumstances where it applies; and
- the authorisation procedures to be followed

2. **Introduction**

2.1 This Act, which came into force in 2000, is intended to regulate the use of investigatory powers exercised by various bodies including local authorities, and ensure that they are used in accordance with human rights. This is achieved by requiring certain investigations to be authorised by an appropriate officer and approved by the judiciary before they are carried out.

2.2 The investigatory powers, which are relevant to a local authority, are directed covert surveillance in respect of specific operations involving criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months imprisonment or are related to the underage sale of alcohol and tobacco and the use of covert human intelligence sources (CHIS). The Act makes it clear for which purposes they may be used, to what extent, and who may authorise their use. There are also Codes of Practice in relation to the use of these powers and the Home Office web site link for these is at **Appendix B.**

2.3 Consideration must be given, prior to authorisation as to whether or not the acquisition of private information is necessary and proportionate, i.e. whether a potential breach of a human right is justified in the interests of the community as a whole, or whether the information could be obtained in other ways.

3. **Scrutiny and Tribunal**

3.1 **External**

3.1.1 As of 1 November 2012 the Council must obtain an order from a Justice of the Peace ("Magistrates Court") approving the grant or renewal of any authorisation for the use of directed surveillance or CHIS before the authorisation can take effect and the activity is carried out. The Council can only appeal a decision of the Justice of the Peace on a point of law by Judicial Review.

3.1.2 The Investigatory Powers Commissioner's Office (IPCO) (which replaced the Office of Surveillance Commissioners ("OSC") was set up to monitor compliance with RIPA. IPCO provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities", and the Investigatory Powers Commissioner will from time to time inspect the Council's records and procedures for this purpose.

3.1.3 In order to ensure that investigating authorities are using the powers properly, the Act also establishes a Tribunal to hear complaints from persons aggrieved by conduct, e.g. directed surveillance. Applications will be heard on a judicial review basis. Such claims must be brought no later than one year after the taking place of the conduct to which it relates, unless it is just and equitable to extend this period.

3.1.4 The Tribunal can order:

- Quashing or cancellation of any warrant or authorisation;
- Destruction of any records or information obtained by using a warrant or authorisation;
- Destruction of records or information held by a public authority in relation to any person.

3.1.5 The Council has a duty to disclose to the tribunal all documents they require if any Council officer has:

- Engaged in any conduct as a result of such authorisation;
- Granted any authorisation under RIPA.

3.2 **Internal Scrutiny**

3.2.1 The Council will ensure that the SRO is responsible for:

- The integrity of the process in place within the Council to authorise directed surveillance and CHIS;
- Compliance with part II of the 2000 Act and with the accompanying Codes of Practice;
- Engagement with the Commissioners and Inspectors when they conduct their inspections; and
- Where necessary, overseeing the implementation of any post-inspection action plans recommended or approved by a Commissioner.

3.2.2 The Audit and Standards Committee will receive reports on the use of the Act annually to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose.

3.3 Unauthorised Activities

3.3.1 If any Officer is concerned that surveillance/CHIS activity is taking place and there is no authorisation under RIPA in place, he/she should notify the Monitoring Officer and the Legal Governance Manager to seek advice.

3.3.2 If any activity is deemed to be unauthorised, it will be reported to the IPCO.

4. Benefits of RIPA authorisations

4.1 The Act states that if authorisation confers entitlement to engage in a certain conduct and the conduct is in accordance with the authorisation, then it will be lawful for all purposes. Consequently, RIPA provides a statutory framework under which covert surveillance activity can be authorised and conducted compatibly with Article 8 of the Human Rights Act 1998 – a person's right to respect for their private and family life, home and correspondence.

4.2 Material obtained through properly authorised covert surveillance is admissible evidence in criminal proceedings.

5. Definitions

5.1 **'Covert'** is defined as surveillance carried out in such a manner that is calculated to ensure that the person subject to it is unaware that it is or may be taking place. (s.26 (9)(a))

5.2 **'Covert human intelligence source'** (CHIS) is defined as a person who establishes or maintains a personal or other relationship with a person for the covert purpose of obtaining/providing access to/ disclosing, information obtained through that relationship or as a consequence of the relationship. (s.26 (8))

5.3 **'Directed surveillance'** is defined as covert but not intrusive surveillance and undertaken:

- for a specific investigation or operations;
- in such a way that is likely to result in the obtaining of private information about any person;
- other than by way of an immediate response (s.26 (2)).

