



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

Official -Sensitive

30 August 2016

Covert Surveillance

Dear *Chief Executive*

I enclose a copy of the report dated 1 August 2016 prepared by Mr Graham McCrory, a Surveillance Inspector, following his analysis of the material provided by the Council which address the arrangements to ensure compliance with the statutory provisions relating to covert surveillance. None of these powers has been exercised for many years now, and there is no present intention to change this pattern. In accordance with recent OSC policy the inspection was based on the papers provided by the Council. Having considered the material Mr McCrory does not believe that a visit by one of my inspectors is necessary, and having read the report which I wholly endorse, I agree with him.

If after you have read the report which I now enclose you believe that a visit would be helpful or appropriate, the necessary arrangements will be made.

The fact that a personal visit has not been thought necessary does not diminish the importance of the recommendations made at paragraph 11. Indeed the first two are linked. The Policy document, although updated following the inspection in 2013, now needs further updating. Particular areas requiring attention set out in paragraphs 4.3, 4.5, 8.3 and 9.1.

It is of particular importance that the issues discussed at paragraph 8, relating to the Internet and social media, should be addressed. They can provide a valuable source of information for many officials exercising the different responsibilities which fall on the Council. What usually starts as an examination of open source material, not falling within the legislative provisions, can and on occasions does develop into collection of private material which does or may do so. Starting with the Policy document, the process of training and awareness of the possible application of the legislation is crucial; otherwise an official, acting honestly and in the best of good faith, may find that he or she has trespassed into protected territory.

The recommendation to better evidence the training arrangements, and the suggested reduction of the number of Authorising Officers are both self-explanatory, and should not present any difficulty.

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Graham McCrory,

John Judge

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OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Shepway District Council

August 2016

**Surveillance Inspector:
Mr Graham McCrory.**

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This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

The report is sent only to the recipient of the Chief Surveillance Commissioner's letter (normally the Chief Officer of the authority inspected). Copies of the report, or extracts of it, may be distributed at the recipient's discretion but the version received under the covering letter should remain intact as the master version.

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OSC/INSP/075

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Chief Surveillance Commissioner
Office of Surveillance Commissioners
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London
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1st August 2016

OSC INSPECTION – Shepway District Council

1 Inspector

Graham McCrory

2 Introduction

- 2.1 Shepway District Council (Shepway DC) is a local government district in Kent, England which takes up the south-east corner of the county. The council area is largely rural covering some 137 square miles. The Council provides services such as Environmental Health, Licensing, Planning, Housing, and Economic Development for a population of around 110,000 people who reside, in the main, within the two coastal towns of Folkestone and Hythe.
- 2.2 The Chief Executive is Mr Alistair Stewart and the address for correspondence is Shepway District Council, Civic Centre, Castle Hill Avenue, Folkestone, Kent, CT20 2QY. Mr Stewart is supported on the senior management team by three corporate directors.
- 2.3 The Senior Responsible Officer (SRO) for matters relating to the Regulation of Investigatory Powers Act 2000 (RIPA) is Mr Amandeep Khroud (amandeep.Khroud@shepway.gov.uk) who, in response to the official OSC request, has provided the information and supporting documentation from which this report has been compiled to provide an evaluation of compliance, policies, procedures, operations and administration in respect of directed surveillance and the use of covert human intelligence sources (CHIS).
- 2.4 Shepway DC has in total 11 Authorising Officers to include the Chief Executive as the Senior Authorising Officer. **(See recommendation)**

3 Progress against Recommendations

- 3.1 Shepway DC was last inspected by Assistant Surveillance Commissioner His Honour David Hodson on the 26th June 2013. Two formal recommendations were required.

2013 Recommendations

1. That the otherwise excellent Policy and Procedures Document and the associated flow chart be brought completely up to date by the deletion of all references to urgent oral applications.

2. That a comprehensive and regular training programme be prepared and a schedule drawn up showing clearly all details of when and by whom all relevant individuals received RIPA training.

Having viewed the associated documentation I would consider Recommendation (1) as discharged.

