



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

15th May 2013

Dear Mr. Scholes,

Covert Surveillance

On the 17th April 2013, an Assistant Surveillance Commissioner, HH Norman Jones QC, visited your Council on my behalf to review your management of covert activities. I am grateful to you for the facilities afforded for the inspection.

I enclose a copy Mr Jones's report which I endorse. It is not acceptable to me that, despite your predecessor's assurance in his letter of 26th August 2010, none of the recommendations made in the report following the last Inspection 3 years ago has been fully discharged. All need attention and are repeated in the recommendations which follow. There are grounds for optimism as Mr Anthony Roche and M/s Sally Everett in their respective roles as SRO and Monitoring Officer appear to be dedicated, efficient and determined to create a system which will achieve high standards.

The recommendations are that this Central Record be compliant with the Codes of Practice, that current Home Office forms be used, that the recommendations made in 2010 be fully discharged, that a training programme to address the issues identified in the report be designed and implemented as indicated in paragraph 22 of the report.

I shall be glad to learn that your Council accepts the recommendations and will see that they are implemented.

One of the main functions of review is to enable public authorities to improve their understanding and conduct of covert activities. I hope your Council finds this process constructive.

Please let this Office know if it can help at any time.

*Yours sincerely
Christopher Rose*

Mr David Scholes
Chief Executive
North Hertfordshire District Council
Council Offices
Gernon Road
Letchworth Garden City
Hertfordshire SG6 3JF

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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

North Hertfordshire District Council

17th April 2013

**Assistant Surveillance Commissioner:
HH Norman Jones QC.**

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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.

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Office of Surveillance
Commissioners

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

5th May 2013.

INSPECTION REPORT NORTH HERTFORDSHIRE DISTRICT COUNCIL

Inspection 17th April 2013.

Inspector His Honour Norman Jones, QC.
Assistant Commissioner

North Hertfordshire District Council.

1. North Hertfordshire District Council is the local government authority serving an area of 880 square miles with a population of about 127000 in the North East of Hertfordshire. It contains a complex mixture of rural and urban communities with the principal towns being Letchworth, Hitchin, Baldock and Royston and some thirty nine other villages.
2. The Senior Corporate Management structure is headed by the Chief Executive - Mr. David Scholes and two Strategic Directors. There is a third Strategic Directorate, Planning, Housing and Enterprise and Mr. Scholes has recently been promoted from that directorship to be CEO. At present he also retains direct responsibility for that office. The Strategic Directors lead teams of Heads of Services and departmental managers.
3. The role of Senior Responsible Officer (SRO) has been undertaken by the Corporate Legal Manager and Monitoring Officer. At the time of the last inspection that was Ms. Katie White but the office is currently temporarily occupied by Mr. Anthony Roche. He has therefore assumed responsibility as acting SRO. The role of *RIPA Co-ordinating Officer* is undertaken by Ms. Sally Everett, Monitoring Officer, Technical Support, and P.A. to the Corporate Legal Manager.
4. North Hertfordshire DC was last inspected for the OSC in July 2010 by Mrs. Clare Ringshawe-Dowle, Surveillance Inspector.

5. The Council is now a minimal user of *RIPA* having granted only two authorisations since the last inspection, those being in May and June 2011. Both were for *directed surveillance* and did not involve the acquisition of *confidential information*, the use of the *urgency* provisions nor was *self authorised*. This represents a substantial reduction since the last two inspections when thirty two and fifteen authorisations had been undertaken over similar periods.
6. The Council Offices are situated at the Council Offices, Gernon Road, Letchworth Garden City, Hertfordshire, SG6 3JF.

Inspection.

7. Both Mr. Roche and Ms. Everett extended a warm welcome to North Hertfordshire DC. They remained throughout the inspection which was conducted by means of interviews, and discussions with the officers and an examination of the Central Record of Authorisations and the retained applications/authorisations, reviews, renewals and cancellations. Feedback was given at the end of the inspection to Mr. Scholes, the Chief Executive.
8. Among *RIPA* issues considered were actions taken on past recommendations, the management of *RIPA*, Authorising Officers, training, reporting to Councillors, policy and procedures, the Protection of Freedoms Act and CCTV.

Examination of Central Record and Authorisations.

