

Circular number	29/2009	Date issued	11 May 2009
This circular is	For action	By	30 June 2009
This circular is	Relevant to the National Framework		
Status	This circular alerts Fire and Rescue Authorities to the recently published Home Office public consultation on the Regulation of Investigatory Powers Act 2000.		

Regulation of Investigatory Powers Act 2000 (RIPA)

Issued by:

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Fire and Rescue Service Development Division

Addressed to:

**The Chair of the Fire and Rescue Authority
The Chief Executive of the County Council
The Clerk to the Fire and Rescue Authority
The Clerk to the Combined Fire and Rescue Authority
The Commissioner of the London Fire and Emergency Planning Authority
The Chief Fire Officer**

Please forward to:

**Technical Fire Safety Officers
Principal Fire Control Officers
FRA legal departments**

Summary

This Circular draws FRAs' attention to the recent Home Office consultation on the Regulation of Investigatory Powers Act 2000. The consultation asks whether you believe that Fire and Rescue Authorities should maintain their status as 'listed bodies' for the purposes of the Act and, if so, requests robust evidence of how FRAs use / could use the Act. FRAs are requested to submit any responses to the consultation via CLG.

For further information, contact:

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Regulation of Investigatory Powers Act 2000 (RIPA)

1.0 Overview

- 1.1 The Home Office has published a public consultation on their review of the Regulation of Investigatory Powers Act (RIPA) 2000. As part of the consultation, local authorities, including FRAs in England are requested to provide information on their current use of RIPA by 10 July.
- 1.2 Whilst FRAs are free to respond direct to the Home Office, CLG has agreed that it will co-ordinate FRA responses to the consultation that come to us directly. It would be helpful therefore if you could send your responses to the contact below by **Tuesday 30 June**. The Home Office is particularly interested in views on whether or not FRAs should continue to be listed under RIPA and why; and, if they are to remain listed, at what level appropriate approvals should be sought. The consultation has been drawn to the attention of CFOA.
- 1.3 A detailed summary of FRAs listing within RIPA is at annex A along with the specific questions to inform a collated response to the consultation. In summary, what we want to know is:

(i) should FRAs remain listed as authorities under RIPA?

(ii) is there a need for the eight Local Authority Controlled Companies (LACCs) and LFEPA to be listed for the purposes of RIPA?

(iii) how is Directed Surveillance used specifically to obtain private information.

(iv) in what circumstances are RIPA authorisations granted for Covert Human Intelligent Sources?

(v) do current authorisation levels represent an appropriate level or should they be changed?

2.0 Background

- 2.1 FRS Circular 14/2008 of April last year asked for information about FRAs use of surveillance and communications data and whether it was necessary to retain the listing in RIPA in the future. The Chief Surveillance Commissioner has expressed doubt as to whether FRAs need their RIPA listing to carry out investigations.
- 2.2 The Home Office received a mixed response to the Circular: some FRAs clearly stated they required continued listing; others said they did not use RIPA but wanted to keep the listing; and others reported that they did not need to be listed. Support for the continuation of the RIPA listing was not always backed up with cogent examples of the circumstances in which the legislation is, or might be, used.

2.3 Under Part 1 of RIPA FRAs are able, at present, to collect information to:

- (a) acquire and disclose communication data (CD)
- (b) conduct covert 'directed surveillance' (DS)
- (c) conduct and use covert human intelligent sources (CHIS)

3.0 Home Office Consultation

3.1 Home Office have now put their proposals for changes to RIPA out to consultation ([www.security.homeoffice.gov.uk/ripa/about-ripa/news/HS outlines review of RIPA](http://www.security.homeoffice.gov.uk/ripa/about-ripa/news/HS_outlines_review_of_RIPA)).

3.2 The consultation asks a series of questions about RIPA, including whether any public authorities should be removed from the RIPA framework and what alternative tools they may need to do their jobs; and, at what level of rank authorisation to use RIPA should be set.

3.3 Given the varying nature of the responses to the earlier circular, the Home Office agreed to consult on the basis of proposing no change to the FRA listing. However, given the view of the Chief Surveillance Commissioner, it may be difficult for this position to easily pass the scrutiny of Parliament. The consultation does not take into account the future requirements of the Regional Control Centres (RCCs). Therefore this circular asks for more robust information on the requirement and use for FRAs to retain their status as listed authorities after the review of RIPA and, in the future, for RCCs to be listed.

