



**Office of Surveillance  
Commissioners**

**OFFICE OF SURVEILLANCE COMMISSIONERS**

**INSPECTION REPORT**

**Tewkesbury Borough Council**

**3<sup>rd</sup> February 2014**

**Assistant Surveillance Inspectors:  
Mr Neil Smart and Mr Alex Drummond(observer).**

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Office of Surveillance  
Commissioners

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Chief Surveillance Commissioner  
Office of Surveillance Commissioners  
PO Box 29105  
London  
SW1V 1ZU

6<sup>th</sup> February 2014

## OSC INSPECTION REPORT – TEWKESBURY BOROUGH COUNCIL

### 1 Date of Inspection

3<sup>rd</sup> February 2014.

### 2 Inspector

Mr Neil Smart and Mr Alex Drummond (observer).

### 3 General Description

- 3.1 Tewkesbury is a local government district and borough in Gloucestershire named after its main town. Other places in the borough include Ashchurch, Bishop's Cleeve, Churchdown and Winscombe. The borough has an area of some 160 square miles (414.4 square kilometres) and a population of 82,300 people served by 270 Council staff (full time equivalent).
- 3.2 The Strategic Management Team comprises the Chief Executive, Deputy Chief Executive and the Borough Solicitor who are supported by eight 'Group Managers' (Revenues and Benefits, Finance and Asset Management, Environment and Housing Services, Development Services, Policy and Performance, Business Transformation, 'One Legal', and Democratic Services).
- 3.3 The grade prescribed by SI 2010 No 521 for authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA) for directed surveillance and the use of covert human intelligence sources (CHIS) within a Local Authority is '*Director, Head of Service, Service Manager or equivalent*'. There are four authorising officers designated for this Authority including the Chief Executive, who would be the authorising officer in respect of confidential information or juvenile CHIS.
- 3.4 Since the last OSC inspection of the Council in August 2010 there have been no authorisations conducted for directed surveillance. There have been no authorisations for the use and conduct of a covert human intelligence source (CHIS).

3.5 Correspondence should be forwarded to Mr Mike Dawson, Chief Executive, Tewkesbury Borough Council, Gloucester Road, Tewkesbury, Gloucestershire. GL20 5TT.

#### **4 Inspection.**

4.1 The purpose of the inspection was to examine policies and procedures relating to the Regulation of Investigatory Powers Act 2000 (RIPA), in respect of directed surveillance and covert human intelligence sources (CHIS).

4.2 The inspection programme was agreed with the Council in advance and took the form of an initial meeting with Sara Freckleton (Borough Solicitor) who is the senior responsible officer (SRO) for RIPA within the Council and Vikki Fennel (solicitor, 'One Legal') the 'RIPA Co-ordinator'.

4.3 We held a focus group meeting with the following staff:-

- a) Mike Dawson - Chief Executive / authorising officer
- b) Richard Horton - Group Revenues and Benefits Manager / authorising officer
- c) Rachel North - Deputy Chief Executive / authorising officer
- d) Vikki Fennell – Solicitor / RIPA Co-ordinator
- e) Kathryn Hill - Environmental Health Officer / RIPA applicant
- f) Sara Freckleton / Borough Solicitor / SRO

Discussion included RIPA training, the component parts of a RIPA application including statutory considerations, confidential information, processes used to comply with the Protection of Freedoms Act 2012, the use of Social Networking Sites (SNS) to obtain intelligence and technical equipment. A reasonable level of awareness of the legislation and associated processes was evident from those in attendance.

4.4 The inspection included examination of the 'Central Records', Policy / guidance document and a discussion in respect of RIPA training.

4.5 Feedback of the outcome of the inspection was given in a discussion with the SRO and RIPA Co-ordinator.

#### **5 Recommendations from the previous inspection.**

5.1 The Council was previously inspected by H.H. Norman Jones QC, Assistant Surveillance Commissioner on 9<sup>th</sup> August 2010. On that occasion there were six recommendations made on which I report the progress to date.

