



ACT NOW
T R A I N I N G

Part II of the Regulation of Investigatory Powers Act 2000

**A GUIDE TO COMPLETING THE RIPA FORMS
FOR COVERT SURVEILLANCE AND CHIS**

2nd Edition (April 2010)

By Ibrahim Hasan
LL.B(Hons) Solicitor



Act Now Training Ltd 64 Bradford Road, Dewsbury, WF13 2DU

Tel 01924 451054 | Fax 01924 451129 | Email info@actnow.org.uk | Web www.actnow.org.uk

CONTENTS

1. Author biography	
2. About this document	
3. Common mistakes in RIPA forms	6
4. Directed Surveillance forms	
a) Application form	
b) Review form	16
c) Renewal form	19
d) Cancellation form	22
5. CHIS forms	
a) Application form	24
b) Review form	34
c) Renewal form	37
d) Cancellation form	40
6. Briefing Note: Changes to the RIPA regime	42
7. Appendix 1 - Flowcharts	
a) Flowchart: Directed Surveillance	47
b) Flowchart: Intrusive Surveillance	48
c) Flowchart: Part 3: CHIS	49
8. Appendix 2 - Common RIPA surveillance form	50
9. Use of websites	56
10. RIPA Timeline	57

AUTHOR BIOGRAPHY

Ibrahim Hasan - Solicitor

Ibrahim Hasan is recognised as one of the UK's leading experts on data protection, freedom of information and surveillance law. He was previously Principal Solicitor at Calderdale Council and has worked for Bradford Council and Nottinghamshire County Council. Ibrahim has also held positions as an associate with the Institute of Public Finance and as a non executive director of an NHS Trust. He is now a director of Act Now Training and a consultant with IBA Solicitors.

Ibrahim is very much in demand as a presenter at courses and conferences throughout the UK. He has conducted training sessions for many national organisations as well as local authorities and the NHS. His high profile clients include the Olympic Delivery Authority, the House of Commons, the Scottish Parliament, the General Medical Council, the Independent Police Complaints Commission, Nottingham City Council and numerous other local and central government organisations. Ibrahim has also travelled to China to train young Chinese and Hong Kong lawyers on behalf of the Law Society and the Bar Council.

Ibrahim's articles appear in many professional journals including the Local Government Lawyer, Benefits Magazine, IRRV Insight Magazine and the Solicitors Journal. He currently writes the Freedom of Information Update column in the Law Society Gazette. Ibrahim has contributed to the privacy aspects of a book entitled "Spy TV – Just who is the digital revolution overthrowing" which won a Best Brother Award from Privacy International.

Ibrahim produces the UK's only podcasts and webcasts on information and surveillance law. He also runs the Act Now helpline on these subjects.

Ibrahim is often interviewed in the local and national media as a legal expert. He has appeared on a programme on Radio 4 and "McIntyre Investigates" on Radio 5.

Telephone 01924 411111

Email info@actnow.org.uk

ABOUT THIS DOCUMENT

The Regulation of Investigatory Powers Act 2000 (RIPA) came into force on 1 October 2000. Part 2 of the Act provides a statutory framework regulating the carrying out of covert surveillance and the conduct or use of covert human intelligence sources by “relevant public authorities”. This includes, amongst others, local authorities, emergency services and law enforcement agencies. These bodies are also subject to regular inspection conducted by the Office of Surveillance Commissioners (OSC).

The lawful conduct of covert surveillance under RIPA requires standard Home Office forms to be completed and authorised. Poor form filling is a common criticism of local authorities by the OSC. Up to now there has been no published guidance on this important topic. Correct completion of the forms is also essential if officers wish to take advantage of the RIPA Shield (section 27 defence).

The purpose of this document is to assist local authorities investigating officers and Authorising Officers to complete the standard Home Office forms when carrying out Directed Surveillance and deploying a Covert Human Intelligence Source under Part 2 of RIPA. It consists of each form reproduced with detailed notes on how to complete each section. All the forms are included from application, through to review, renewal and cancellation.

This document takes into account the changes made to the RIPA regime by the Home Office, which came into force on 6th April 2010, in virtue of three new statutory instruments:

- The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, SI 2010/521
- The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Code of Practice) Order 2010, SI 2010/462
- The Regulation of Investigatory Powers (Covert Surveillance and Property Interference: Code of Practice) Order 2010, SI 2010/463

The changes include three new codes of practice and new authorising officers. A detailed briefing note about these changes can be read on page 42.