4.0 Appropriate use of RIPA

4.1 The Government and the Information Commissioner want to ensure public authorities use the legislation which is most appropriate to their needs. Other legislation such as the Fire Safety Order or the Data Protection Act may be a more appropriate route for FRAs to gain access to different types of information. However, it is essential that FRAs have the correct legislation to enable them to carry out their statutory functions.

4.2 If, as a result of the consultation and information provided by FRAs, it looks likely that FRAs no longer require RIPA listing for DS and CHIS, CLG will consider producing guidance to FRAs to explain what other legislation can enable them to carry out their functions.

5.0 Contact Details

5.1 Responses should be directed to: Rhian Blackman, phone 020 7944 6152, e-mail: Rhian.Blackman@communities.gsi.gov.uk.

Rhian Blackman

Fire and Rescue Service Development Division

FRA listing within RIPA

FRAs are listed within RIPA to enable them to

- (a) acquire and disclose communication data (CD)
- (b) conduct covert 'directed surveillance' (DS)
- (c) conduct and use covert human intelligent sources (CHIS)

Communications Data

The ability to acquire communications data permits an FRA to get various sorts of data related to a communication (usually a telephone call but may include, eg, emails or letters), from a communication service provider (CSP). But it does not permit the authority to obtain the contents of the communication.

FRAs have two purposes in relation to CD:

- (a) to prevent death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health in an emergency
- (b) to prevent or detect crime or prevent disorder, or in the interests of public safety.

Question 1

Do you believe that FRAs are required to remain listed as authorities under RIPA? If so, you need to provide concrete examples of how the legislation is used specifically to obtain communications data. Please also include information on what the implications would be for the work of the FRA if the listing was removed.

There are implications in the future development of the fire and rescue service by the planned move to the FiReControl network – the network which will replace the current 46 separate control rooms with a linked network of nine Regional Control Centres. In the future, the control and mobilising function will be provided by nine Regional Control Centres, which will be run by the eight Local Authority Controlled Companies (LACCs) wholly owned by the constituent FRAs, and in London by the London Fire and Emergency Planning Authority.

The Regional Fire Control Centres are, in legal terms, separate legal entities to their constituent FRAs – although are wholly-owned by these FRAs. Respondents are free to comment on how they believe the Act should apply when the FiReControl network is up and running.

Question 2

Do you foresee a need for the eight LACCs and LFEPA to be listed for the purposes of RIPA? Would these LACCs require ability to authorise:

- (a) acquire and disclose communication data (CD)
- (b) 'directed surveillance' (DS)
- (c) the conduct and use covert human intelligent sources (CHIS)

Directed Surveillance

'Directed Surveillance' is surveillance which is

- (a) covert
- (b) not intrusive
- (c) for the purpose of a specific investigation or operation
- (d) likely to result in obtaining private information about any person, and
- (e) not an immediate response to events or circumstances

FRA's are likely to carry out DS mainly as enforcing authorities under the FSO. Please note that not all covert surveillance falls within the definition of Directed Surveillance.

Question 3

If FRA's are to remain listed as authorities under RIPA you need to provide concrete examples of how Directed Surveillance is used specifically to obtain private information. Please also include information on what the implications would be for the work of the FRA if the listing was removed.

Covert Human Intelligence Sources

A person is a covert human intelligence source if –

- (a) they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- (b) they covertly use such a relationship to obtain information or to provide access to any information to another person; or
- (c) they covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship

This includes, for example, the use of undercover informers or agents.

Regulation of Investigatory Powers Act 2000 (RIPA)

We are not clear how widely FRA may authorise the use or conduct of CHIS.

Question 4

If FRAs are to remain listed as authorities under RIPA you need to provide concrete examples of the circumstance in which such authorisations are or may be granted. Please also include information on what the implications would be for the work of the FRA if the listing was removed.

Appropriate level of approval to use RIPA

The consultation seeks FRA views on whether the current levels for authorisations are appropriate.

The current levels of approval are as follows:

- (a) Communications data
 - (i) any data, in emergency for preventing death/injury etc - a Fire Control Officer or Principal Fire Control Officer (or above)
 - (ii) service use information or subscriber data, for preventing or detecting crime or disorder, or for public safety – Group Manager or Principal Fire Control Officer (or above)
- (b) Directed surveillance or CHIS - a Group Manager (or above)

Question 5

If FRAs are to retain their listing under RIPA, the Home Office have asked what the appropriate level for authorisation is. Are current authorisations levels appropriate?