5.4 **'Private information'** includes any information relating to a person's private or family life (s.26 (10)). Private information should be taken generally to include information on any aspect of a person's private or personal relationship with others including family and professional or business relationships.

5.5 **'Intrusive'** surveillance is covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle or using a surveillance device. **Melton Borough Council may not authorise such surveillance.**

5.6 **'Authorising Officer'** in the case of Melton Borough Council can be the following senior officers within the Council:

1. Edd De Coverly – Chief Executive
2. Keith Aubrey – Deputy Chief Executive & Director for People & Communities
3. Dawn Garton – Director for Corporate Services (Chief Finance Officer)
4. Pranali Parikh – Director for Growth & Regeneration

5.7 In exceptional circumstances, Adele Wylie, Director for Governance & Regulatory Services (& Monitoring Officer) may also act as authorising officer but it must not conflict with the SRO role.

5.8 If the operation concerns more than one department of the Council it can only be authorised by either the Monitoring Officer or the Chief Executive.

5.9 Please refer to **appendix 1** for a list of Authorising Officers and their contact details for Melton Borough Council.

6. When does RIPA apply?

6.1 Where the directed covert surveillance of an individual or group of individuals, or the use of a CHIS, **is necessary for the purpose of preventing or detecting crime.**

6.2 The Council can only authorise **Directed Surveillance** to prevent and detect conduct which constitutes one or more criminal offences. The criminal offences must be punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months imprisonment or be an offence under:

a) S.146 of the Licensing Act 2003 (sale of alcohol to children);

b) S.147 of the Licensing Act 2003 (allowing the sale of alcohol to children);

c) S.147A of the Licensing Act 2003 (persistently selling alcohol to children);

d) S.7 of the Children and Young Persons Act 1933 (sale of tobacco, etc, to persons under eighteen).

6.3 CCTV:

6.3.1 The normal use of CCTV is not usually covert because members of the public are informed by signs that such equipment is in operation. However, authorisation should be sought where it is intended to use CCTV covertly and in a pre-planned manner as part of a specific investigation or operation to target a specific individual or group of individuals. Equally a request, say by the police, to track particular individuals via CCTV recordings may require authorisation (from the police).

6.3.1 Melton's system is run by Melton Borough Council and its operational partner, Leicestershire Police, who staff the system with Community Volunteers.

6.4 Online Covert Activity

6.4.1 Reviewing open source sites does not require authorisation unless the review is carried out with some regularity, usually when creating a profile, in which case directed surveillance authorisation will be required. If it becomes necessary to breach the privacy controls and become, for example, a “friend” on the Facebook site, with the investigating officer utilising a false account concealing his/her identity as a Council Officer for the purposes of gleaning intelligence, this is a covert operation intended to obtain private information and should be authorised, at a minimum, as directed surveillance. If the investigator engages in any form of relationship with the account operator then the investigator becomes a Covert Human Intelligence Source (CHIS) requiring authorisation as such and management by a Controller and Handler with a record being kept and a risk assessment created.

6.4.2 Where the serious crime threshold is not met in relation to an investigation, surveillance of social media sites could amount to a breach of an individual’s Article 8 rights for which there is no protection offered by RIPA. Officers using social media sites as part of an investigation should seek advice from the Legal Team as to when an authorisation for directed surveillance or CHIS would be required.

6.4.3 The Revised Code of Practice for Covert Surveillance and Property Interference (August 2018) at paragraphs 3.10 to 3.17 provides guidance in relation to online covert activity and should be considered in relation to any covert activity.

6.4.4 Some key paragraphs provide:

"…

3.11 The internet may be used for intelligence gathering and/or as a surveillance tool. Where online monitoring or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, an authorisation for directed surveillance should be considered, as set out elsewhere in this code. Where a person acting on behalf of a public authority is intending to engage with others online without disclosing his or her identity, a CHIS authorisation may be needed (paragraphs 4.10 to 4.16 of the Covert Human Intelligence Sources code of practice provide detail on where a CHIS authorisation may be available for online activity).

…

3.15 Whether a public authority interferes with a person's private life includes a consideration of the nature of the public authority's activity in relation to that information. Simple reconnaissance of such sites (i.e. preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation. But where a public authority is systematically collecting and recording information about a particular person or group, a directed surveillance authorisation should be considered. These considerations apply regardless of when the information was shared online. See also paragraph 3.6.