How to Use This Document

The form for each standard Home Office RIPA form is reproduced with guidance notes in **point Calibri font**. These forms are the latest versions (January 2007) downloaded from the Home Office RIPA website on 17th March 2010.

The Home Office states that public authorities may use these forms or adapt them, for example to include corporate logos or images or to combine review and renewal, or renewal and cancellation forms. However, if they adapt these forms for their own purposes - to record extra information that is not strictly necessary to ensure and demonstrate compliance with RIPA - that additional local requirement should be indicated as being distinct from the necessary recording of RIPA considerations and on no account should the forms be pre completed with standard wording as each application should be made with the specific circumstances of the case in mind.

The only amendment we have made to the standard Home Office forms in this document is that references to the old codes and statutory instruments have been replaced with references to the new ones.

Procedure for Completing the RIPA Forms

1. Decide what types of surveillance you are doing by reference to the flowcharts in Appendix 1.
2. Check the Home Office RIPA website for any updates to the forms before completing them:

<http://security.homeoffice.gov.uk/ripa/about-ripa/forms/index.html?version=1>

3. Use this guidance to complete the appropriate forms. The following documents also assist in this task:
 - a) The new Covert Surveillance Code of Practice
 - b) The new Covert Human Intelligence Sources (CHIS) Code of PracticeBoth codes are available from the Home Office website (see page 56).
 - c) The OSC Procedure and Guidance Document - This is only available directly from the OSC (email osc@osc.gsi.gov.uk)
 - d) Your organisation's Surveillance Policy and Procedure Manual
4. Remember section 28(5) and 28(6) of RIPA mean that only conduct set out in the forms and which is authorised carries the subject a defence under section 27 ("the RIPA Shield") if the surveillance activity is challenged in court.
 5. Once completed the forms should be sent to the Authorising Officer for approval. A list of Authorising Officers is available from your organisation's RIPA Co-ordinator.
 6. A copy of each completed form should be sent to the person maintaining your organisation's Central Record of Authorisations.

LEGAL ADVICE

Surveillance law and related legislation is a very complex area. The contents of this document are meant for you to consider as general guidance. It is not advice or opinion (legal or otherwise) on any specific surveillance operation. You should obtain legal advice on your specific issues from a qualified solicitor in your legal department.

Any liability (in negligence or otherwise) arising from you acting or refraining to act as a result of anything in this document is excluded.

COPYRIGHT TERMS

Please note that a lot of time and effort has been invested in the preparation of this document. Ibrahim Hasan owns and asserts all copyright and moral rights. No part of this document may be reproduced, stored in a retrieval system, emailed, copied, or published in any way (whether on the Internet or otherwise) without the express written permission of Ibrahim Hasan.

However, where you have purchased the electronic version of this document on CD ROM, you have been granted a perpetual non-exclusive multi-user license to:

1. Upload this document or any part of it to your internal intranet site or portal for the sole use of your organisation's employees. In such cases you should add the following wording on the page or some other prominent place:

“© Ibrahim Hasan (2010)
Act Now Training - www.actnow.org.uk - Surveillance Law Training and Resources”

2. Make hard copies of this document for the sole use of your organisation's employees. You may also customise this document to suit your organisation. However the footnotes should not be altered as they show the origin of the document.

Under no circumstances shall this document (electronic or paper version) be provided to any third person or organisation without the express written permission of the copyright owner (Ibrahim Hasan).

Any enquires about the use of this document should be directed to:

Ibrahim Hasan
Telephone: 01924 411100
Email: info@actnow.org.uk

COMMON MISTAKES IN RIPA FORMS

(Highlighted by the OSC)

Investigating Officer Mistakes

- Use of out of date Home Office forms
- Not quoting a unique reference number (URN)
- Copying wording from old authorisation forms
- Failing to give a detailed explanation of what the surveillance will involve
- Continuing to request authorisations for surveillance based on grounds which have been removed by SI 2003/3171 (e.g. public safety, public health)
- Proportionality factors not fully considered and explained
- Collateral intrusion not fully considered and explained
- Likelihood of obtaining Confidential Information not fully considered and explained
- Failing to send copies of authorisations to the RIPA Co-ordinator