Recommendation (2) has been addressed in part with training documented as having been undertaken. No details of the specific nature, quality and dates of this relevant training are available to assess. This is referred to in more detail at paragraph 7.1 of this report.

4 RIPA Structure and Policy

- 4.1 The Council is not a prevalent user of the powers available under RIPA and no authorisation has been granted since June 2012.
- 4.2 Although use is infrequent, the Council has maintained a policy and procedural guide as per the previous recommendations, that covers the process for the application, authorisation and oversight of directed surveillance and use of CHIS. The policy is generally suitable for purpose and includes very useful examples of overt and covert surveillance to assist readers to determine what level of authorisation is required.
- 4.3 The policy, which was updated as recommended in the last inspection, could benefit with some further amendment and revision as follows:
- i. Covert Human Intelligence Source (CHIS) - Whilst the council has not in recent times authorised a CHIS, the policy section referring to CHIS states: *"RIPA does NOT apply in circumstances where members of the public VOLUNTEER information to the Council as part of their normal civic duties.*

- ii. *However if the member of the public is asked to get further information or if that information that they have covertly gathered is used and could be traced to them consideration must be given to authorising them as a CHIS”.*

This statement is somewhat misleading and does not cater for repeat volunteering of information by an individual performing their civic duty and should therefore be clarified in the policy documents and guidance.

Attention should be drawn to CHIS Code of Practice paragraph 2.25 which states that *“the tasking of a person should not be used as the sole benchmark in seeking a CHIS authorisation”* and *“It is possible therefore that a person will become engaged in the conduct of a CHIS without a public authority inducing, asking or assisting the person to engage in that conduct”*. (**See recommendation**)

- 4.4 As the Council is such an infrequent user of RIPA a table top exercise to complete an application and authorisation for directed surveillance, as a simulation of a real life situation the Council may be presented with, would be a worthwhile investment to compliment any individual training.
- 4.5 The SRO reviews the training of RIPA for applying and authorising officers. I do note that the SRO has outlined that each Authorising Officer is responsible for making sure staff comply with the statutory provisions. It would be beneficial to outline and further identify with clarity, the full role of the SRO to include how the SRO oversees the competence of the Authorising Officers and the processes in use by the Council (Note 288 of the OSC Procedures and Guidance July 2016) and oversight of all the Council business functions to ensure there is no activity inadvertently taking place that could be considered as directed surveillance. (**See recommendation**)

5 Reports to Members

- 5.1 An annual report of the Council's use of RIPA is incorporated into the report submitted to elected members at the end of each financial year, and should any authorisation have been granted between these reports, a more detailed and quarterly report would be presented.

6 The Protection of Freedoms Act 2012

- 6.1 The requirement and arrangements for endorsement of an authorisation by a magistrate under the Protection of Freedoms Act 2012 is included in the Council's RIPA policy. The SRO may wish to consider engaging with neighbouring councils who have recently used the judicial process for authorisations to ensure practical understanding of the procedure in the event an authorisation is required in the future.

7 Training

- 7.1 The training of both applicants and Authorising Officers was briefly outlined. Two courses have been undertaken relating to 1) applicant training and 2) Authorising Officer, RIPA core training. There are no details documented to understand the competence of the training nor that of those trained. Even for infrequent users of the powers, councils must ensure that all staff who may be involved in the application, authorisation and management of covert activity receive regular, competent refresher training. (This was commented upon by the Chief Surveillance Commissioner the Rt. Hon. Lord Judge in his 2016 Annual Report at paragraph 2.3.)
- 7.2 Within the Council policy reference is made to the following regarding training: *“periodic written tests will be conducted to ensure the Authorising officer and Applying officers retain their knowledge”*. This testing regime for Authorising Officers and applicants is not clearly documented and may give a sense that continuous professional development is ongoing when this may not be the case. The training undertaken should be documented in sufficient detail so as to be subject to audit and critique. Ensuring staff receive regular refresher training will allow the Council to comply with its stated policy. The training undertaken by the Council should include further guidance on the use of the Internet (see following paragraphs) and could be incorporated with the table top exercises discussed above at point 4.4. **(Recommendation)**.