5.2 ***Recommendation 1 – Create a RIPA management structure around the SRO and RIPA Co-ordinating Officer with each having the duties outlined in the Code of Practice for Covert Surveillance and Property Interference (3.28) and in this report. (Paragraphs 11 and 17).***

- 5.3 A suitable RIPA management structure has been developed. Sara Freckleton is the SRO and Vikki Fennell the 'RIPA Co-ordinator'. The roles are fully documented within the 'Policy and Procedures' section of this report. **The recommendation is discharged.**
- 5.4 *Recommendation 2 – Reduce the number of authorising officers (Paragraph 19)*
- 5.5 There were previously thirteen authorising officers designated (those who held the statutory staff grading). Following the OSC inspection this was reduced to four, which is an appropriate number for this Authority to provide the necessary resilience. **This recommendation is discharged.**
- 5.6 *Recommendation 3 – Amend the 'Central Record of Authorisations'. (Paragraphs 20 and 21).*
- 5.7 The Central Record of Authorisations was amended following the inspection. It is now compliant with the statutory Code of Practice (Surveillance). There is further comment in relation to the Central Record in the 'Policy and Procedures' section of this report. **The recommendation is discharged.**
- 5.8 *Recommendation 4 - Record all reviews on the appropriate Home Office form and within the Central Record of Authorisations. (Paragraph 22).*
- 5.9 There have been no authorisations for directed surveillance by the Council since the last OSC inspection. These issues have been taken on board and the extant Home Office forms brought into use. Although not a statutory requirement reviews have been included within the Central Record to assist management and administration processes. The procedural guide has been amended accordingly. **This recommendation is discharged.**
- 5.10 *Recommendation 5 – Address weaknesses identified in this and the previous inspection report by further training. Establish a training programme. (Paragraphs 10(ii), 25 and 27).*
- 5.11 A training programme has been introduced and delivered internally, latterly by Vikki Fennell, to both applicants and authorising officers. Authorising officer training is shared with Cheltenham Council with whom this Authority shares its Legal Service Department. Issues identified in the last two OSC inspections, namely the quality of supporting intelligence, addressing statutory considerations to the appropriate standard, the quality of authorisations, expiry times outside the statutory three month period, understanding issues in respect of 'confidential information', reviews and cancellations have been addressed. There is nothing to check and test against since the last inspection. However following discussions with staff **I am satisfied that this recommendation is discharged.**
- 5.12 *Recommendation 6 - Amend the RIPA Covert Surveillance Procedure document and Assistance Notes. (Paragraph 29).*

- 5.13 Issues identified at the last inspection have been incorporated into the RIPA Covert Procedure document. The revised document has now amalgamated the previous two guidance documents. Following this inspection there are further amendments required to the document. This is subject to a revised recommendation of this inspection. **The recommendation made in 2010 is discharged.**

## **6 Training**

- 6.1 Internal RIPA training has been delivered by the Council to practitioners since the last OSC inspection - latterly by Vikki Fennell (Legal Services), the RIPA Co-ordinator. Records are kept of those in attendance. All of the authorising officers including the Chief Executive have undergone training. Any opportunities for joint training with other Councils in the area or with Gloucestershire Police should be seized upon. It is important that such training continues in order for staff to retain their skills base and appropriate standards can be achieved and maintained. It is clear from discussions with staff that benefit would be derived from some sort of practical exercise that would demonstrate what should be written on the RIPA forms.

- 6.2 **RIPA training should continue to be formally delivered by the Council to staff who are likely to engage the legislation to ensure it can be applied to the appropriate standard should it be required. This should be considered as ongoing professional development.**

## **7 Policies and Procedures**

- 7.1 The 'Central Record' for covert surveillance is in the form of an ExCel spreadsheet maintained by the RIPA Co-ordinator. The record is fully compliant with paragraph 8.1 of the Code of Practice (Surveillance). The record in addition includes reviews, which although not a statutory requirement, is a useful management tool. A comments section would also facilitate the collation of oversight critique for analytical purposes over the year.
- 7.2 The Council also has a Central Record in respect of covert Human Intelligence Sources (CHIS) containing the relevant data documented within paragraph 7.1 of the Code of Practice (CHIS) which formally records the Council's position.
- 7.3 The RIPA Procedure document has recently been updated to include the requirements under the provisions of the Protection of Freedoms Act 2012.
- 7.4 The '**Tewkesbury Borough Council Procedural Guide Regulation of Investigatory Powers Act 2000**' document was examined in detail and **should be further amended** to deal with the following issues identified:

- a) Paragraph 3.2.3. refers to technical equipment that may provide the same quality of image as that which may be expected from a device actually present on the premises. This would in fact constitute 'Intrusive surveillance' which the Council can not authorise.