Example 1:

A police officer undertakes a simple internet search on a name, address or telephone number to find out whether a subject of interest has an online presence. This is unlikely to need an authorisation. However, if having found an individual's social media profile or identity, it is decided to monitor it or extract information from it for retention in a record because it is relevant to an investigation or operation, authorisation should then be considered.

…

Example 3:

A public authority undertakes general monitoring of the internet in circumstances where it is not part of a specific, ongoing investigation or operation to identify themes, trends, possible indicators of criminality or other factors that may influence operational strategies or deployments. This activity does not require RIPA authorisation. However, when this activity leads to the discovery of previously unknown subjects of interest, once it is decided to monitor those individuals as part of an ongoing operation or investigation, authorisation should be considered."

6.4.5 *Paragraph 3.16* of The Revised Code of Practice for Covert Surveillance and Property Interference (August 2018) provides to be considered in establishing whether a directed surveillance authorisation is required.

7. Covert Human Intelligence Source

7.1 Put simply, this means the use of members of the public, undercover officers or professional witnesses to obtain information and evidence.

7.2 The RIPA definition (section 26) is anyone who:

a) establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraphs b) or c);

b) covertly uses such a relationship to obtain information or provide access to any information to another person; or

c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

Any reference to the conduct of a CHIS includes the conduct of a source which falls within a) to c) or is incidental to it. References to the use of a CHIS are references to inducing, asking or assisting a person to engage in such conduct.

7.3 Section 26(9) of RIPA goes on to define:

a) a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if, and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of that purpose; and

b) a relationship is used covertly, and information obtained as mentioned in s 26(8) (c) above and is disclosed covertly, if, and only if it is used or as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

7.4 With any authorised use of a CHIS, the Council must ensure that arrangements are in place for the proper oversight and management of the CHIS, this includes appointing individual officers as handlers and controllers in relation to the CHIS (s.29(5)(a) and (b)).

7.5 There is a risk that an informant who is providing information to the Council voluntarily may in reality be a CHIS even if not tasked to obtain information covertly. It is the activity of the CHIS in exploiting a relationship for a covert purpose which is ultimately authorised in the 2000 Act, not whether or not the CHIS is asked to do so by the Council. When an informant gives repeat information about a suspect or about a family and it becomes apparent that the informant may be obtaining the information in the course of a neighbourhood or family relationship, it may mean that the informant is in fact a CHIS. Legal advice must always be sought from the Legal Governance Manager in such instances before acting on any information from such an informant.

7.6 The Revised Code of Practice for Covert Human Intelligence Sources (August 2018) at paragraphs 4.11 to 4.17 should be considered where any activity on requires interaction with others where those parties could not reasonably be expected to know their true identity. A CHIS authorisation may be required.

7.7 Some key paragraphs provide:

"…

4.12 Where someone, such as an employee or member of the public, is tasked by a public authority to use an internet profile to establish or maintain a relationship with a subject of interest for a covert purpose, or otherwise undertakes such activity on behalf of the public authority, in order to obtain or provide access to information, a CHIS authorisation is likely to be required. For example:

- *An investigator using the internet to engage with a subject of interest at the start of an operation, in order to ascertain information or facilitate a meeting in person.*

- *Directing a member of the public (such as a CHIS) to use their own or another internet profile to establish or maintain a relationship with a subject of interest for a covert purpose.*

- *Joining chat rooms with a view to interacting with a criminal group in order to obtain information about their criminal activities.*

4.13 A CHIS authorisation will not always be appropriate or necessary for online investigation or research. Some websites require a user to register providing personal identifiers (such as name and phone number) before access to the site will be permitted. Where a member of a public authority sets up a false identity for this purpose, this does not in itself amount to establishing a relationship, and a CHIS authorisation would not immediately be required, though consideration should be given to the need for a directed surveillance authorisation if the conduct is likely to result in

the acquisition of private information, and the other relevant criteria are met.

Example 1:

An HMRC officer intends to make a one-off online test purchase of an item on an auction site, to investigate intelligence that the true value of the goods is not being declared for tax purposes. The officer concludes the purchase and does not correspond privately with the seller or leave feedback on the site. No covert relationship is formed and a CHIS authorisation need not be sought.

