

Use of covert surveillance of employees and former employees

New policy number: **899**
 Old instruction number:
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 Owner: **General Counsel**
 Responsible work team: **GCD**

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1 Introduction

- 1.1 This policy covers any use of covert surveillance of employees and former employees by the LFC. It does not affect any use of any overt surveillance such as CCTV. Use of covert surveillance other than in accordance with this procedure risks being a breach of the Brigade's duties under the Data Protection Act 2018 and can carry criminal sanctions. This policy should be read in conjunction with policy on the LFC's powers to use covert surveillance **within RIPA**, Policy number 819 - the Regulation of Investigatory Powers Act 2000. Note that it is expected that LFC's powers to use RIPA will cease at some point during the lifetime of this policy. Those changes to RIPA powers will not affect this policy.
- 1.2 The procedure in this policy limits use of covert surveillance to cases where it can be shown to be necessary and where specifically authorised by the General Counsel. This is only likely in the context of litigation in relation to personal injury claims, employment or pension disputes etc. where there is reason to suspect some kind of fraudulent claim or criminal conduct. An anonymised report of any use of covert surveillance will also be given to the Audit Committee.

2 Authorisation

- 2.1 All authorisations will comply with the Information Commissioner's Office Employment Practices Code, in particular paragraph 3.4 of Part 3, and any further guidance issued by them.
- 2.2 All authorisations will be made by the General Counsel (or one of LFC's reserve Authorising Officers in the absence of GC) who should be satisfied that there are grounds for suspecting criminal activity or equivalent malpractice and that overt surveillance would prejudice its prevention or detection.
- 2.3 Authorisations will be made in consultation with (1) the Deputy Commissioner, Operations or his nominee at Top Management Group level and (2) the Assistant Director People Services.
- 2.4 Authorisations will be made only where necessary and proportionate and made on the forms in Appendix 1. This ensures the authorisation considers: the purpose of the surveillance; any likely adverse impacts; alternatives to covert surveillance; obligations that arise from monitoring (such as confidentiality of data); and whether the covert surveillance is justified.
- 2.5 Authorisations will be in writing and time limited with a set period for review; the General Counsel will retain a secure copy of all authorisations or applications for authorisations (but not including material revealed by the surveillance which will be kept on the relevant legal case file).

3 Surveillance

- 3.1 Where investigators are engaged by the Brigade to carry out the surveillance, they will act under a contract requiring them to adhere to the ICO Employment Practice Code and to collect and use information only in accordance with the Brigade's instructions and to keep information secure.
- 3.2 Only material revealed by the surveillance that is relevant to the particular case should be recorded (unless it is material that no employer could reasonably disregard); material in an un-anonymised form should not be held elsewhere. When the Legal file is closed consideration will be given to the destruction of any material obtained from covert surveillance. However, it is anticipated that the material will be kept with the stored file for the usual litigation file retention period of 7 years so that the stored file is complete. Any covertly obtained material will then be destroyed unless it is relevant to an ongoing matter and appropriate for further retention under this procedure.

4 Reporting

- 4.1 An anonymised account of any authorisations will be reported to the Audit Committee.

Appendix 1 – Forms

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INITIAL AUTHORISATION of Covert Surveillance of employee/former employee

Policy Note 899: Use of covert surveillance of employees and former employees

**Form to be completed and sent to General Counsel's Department
for consideration and completion of Part 10 onwards.**

**No covert surveillance should be undertaken or procured until a decision is made on this
application.**

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

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DETAILS OF APPLICATION
1. Describe the purpose of the specific operation or investigation.
2. Describe in detail the surveillance operation to be authorised. Include details of its expected duration and location. State who will carry out the surveillance and their qualifications, any premises, vehicles or equipment (e.g. camera, binoculars, recording devices) that may be used.
3. The identities, where known, of those to be subject of the covert surveillance.
<ul style="list-style-type: none"> • Name: • Address: • DOB: • Other information as appropriate:
4. Explain the information that it is desired to obtain as a result of the directed surveillance.

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5. Covert surveillance of employees or former employees will only be approved where there is grounds to believe there is criminal or other serious misconduct. Explain what criminal or other serious misconduct is suspected and the basis for that suspicion.

6. Explain why it is necessary for the surveillance to be covert.

**7. Supply details of any potential collateral intrusion and why the intrusion is unavoidable ie what personal information about other people not the subject of the investigation might be observed/recorded etc
Describe the precautions you will take to minimise this collateral intrusion.**

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8. Explain why this covert surveillance is proportionate to what it seeks to achieve. For example consider:

- How intrusive might it be on the subject of surveillance or on others?
- Why is this intrusion outweighed by the need for covert surveillance?
- Can the evidence or equivalent evidence be obtained by any other means?

9. Explain how likely the proposed covert surveillance is to acquire:

- private information that should be treated as confidential such as medical records or spiritual counselling or
- other confidential material such as journalistic material, confidential discussions between Members of Parliament and their constituents, or matters subject to legal privilege

What safeguards are proposed to minimise the likelihood of the covert surveillance acquiring such information?

What safeguards are proposed to ensure the security of any confidential information acquired?