- b) Paragraph 3.5 refers to ‘intrusive surveillance’ that quite rightly highlights that the Council can not authorise this activity. It should also be clarified within this section of the document that the Council also can not authorise the ‘interference with property’. It may be the case that a Council officer may need to trespass onto land belonging to another without consent during their duties, for example to deploy a covert camera. It is important that urgent advice is sought from ‘One Legal’ in respect of such matters as there may be a civil ‘tort’ liability.
- c) Paragraph 4.4.5 should also make reference to the statutory roles required by Section 29(5) (a) and (b) RIPA 2000 i.e. handler and controller. The risk assessment should take into account the likely outcome should the role of the CHIS become known (Paragraph 6.14 Code of Practice (CHIS) refers), and the requirement for source records to be maintained in accordance with SI 2000 2725.
- d) Statutory considerations of necessity and proportionality at paragraph 4.4.7 should be aligned to those at notes 105 and 106 of the OSC Procedures and Guidance 2011.
- e) Paragraph 4.6 in relation to ‘Confidential Information’ should also include ‘MP and constituent’.
- f) Paragraph 4.9.4 in respect of cancellations – authorisations should not simply cease to have effect, they should be formally cancelled.
- g) The reference to the urgent oral process in paragraph 5.4 should be removed. Since the introduction of the Protection of Freedoms Act 2012 all authorisations for directed surveillance require judicial approval. This should perhaps be replaced by the process for an ‘out of hours’ application.

7.5 Once amended I am satisfied that the document forms comprehensive guidance to practitioners. It is advised that authorising officers have personal hard copies of the Codes of Practice and OSC Procedures and Guidance 2011 for immediate reference.

7.6 The current process for RIPA authorisation is the completion of RIPA forms by the applicant. Contact is made with the RIPA Co-ordinator at ‘One Legal’ in order for the ‘Central Record’ to be commenced and the application is forwarded to an authorising officer for consideration. Once completed the authorisation is forwarded to the RIPA Co-ordinator at ‘One Legal’ who completes the ‘Central Record’. ‘One Legal’ would make appropriate contact with the Magistrates Court for a ‘hearing’ for approval and administrate this process. A representative from ‘One Legal’ would attend with the nominated officer who may be required as a ‘witness’ and give evidence at the ‘hearing’. Original documents would be centrally filed and practitioners work from copies in order to comply with *R v Sutherland* requirements.

7.7 Oversight in the form of retrospective quality assurance is advised, conducted by the SRO. A ‘comments’ column on the Central Record to document any issues identified is also advised. It is important that issues identified in the oversight process lead to remedial action where required (a full audit trail of all documents should be maintained) and in addition are fed into RIPA training to ensure these matters are corporately addressed and others have the benefit of the learning. In addition benefit would be derived from the occasional dip sampling

of investigations by Legal Services to ensure no unauthorised covert surveillance is being conducted.

- 7.8 There is currently no formal process to ensure elected members have knowledge of the extent of covert activity conducted by the Council and have an opportunity to influence policy, as considered good practice documented in paragraph 3.30 of the Code of Practice (Covert Surveillance). In discussions with the SRO there are currently briefings conducted for lead members via the Executive Committee. An annual report also goes to the Audit Committee which could be utilised for this process. The importance of a formal process was discussed and understood. Such a process will be introduced.

## **8 Significant Issues**

### *Directed Surveillance*

- 8.1 No directed surveillance has been conducted by the Council since the last OSC inspection.

### *Covert Human Intelligence Sources (CHIS)*

- 8.2 No CHIS authorisations have been conducted by the Council. There is an appropriate understanding within the Council of the statutory obligations in respect of roles, management of risk, and documentation required should this be a future consideration.

## **9 CCTV**

- 9.1 The Council has no public space CCTV system. CCTV at the Council's car park, Leisure Centre and Office reception are overt with appropriate signage displayed.

## **10 Observations**

- 10.1 Like many other councils Tewkesbury Borough Council has adopted a problem solving approach to investigations and as a consequence has not used RIPA in the last three years. Nevertheless its responsibilities under this legislation are taken seriously and there are systems and processes in place to use it effectively. Training has been conducted and it is appreciated that staff likely to use the legislation require periodic training. There would be clear benefit in some practical scenario based exercises to ensure staff remain 'match fit' and would approach the use of the legislation with some confidence if required to use it. Recommendations made in this report are done so to ensure this is the case and practical extant guidance material is available.
- 10.2 I would like to thank the staff from Tewkesbury Borough Council for their participation and positive approach to the inspection process.



**11 Recommendations.**

- 11.1 RIPA training should continue to be formally delivered by the Council to staff who are likely to engage the legislation to ensure it can be applied to the appropriate standard should it be required. This should be considered as ongoing professional development. (Paragraphs 6.1 and 6.2 refer).
- 11.2 The 'Tewkesbury Borough Council Procedural Guide Regulation of Investigatory Powers Act 2000' document should be further amended to provide comprehensive guidance to practitioners. (Paragraph 7.4 refers).



Surveillance Inspector.