Example 2:
HMRC task a member of the public to purchase goods from a number of websites to obtain information about the identity of the seller, country of origin of the goods and banking arrangements. The individual is required to engage with the seller as necessary to complete the purchases. The deployment should be covered by a CHIS authorisation because of the intention to establish a relationship for covert purposes.

4.14 Where a website or social media account requires a minimal level of interaction, such as sending or receiving a friend request before access is permitted, this may not in itself amount to establishing a relationship. Equally, the use of electronic gestures such as "like" or "follow" to react to information posted by others online would not in itself constitute forming a relationship. However, it should be borne in mind that entering a website or responding on these terms may lead to further interaction with other users and a CHIS authorisation should be obtained if it is intended for an officer of a public authority or a CHIS to engage in such interaction to obtain, provide access to or disclose information.

Example 1:
An officer maintains a false persona, unconnected to law enforcement, on social media sites in order to facilitate future operational research or investigation. As part of the legend building activity he "follows" a variety of people and entities and "likes" occasional posts without engaging further. No relationship is formed and no CHIS authorisation is needed.

Example 2:
The officer sends a request to join a closed group known to be administered by a subject of interest, connected to a specific investigation. A directed surveillance authorisation would be needed to cover the proposed covert monitoring of the site. Once accepted into the group it becomes apparent that further interaction is necessary. This should be authorised by means of a CHIS authorisation.

4.15 When engaging in conduct as a CHIS, a member of a public authority should not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without considering the need for authorisation. Full consideration should be given to the potential risks posed by that activity.

…"

7.8 **Juvenile Sources**

Special safeguards apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. On no occasion should the use or conduct of a source under the age of 16 years be authorised to give information against his parents or any person who has parental responsibility for them. The duration of a juvenile CHIS is **four** months from the date of grant or renewal. The Regulation of Investigatory Powers (Juveniles) Order 2000 SI No. 2793 contains special provisions which must be adhered to in respect of juvenile sources. Any authorisation of a juvenile CHIS must be made by either the Monitoring Officer or the Chief Executive Officer.

7.9 **Vulnerable Individuals**

A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of themselves, or unable to protect themselves against significant harm or exploitation. Any individual of this description should only be authorised to act as a source in the most exceptional circumstances. Any authorisation of a vulnerable individual as a CHIS must be made by either the Monitoring Officer or the Chief Executive Officer.

8. Authorisations /Applications

8.1 **Applications for directed surveillance**

8.1.1 All application forms must be fully completed with the required details to enable the Authorising Officer to make an informed decision.

8.1.2 Application forms are available on the Home Office website, officers should ensure they are using the most up to date forms for RIPA authorisations.

https://www.gov.uk/government/collections/ripa-forms--2

8.1.3 No authorisation shall be granted unless the Authorising Officer is satisfied that the investigation is:

1. **necessary** for either the purpose of preventing or detecting crime i.e. involves a criminal offence punishable whether summarily or on indictment by a maximum sentence of at least six months imprisonment or related to the underage sale of alcohol or tobacco (see para 6.2 for offences)

2. **proportionate to the ultimate objective.** This has 3 elements, namely, (1) that the method of surveillance proposed is not excessive to the seriousness of the matter under investigation, (2) the method used must be the least invasive of the target's privacy, (3) the privacy of innocent members of the public must be respected and collateral intrusion minimised (see 8.1.2).

3. **collateral Intrusion** i.e. intrusion on, or interference with, the privacy of persons other than the subject of the investigation and consider/assess the risk; and

4. that no other form of investigation would be appropriate.

Note:

Necessity: Covert surveillance cannot be said to be necessary if the desired information can reasonably be obtained by overt means. It must also be necessary for the purpose of preventing or detecting conduct which constitutes one or more criminal offences as set out in paragraph 6 above.

Proportionality: The method of surveillance proposed must not be excessive in relation to the seriousness of the matter under investigation. It must be the method which is the least invasive of the target's privacy.

Collateral intrusion, which affects the privacy rights of innocent members of the public, must be minimised and use of the product of the surveillance carefully controlled so as to respect those rights.