9. The **Central Record of Authorisations** is maintained in a computerised format. As at the previous inspection it is not fully compliant with the requirements of the *Code of Practice for Covert Surveillance and Property Interference* (8.1) and the *Code of Practice for CHIS* (7.1) in that it does not contain columns to record *confidential information*, *self authorisation* and *urgency*. It is otherwise well maintained. As such it is an invaluable tool for oversight purposes especially in the event of the Council again becoming more active in its resort to *RIPA*.

See recommendation

10. The first Application/Authorisation concerned the monitoring of a Market Waste Services crew by CCTV. Whilst it was said to be for the prevention or detection of crime or the prevention of public disorder it bore the comment "*The information gathered will be used to determine the course of formal action against the individuals*" and a further comment under *proportionality* that "*Surveillance is necessary in order to catch the individuals in the act so that disciplinary action can be taken against them*". It therefore carried the risk that this was not intended as a criminal investigation but was for employment reasons which is not a "core function" of the Council and for which the Council may not use *RIPA*, (see *C v Police*, (2006) IPT/03/32/H).
11. Both *necessity* and *collateral intrusion* were well considered but the articulation of *proportionality* failed to adequately detail the three essential elements namely (a) *that the proposed covert surveillance is proportional to the mischief under investigation*; (b) *that it is proportional to the degree of anticipated intrusion on the target and others*, and (c) *it is the only option, other overt means having*

been considered and discounted. Confidential information was considered in terms which suggested some likelihood of it being acquired when there was none. This tended to indicate that the applicant was unsure of the meaning of the term and unaware of the fact that if there was such likelihood only the CEO could authorise. The authorising officer and the process of oversight failed to notice the defect.

12. The authorisation section of the form was not in accordance with the current Home Office forms and this requires to be addressed. There was no separate box for *necessity* and *proportionality* which lead the Authorising Officer to consider these under the general heading of Authorising Officer's statement. This observed "*I believe that directed surveillance is proportionate as regards what is sought to be achieved for the following reasons (Code paragraph 2.5)*". This failed to articulate any consideration given by the Authorising Officer relating to either *necessity* or *proportionality*. The reference to "Code 2.5" appears to be a reference to the 2002 *Codes of Practice* both of which consider *proportionality* in that paragraph. This is an inadequate and relaxed approach to the authorisation as well as referring to a version of the *Codes of Practice* which had been replaced in 2010 by new Codes. A review date was set but no expiry date. There was no evidence of a review being undertaken. The authorisation was dated but not timed. Subsequent to the authorisation a helpful summary of events occurring during the investigation was attached to the document. This contained intelligence material which should have appeared in the application. The authorisation was cancelled a month out of time on the basis that it was time expired and that no surveillance had taken place. This was an authorisation which should have been cancelled at an early review and, in any case, before expiry.

See recommendation

13. The second application related to the installation of a sound recording machine in a complainant's house to record noise from a neighbour. The neighbour allegedly had failed to respond to harassment warning letters. There was no description of the machine save that it was a "sound recording device". However there was an indication that it had the capacity "*to capture voice recordings of foul and abusive spoken words that are being directed at the neighbours and identify the perpetrators. Such evidence will be used as regards tenancy enforcement or formal intervention in respect of anti social behaviour*". Concern was expressed to the officers that if the machine had the sensitivity to record conversations from within the neighbours' home it was likely to fall into the category of *intrusive surveillance*. *Proportionality* was well considered in the application but *confidential information* again indicated some likelihood of its acquisition and the comments above (*Paragraph 11*) are applicable.
14. The form was again not in the prescribed Home Office format. The authorisation was of a good standard with *proportionality* and *necessity* being well articulated and excellent detail given of what was being authorised, though a description of the machine being used would have been helpful. A review was correctly set and carried out, though a few days late. The authorisation was cancelled at the review but no cancellation form was raised, the cancellation being noted on the review form.

See recommendation

Actions Taken on Past Recommendations

15. Mrs. Ringshawe-Dowle made five recommendations in her 2010 report:

- I. *The Central Record should be updated with additional columns to record any future cases involving self authorisation, the urgency procedures or confidential information.*

These columns remain absent in the Central Record. However the requirement for a column to represent *urgency* is no longer required since such authorisations are no longer available to local authorities. (see *Protection of Freedoms Act 2012, Schedule 9(9)(2)*). This recommendation has not been discharged.