Authorising Officer Mistakes

- Repetitive narrative and rubber stamping without proper consideration of all the facts set out in the authorisation form
- Not knowing the capability of the surveillance equipment which is being authorised. (For instance, there are differences between video cameras that record continuously and those activated by movement, between thermal image and infrared capability. These differences can have an important bearing on how a surveillance operation is conducted and the length of the authorisation being granted. Therefore, a simple authorisation for 'camera' is usually insufficient.)
- Failing to demonstrate that less intrusive methods have been considered and why they have been discounted in favour of the tactic selected
- Failing, when giving directions, to give directions for the management and storage of the product of the surveillance
- No record of management and quality assurance procedures including no regular audits

Unique Reference Number

Part II of the Regulation of Investigatory Powers Act 2000 Application for Authorisation of Directed Surveillance

Sample Form with Notes to Assist Completion

This form is to be completed by an officer of the local authority seeking authorisation to carry out Directed Surveillance. Before completing it please read section 2 of the Covert Surveillance Code of Practice. Once completed, this form should be forwarded to the Authorising Officer for approval and to complete box 12 onwards. If granted, the authorisation will last for three months.

Code of Practice/Code: This is the revised RIPA Covert Surveillance Code of Practice which came into force on 6th April 2010.

OSC Document: This is the Office of Surveillance Commissioners' Procedures and Guidance Document which can be obtained directly from the OSC (email: oscmanager@osc.gsi.gov.uk)

Unique Reference Number (URN): This is a reference number unique to each individual form but which also allows the form to be matched with other forms in the same investigation which are issued by the same department. Some organisations devise a URN which comprises of the year, department initials, applicant initials and investigation number. In some cases the investigating department allocates the URN whilst in others this is done by the RIPA Co-ordinating Unit. There are no hard and fast rules.

Public Authority (including full address)			
Name of Applicant		Unit/Branch/Division	
Full Address			
Contact Details			
Investigation/Operation Name (if applicable)			
Investigating Officer (if a person other than the applicant)			

This section is fairly straightforward. Where a third party (e.g. private detective agency or the police) is used to carry out Directed Surveillance on behalf of the authority or to give operational support, details of that party and their involvement should be provided on this form. See paragraph 3.16 of the Code of Practice.

DETAILS OF APPLICATION

1. Give rank or position of authorising officer in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010; No.521 2003; No. 317

Insert the name and position of the Authorising Officer. This is the person who will decide whether or not Directed Surveillance should be authorised and will countersign this form. He/she must hold a rank in accordance with the above Order (i.e. Director, Head of Service, Service Manager or equivalent). Care should be taken to avoid more junior officers authorising surveillance. Each department which makes regular use of Directed Surveillance, will have officers appointed as such. If in doubt consult the RIPA Co-ordinator.

2. Describe the purpose of the specific operation or investigation

Explain the crime or disorder, which is being investigated. For example,

- “To investigate alleged acts of anti social behaviour at....”
- “To investigate and gather evidence of a possible benefit fraud by the target.”
- “To investigate instances of illegal dumping of waste at”

If possible, include the relevant legislation that may be used to prosecute offenders and/or which gives you the power/duty to investigate the matter.

3. Describe in detail the surveillance to be authorised and expected duration, including any premises, vehicles or equipment (e.g. binoculars, and other) that may be used.

Read the above carefully. Note the phrase “in detail” therefore a response which merely states “Video camera and recording equipment will be installed at a fixed point” will not be adequate.

Your statement here needs to include what is going to be done, who is going to do it, when they are going to do it, where they are going to do it and how they are going to do it. Other points to address here include:

- How long will the surveillance last?
- Specific details about times and times of day? e.g. specific times of the day or at random times?
- Which premises are to be used and/or targeted?
- Which vehicles are to be used? are they public or private?
- What type of equipment is to be used? e.g. covert cameras, audio devices
- What is the capability of the equipment to be used? e.g. zoom lense, remote controlled etc.
- Who is to be involved in the operation and what will be their role? e.g. private detectives, police

It may be appropriate to attach a plan showing where and how the surveillance will be conducted and indicating where any surveillance equipment will be installed.

Note that, once the Authorising Officer approves this surveillance, the authorisation will only cover you to do what you have stated here (subject to any amendments made by the Authorising Officer in box 12). Consequently you can only rely on section 27 (“the RIPA Shield/Defence”) in so far as you were undertaking the activities set out in this section. Therefore it pays to include lots of detail.

¹ For local authorities: The exact position of the authorising officer should be given. For example, Head of Trading Standards.