8.1.4 The grant of authorisation should indicate that consideration has been given to the above points.

8.1.5 Advice should be sought from the Legal Governance Manager on any issues of concern.

8.1.6 The Authorising Officer must also take into account the risk of **'collateral intrusion'** i.e. intrusion on, or interference with, the privacy of persons other than the subject of the investigation. The application must include an **assessment** of any risk of collateral intrusion for this purpose.

8.1.7 Steps must be taken to avoid unnecessary collateral intrusion and minimise any necessary intrusion.

8.1.8 Those carrying out the investigation must inform the Authorising Officer of any unexpected interference with the privacy of individuals who are not covered by the authorisation, as soon as these become apparent.

8.1.9 Where such collateral intrusion is unavoidable, the activities may still be authorised, provided this intrusion is considered proportionate to what is sought to be achieved.

8.1.10 The Authorising Officer should also fully understand the capabilities and sensitivity levels of any equipment being used to carry out directed surveillance so as to properly assess the risk of collateral intrusion in surveillance techniques.

8.2 **Special consideration in respect of confidential information**

8.2.1 Particular attention is drawn to areas where the subject of surveillance may reasonably expect a high degree of privacy, e.g. where confidential information is involved.

8.2.2 Confidential information consists of matters subject to legal privilege, communication between Members of Parliament and another person on constituency matters, confidential personal information or confidential journalistic material. (ss 98-100 Police Act 1997).

8.2.3 Legal privilege

8.2.3.1 Generally, this applies to communications between an individual and his/her legal adviser in connection with the giving of legal advice in connection with or in contemplation of legal proceedings. Such information is unlikely ever to be admissible as evidence in criminal proceedings.

8.2.3.2 If in doubt, the advice of the Legal Governance Manager should be sought in respect of any issues in this area.

8.2.4 Confidential personal information

8.2.4.1 This is oral or written information held in (express or implied) confidence, relating to the physical or mental health or spiritual counselling concerning an individual (alive or dead) who can be identified from it. Specific examples provided in the codes of practice are consultations between a health professional and a patient, discussions between a minister of religion and an individual relating to the latter's **spiritual welfare** or matters of **medical or journalistic confidentiality**.

8.2.5 Confidential journalistic material

8.2.5.1 This is material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence.

8.2.5.2 It should be noted that matters considered to be confidential under RIPA may not necessarily be properly regarded as confidential under section 41 Freedom of Information Act 2000.

8.2.5.3 In such cases, where it is likely that knowledge of confidential information will be acquired, the use of covert surveillance is subject to a higher level of authorisation and may only be authorised by the Chief Executive Officer or their deputy. Authorisation can only be granted where there are exceptional and compelling circumstances that make the authorisation necessary.

8.2.6 Authorisations must be **in writing and have a "wet" signature.**

8.3 Notifications to Inspector/Commissioner

8.3.1 The following situations must be brought to the Inspector/Commissioner's attention at the next inspection:

- Where an officer has had to authorise surveillance in respect of an investigation in which he/she is directly involved;
- Where legally privileged information has been acquired;
- Where a lawyer is the subject of an investigation or operation;
- Where confidential personal information or confidential journalistic information has been acquired and retained.

8.4 Applications for CHIS

8.4.1 The process for CHIS applications is the same as for directed surveillance except that the serious crime threshold of investigating criminal offences with a sentence of at least 6 months in imprisonment does not apply. The authorisation must be in writing, must specify the activities and identity (by pseudonym only) of the CHIS and that the authorised conduct is carried out for the purposes of, or in connection with, the investigation or operation so specified.

8.4.2 Again the Authorising Officer must be satisfied that the authorised use and conduct of the CHIS is proportionate to what is sought to be achieved by that conduct and the CHIS must be necessary for the prevention or detection of crime.

8.4.3 A record must be kept of the matters mentioned in s29(5) and the Source Records Regulations (SI 2000/2725). The Magistrate must be satisfied that the provisions of section 29(5) have been complied with.

8.4.4 Section 29(5) requires:

" (a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare;

(b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;

(c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source;

(d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and

(e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons."

8.4.5 All application forms must be fully completed with the required details to enable the Authorising Officer to make an informed decision. A risk assessment and record must be prepared for each CHIS.

8.5 Judicial Approval of authorisations

8.5.1 Once the Authorising Officer has authorised the Directed Surveillance or CHIS, the Investigating Officer or the Authorising Officer who completed the application form should contact the Magistrates' Court to arrange a hearing for the authorisation to be approved by a Justice of the Peace.