8 Internet and Social Media Investigation

- 8.1 The Council's RIPA policy does provide specific guidance on the use of social media for investigative purposes. Some guidance has been provided to staff that false identities and assumed names will not be used, and only sites “that are truly open source” may be viewed. Some advice however, within the well intentioned document, is less than clear when referring to “open source” and to persons who “are” being “monitored”:

“Where privacy settings are available but not applied the data may be considered ‘open source’ and an authorisation is not usually required. However, repeat viewing of ‘open source’ sites may constitute directed surveillance on a case by case basis and this should be borne in mind e.g. if someone is being monitored through, for example, their Facebook profile for a period of time and a record of the information is kept for later analysis, this is likely to require a RIPA authorisation for directed surveillance.”

This section within the policy document could benefit from some clarification and guidance to ensure staff fully understand their parameters when engaged in open source use and prior to undertaking any monitoring of a site which may require an authorisation.

- 8.2 As this technique of investigation and research is expanding exponentially with all manner of new technology, and presents

significant opportunity for the Council, further clarification may be required for investigators and Authorising Officers alike. The key consideration when viewing publically available information where no privacy settings have been applied, often referred to as 'open source' material, is the **repeated** or **systematic** collection of private information. Initial research of social media to establish a fact or corroborate an intelligence picture is unlikely to require an authorisation for directed surveillance; whereas repeated visits building up a profile of a person's life style would do so. Each case must be considered on its individual circumstances and early discussion between the investigator, the RIPA Co-ordinator and the Authorising Officer is advised to determine whether activity should be conducted with or without the protection of an authorisation. (Paragraph 289 of the OSC Procedures and Guidance July 2016 provides more detail.)

- 8.3 The Council should revise its RIPA policy to provide more detailed guidance on the use of the Internet and social media for investigative purposes and consider the need for specific training in the discipline. **(See recommendation)**

9 CCTV

- 9.1 Shepway DC does not own or manage an overt CCTV facility as outlined in the documentation provided. Within the Council policy document reference is made to joint working with other agencies and specific reference is made to use of Council resources to include "CCTV surveillance systems". The policy document should be updated to identify that the Council no longer owns nor manages a town/city centre CCTV system. **(Recommendation)**

10 Conclusion

- 10.1 Shepway District Council is unlikely to be more than an occasional user of the powers available under RIPA, resorting to use overt methods of investigation wherever possible, although this may change if more use is made of Internet investigations in the future. The infrequent use does not allow staff to become proficient and confident in the use of covert powers, however the policy and procedures in place (with some minimal revision) should result in authorisations that are compliant with the legislation and the Codes of Practice.
- 10.2 Of note is the number of Authorising Officers (11), to include the Senior Authorising Officer, identified within the Council. Reducing the number of Authorising Officers to a smaller cadre who are equipped with specific and continual professional development regarding RIPA and who can take "cradle to grave" ownership of any future RIPA authorisation requests may assist with quality and control. **(See Recommendation)**
- 10.3 The SRO has taken steps to ensure that some training and continual development has been undertaken by both Applicants and Authorising

Officers. Further details are required in relation to this and also as to how the SRO oversees those Council employees with regards RIPA compliance, to ensure that unauthorised activity does not take place and that compliance with RIPA is a focus of the staff involved in criminal investigations. The recommendations made will support this position and increase the state of readiness when, or if, the Council next seeks to utilise covert investigation techniques.

10.4 A follow up physical inspection is not considered necessary on this occasion.

11 Recommendations

11.1 The Council should revise the RIPA policy document to account for the observations made in paragraphs 4.3, 4.5, 8.3 and 9.1 of this report and make arrangements for appropriate training to deal with the revisions.

11.2 The Council must ensure that all staff who may be involved in the application, authorisation and management of covert activity receive regular refresher training which is fully documented and can be assessed for its quality and competence. (Paragraph 7.1 of this report.)

11.3 The Council should consider reducing the number of Authorising Officers to allow a smaller and more focused cadre to exist. (Paragraph 10.2)

Graham McCrory
Surveillance Inspector