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*******THIS SECTION TO BE COMPLETED BY THE AUTHORISING OFFICER*******

10. Applicant's Details			
Name (print)		Tel No:	
Grade/Rank		Date	
Signature			
11. Authorising Officer's Statement. [Spell out the "5 Ws" – Who; What; Where; When; Why and HOW– in this and the following box.]			
<p>I hereby authorise covert surveillance defined as follows: [<i>Why is the surveillance necessary, whom is the surveillance directed against, Where and When will it take place, What surveillance activity/equipment is sanctioned, How is it to be achieved?</i>]</p>			

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12. Explain <u>why</u> you believe the covert surveillance is necessary Explain <u>why</u> you believe the directed surveillance to be proportionate to what is sought to be achieved by carrying it out

Date of first review			
Programme for subsequent reviews of this authorisation. Only complete this box if review dates after first review are known. If not or inappropriate to set additional review dates then leave blank.			
Name (Print)		Grade / Rank	
Signature		Date and time	
Expiry date and time [e.g.: authorisation granted on 1 April 2005 - expires on 30 June 2005, 23.59]			

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<u>Urgent Authorisation</u>			
13. Authorising officer: explain why you considered the case so urgent that an oral instead of a written authorisation was given.			
14. If you are only entitled to act in urgent cases: explain why it was not reasonably practicable for the application to be considered by a fully qualified authorising officer.			
Name (Print)		Grade/ Rank	
Signature		Date and Time	
Urgent authorisation expiry date:		Expiry time:	
<i>Remember the 72 hour rule for urgent authorities – check Code of Practice.</i>	e.g. authorisation granted at 5pm on June 1 st expires 4.59pm on 4 th June		

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**RENEWAL AND AMENDMENT OF AUTHORISATION of Covert Surveillance of
employee/former employee**

Policy Note 899: Use of covert surveillance of employees and former employees

**Form to be completed and sent to General Counsel's Department for
consideration and completion of Part 7 onwards.**

**No covert surveillance should be continued until any scheduled review has been carried out by
the LFC Authorising Officer.**

Name of Applicant		Unit/Branch /Division	
Full Address			
Contact Details			
Investigation/Operation Name (if applicable)			
This renewal number			

Details of renewal:

1. Renewal numbers and dates of any previous renewals.	
Renewal Number	Date

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2. Detail any significant changes to the information as listed in the original authorisation as it applies at the time of the renewal.

3. Detail the reasons why it is necessary to continue with the covert surveillance.

4. Detail why the covert surveillance is still proportionate to what it seeks to achieve.

5. Indicate the content and value to the investigation or operation of the information so far obtained by the covert surveillance.

6. Give details of the results of any reviews of the investigation or operation made before this application for a renewal of the authorisation.

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*****THIS SECTION TO BE COMPLETED BY THE AUTHORISING OFFICER*****

7. Applicant's Details			
Name (Print)		Tel No	
Grade/Rank		Date	
Signature			

8. Authorising Officer's Comments. <u>This box must be completed.</u>
(State here any changes to the authorisation.)

9. Authorising Officer's Statement.			
<p>I, [insert name], hereby authorise the renewal of the directed surveillance operation as detailed above. The renewal of this authorisation will last for 3 months unless renewed in writing. From the date of this renewal of authorisation the authorisation will be changed as set out above.</p> <p>This authorisation will be reviewed frequently to assess the need for the authorisation to continue.</p>			
Name (Print)	-----	Grade / Rank	-----
Signature	-----	Date	-----
Renewal From:	Time:	Date:	

Date of first review.	
Date of subsequent reviews of this authorisation.	

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**CANCELLATION OF AUTHORISATION of Covert Surveillance of
employee/former employee**

Policy Note 899: Use of covert surveillance of employees and former employees

**Form to be completed and sent to General Counsel's Department for
consideration and completion of Part 7 onwards.**

All covert surveillance authorisations must be renewed, amended or cancelled by the LFC Authorising
Officer. Do not allow an authorisation to lapse.

Name of Applicant		Unit/Branch /Division	
Full Address			
Contact Details			
Investigation/Operation Name (if applicable)			

Details of cancellation:

1. Explain the reason(s) for the cancellation of the authorisation:

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*****THIS SECTION TO BE COMPLETED BY THE AUTHORISING OFFICER*****

2. Review the file. Explain the value of surveillance in the operation:

3. Authorising officer's statement.				
I, [insert name], hereby authorise the cancellation of the covert surveillance investigation/operation as detailed above.				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Name (Print)</td> <td style="width: 50%;">Grade</td> </tr> <tr> <td>Signature</td> <td>Date</td> </tr> </table>	Name (Print)	Grade	Signature	Date
Name (Print)	Grade			
Signature	Date			

4. Time and Date of when the authorising officer instructed the surveillance to cease.				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Date:</td> <td style="width: 40%;"></td> <td style="width: 30%;">Time:</td> <td style="width: 10%;"></td> </tr> </table>	Date:		Time:	
Date:		Time:		

5. Date of cancellation decision.	Date:	Time:
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Document history

Assessments

An equality, sustainability or health, safety and welfare impact assessment and/or a risk assessment was last completed on:

EIA	03/12/2020	SDIA	11/10/2019	HSWIA	03/12/2020	RA	
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Audit trail

Listed below is a brief audit trail, detailing amendments made to this policy/procedure.

Page/para nos.	Brief description of change	Date
Throughout	Reviewed as current with the following changes made.	09/12/2020
Page 2, para 2.4	New Appendix 1 introducing standard forms.	
Page 2, para 1.2 and page 3, para 4	Amended arrangements for reporting use of policy.	
Throughout	Updated for new structure/job titles.	

Subject list

You can find this policy under the following subjects.

Freedom of Information Act exemptions

This policy/procedure has been securely marked due to:

Considered by: (responsible work team)	FOIA exemption	Security marking classification