8.5.2 The Investigating Officer and / or the Authorising Officer will provide the Justice of the Peace with a copy of the original authorisation and the supporting documents setting out the case. This forms the basis of the application to the Justice of the Peace and should contain all information that is relied upon.

8.5.3 In addition the Investigating Officer and / or the Authorising Officer will provide the Justice of the Peace with a partially completed judicial application/order form.

8.5.4 The hearing will be in private and the Investigating Officer / Authorising Officer will be sworn in and present evidence as required by the Justice of the Peace. Any such evidence should be limited to the information in the authorisation.

8.5.5 The Justice of the Peace will consider whether he/she is satisfied that at the time the authorisation was given there were reasonable grounds for believing that the authorisation or notice was necessary and proportionate and whether that continues to be the case. They will also consider whether the authorisation was given by the appropriate designated person at the correct level within the Council and whether (in the case of directed surveillance) the crime threshold has been met.

8.5.6 The Justice of the Peace can:

a) **Approve the grant of the authorisation**, which means the authorisation will then take effect;

b) **Refuse to approve the grant of the authorisation**, which means the authorisation will not take effect but the Council could look at the reasons for refusal, make any amendments and reapply for judicial approval.

c) **Refuse to approve the grant of the authorisation and quash the original authorisation**. The court cannot exercise its power to quash the authorisation unless the applicant has at least 2 business days from the date of the refusal in which to make representations.

8.6 Working in partnership with the Police

8.6.1 Authorisation can be granted in situations where the police rather than the Council require the surveillance to take action, as long as the behaviour complained of, meets all criteria to grant and in addition is also of concern to the Council. Authorisation cannot be granted for surveillance requested by the police for a purely police issue.

8.6.2 The Police, as an emergency service may authorise RIPA without Magistrates' Court approval; if an urgent situation arises and RIPA authorisation would be required urgently the Council should contact the Police.

9. Duration and Cancellation

9.1 An authorisation for **directed surveillance:**

- An authorisation for **directed surveillance** shall cease to have effect (if not renewed or cancelled) **3 months** from the date the Justice of the Peace approves the grant

- If renewed the authorisation shall cease to have effect 3 months from the expiry date of the original authorisation.

9.2 An authorisation for **CHIS**:

- shall cease to have effect (unless renewed or unless juvenile) **12 months** from the date the Justice of the Peace approves the grant or renewal. Juvenile CHIS authorisations are only valid for 1 month.

This does not mean that the authorisation should necessarily be permitted to last for the whole period so that it lapses at the end of this time. The authorisation must be cancelled as soon as the Investigating Officer decides that the surveillance should be discontinued.

9.3 Authorisations continue to exist even if they have ceased to have effect. The authorisation must be cancelled if satisfied that the directed surveillance as a whole no longer meets the criteria upon which it was authorised. The date the authorisation was cancelled should be centrally recorded and documentation of any instruction to cease surveillance should be retained and kept with the cancellation form.

9.4 The cancellation form should detail what surveillance took place, if there was any collateral intrusion, what evidence was obtained and how it is to be managed, any risks to a CHIS. Details relating to the retention of records is set out in paragraph 13 below.

10. Reviews

10.1 The Authorising Officer should review all authorisations at intervals determined by him/herself. This should be as often as necessary and practicable. The reviews should be recorded.

10.2 If the directed surveillance authorisation provides for the surveillance of unidentified individuals whose identity is later established, the terms of the authorisation should be refined at review to include the identity of these individuals. A review would be appropriate specifically for this purpose.

10.3 Particular attention should be paid to the possibility of obtaining confidential information and an assessment as to the information gleaned should take place at every review.

11. Renewals

11.1 Any Authorised Officer may renew an existing authorisation on the same terms as the original at any time before the original ceases to have effect. The renewal must then be approved by the Justice of the Peace, before the expiry of the original authorisation, in the same way the original authorisation was approved.

11.2 The process outlined in paragraph 11.1 should be followed for renewals.

11.3 A CHIS authorisation must be thoroughly reviewed at regular intervals before it is renewed.

12. Central Register of Authorisations

12.1 All authorities must maintain the following documents:

- Copy of the application and a copy of the authorisation form and the approval order from the Magistrates together with any supplementary documentation;
- A record of the period over which the surveillance has taken place;
- The frequency of reviews prescribed by the Authorising Officer;
- A record of the result of each review of the authorisation;
- A copy of any renewal of an authorisation and Order made by the Magistrates Court and supporting documentation submitted when the renewal was requested;
- The date and time when any instruction to cease surveillance was given;
- The date and time when any other instruction was given by the Authorising Officer.

12.2 To comply with 12.1 the Legal & Governance Manager will hold the central register of all authorisations issued by officers of Melton Borough Council. The original copy of every authorisation, renewal and cancellation issued should be lodged immediately with the Legal & Governance Manager in an envelope marked ‘Private and Confidential’.

12.3 Any original authorisations and renewals taken to the Magistrates' Court should be retained by the Council, the Court must only keep copies of the authorisations or renewals.

12.4 The Council must also maintain a centrally retrievable record of the following information:

- type of authorisation
- date the approval was given by the Magistrates Court
- details of attendance at the Magistrates' Court, the date of the attendance, the determining Justice of the Peace, the decision of the court and the time and date of the decision
- name and rank/grade of the Authorising Officer
- unique reference number of the investigation/operation
- title (including brief description and names of the subjects) of the investigation/operation;
- whether urgency provisions were used, & if so why
- details of reviews
- dates of any renewals including the name and rank of the Authorising Officer
- whether the investigation/operation is likely to result in obtaining confidential information
- whether the authorisation was granted by an individual directly involved in the investigation
- date of cancellation
- Magistrates' Court Information
- where any application is refused, the grounds for refusal as given by the issuing authority or Judicial Commissioner;
- a record of whether, following a refusal of any application by a Judicial Commissioner, there is an appeal to the Investigatory Powers Commissioner;
- where there is such an appeal and the Investigatory Powers Commissioner also refuses the issuing of an application, the grounds for refusal given.

12.5 These records will be retained for at least 3 years and will be available for inspection by the Office of Surveillance Commissioners.

13. Retention of Records

13.1 The Council must ensure that arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed surveillance or CHIS.

13.2 Authorising Officers, through their relevant Data Controller, must ensure compliance with the appropriate data protection requirements under the Data Protection Act 2018 and any relevant codes of practice relating to the handling and storage of material.

14. Complaints procedure

14.1 The Council will maintain the standards set out in this guidance and the Codes of Practice (**See Appendices 3 - 5**). The Chief Surveillance Commissioner has responsibility for monitoring and reviewing the way the Council exercises the powers and duties conferred by RIPA.

14.2 Contravention of the Data Protection Act 2018 may be reported to the Investigatory Powers Tribunal. Before making such a reference, a complaint concerning a breach of this guidance should be made using the Council's own internal complaints procedure. To request a complaints form, please contact the Council at Melton Borough Council, Parkside, Station Approach, Burton Street, Melton Mowbray, LE13 1GH or by e-mail to complaints@melton.gov.uk or by telephone 01664 502502.

14.3 The 2000 Act establishes an independent Tribunal. The Tribunal has full powers to investigate and decide any case within its jurisdiction.

14.4 Details of the relevant complaints procedure can be obtained from the following address:

Investigatory Powers Tribunal

PO Box 33220

London

SW1H 9ZQ

020 7035 3711

Appendix 1 – Chief Officer & Authorising Officers

	Name	Title	Email	Telephone
1.	Edd de Coverly	Chief Executive Officer (CEO)	edecoverly@melton.gov.uk	01664 502536 07909 097949
2.	Keith Aubrey	Deputy Chief Executive & Director for People & Communities	kaubrey@melton.gov.uk	01664 502530 07970 722024
3.	Dawn Garton	Director for Corporate Services (Chief Finance Officer)	dgarton@melton.gov.uk	01664 502444 07973 541436
4.	Pranali Parikh	Director for Growth & Regeneration	pparikh@melton.gov.uk	01664 504321 07795 475769

Senior Responsible Officer:

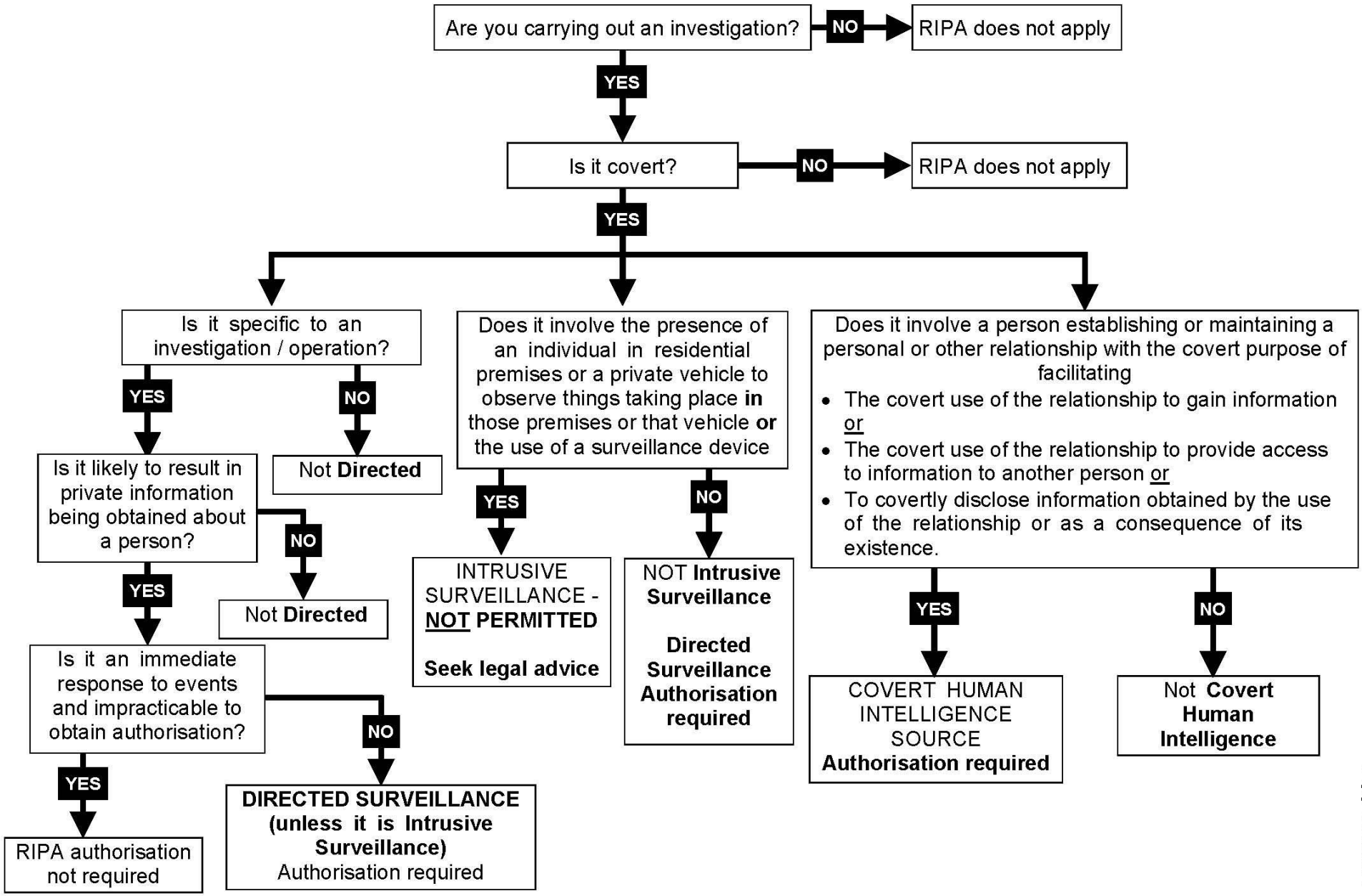
The Officer below ("the SRO") will only act as an Authorising Officer in exceptional circumstances to avoid any conflicts with the SRO role.

5.	Adele Wylie	Director for Governance & Regulatory Services (& Monitoring Officer)	awylie@melton.gov.uk	01664 502205 07787 268984

Appendix 2:

DIRECTED SURVEILLANCE

Regulation of Investigatory Powers Act 2000 - Do you need Authorisation?



Appendix A

APPENDIX 3 - Forms

See Home Office website:

https://www.gov.uk/government/collections/ripa-forms--2

APPENDIX 4 - Codes of Practice

See Home Office website:

https://www.gov.uk/government/collections/ripa-codes

APPENDIX 5 - Guidance for Applications at the Magistrates' Court

See Home Office website:

https://www.gov.uk/government/publications/changes-to-local-authority-use-of-ripa