- II. *Authorising Officers must ensure that they provide clear details of the correct validity of directed surveillance authorisations – for three months less a day, expiring at 23.59 hours. Once authorised reviews should be regular until such time as a formal renewal of the authorisation is required*

Of the two authorisations inspected the first failed to accommodate these requirements whilst the second substantially, though not entirely, did so (see *Paragraphs 12 and 14* above). It would therefore appear that Authorising Officers have responded differently to this recommendation. This recommendation has been partially discharged.

- III. *The SRO should establish suitable systems to ensure that a record of all future RIPA training is maintained, and that robust quality assurance is undertaken on all future applications and authorisations.*

A computerised schedule is maintained of formal *RIPA* training, the sole entry relating to external professional training of eighteen named officers on one day in February 2011. Internal training is undertaken through the Council's *Corporate Enforcement Forum*. Records are maintained in the form of the minutes of these meetings. Six such meetings have occurred since the last OSC inspection. However examination of the applications/authorisations, reviews, renewals and cancellations since that inspection does not indicate any robust oversight. This recommendation has been partially discharged.

- IV. *Training should be regularly repeated for all key applicants and Authorising Officers as well as the CCTV Control Room Manager (where this has not been provided by another partnership council). It should concentrate on the important matters of necessity, proportionality, collateral intrusion, durations, reviews and renewals. It should also cover the important matter of how to identify a potential CHIS and how they are appropriately risk assessed and managed.*

These issues will have been covered in the seminar in February 2011. However a perusal of the Minutes of the *Corporate Enforcement Forum* did not indicate that the core issues raised by Mrs. Ringshawe-Dowle received consideration. *RIPA* was clearly a regular item on the agenda but the issues covered tended to be concerned with legislative and procedural changes. The report anticipated regular training and this is not provided by the *Forum*. This recommendation has not been discharged.

- V. *Applicants must advise Authorising Officers of any product obtained by the use of covert tactics and Authorising Officers should comment on this material and how it is to be managed or used thereafter.*

Neither authorisation was productive and hence this recommendation cannot be verified as discharged.

See recommendation

Management of *RIPA*

16. The *SRO* will have responsibility for the integrity of the *RIPA* process within the Council; for compliance with *RIPA* and its regulatory framework; for engagement with the Commissioners and Inspectors when they conduct inspections; for overseeing the implementation of any recommendations made by the OSC and for ensuring that authorising officers are of the appropriate standard. It would be hoped that this would involve regular attendance at the *Corporate Enforcement Forum* to seek to ensure that the recommendations made by the OSC are discharged. Further there is a need for him/her to act as the officer exercising ultimate oversight of the authorisation process which must involve regular reviews of the submitted documents to ensure that a high standard is maintained.
17. Ms. Everett, as *RIPA Co-ordinating Officer*, undertakes the day to day management of *RIPA*. She is, however, not a lawyer and, although she has a good working knowledge of the Council's *RIPA* procedures, may benefit from some concentrated training relating to the more legal aspects of the subject to assist her in the role of immediate oversight and quality control of submitted documentation. Her overall role was discussed as including: (a) maintaining the Central Record of Authorisations and collating the original applications/authorisations, reviews, renewals and cancellations; (b) oversight of submitted *RIPA* documentation; (c) organising a *RIPA* training programme; and (d) raising *RIPA* awareness within the Council. She already collates the *RIPA* documents and populates the Central Record. In addition she diarises reviews and cancellations and reminds applicants or Authorising Officers when they are due. She is responsible for organising the quarterly meetings of the *Corporate Enforcement Forum* and keeps the minutes. She raises awareness by the placing of *RIPA* items in Council intranet newsletters and activates the cascading down of information from management meetings.

Authorising Officers

18. The Strategic Directors and three other senior managers are Authorising Officers. The CEO or the Strategic Director deputising for him in his absence are

the only officers who may authorise the employment of juvenile or vulnerable *CHIS* or the acquisition of *confidential information*. At the time when authorisation was far more common in the Council such numbers may have been thought appropriate. However there has been a dramatic reduction in authorisation and the event of the *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500* will likely serve to place more constraints on numbers. Consequently it is likely that the Council could manage with even fewer Authorising Officers and should give some consideration to a further reduction in numbers.

Training

19. North Hertfordshire DC does not have a *RIPA* training programme and consequently does not have a system designed to keep officers refreshed about *RIPA* practices. This was a concern expressed through a recommendation in the last OSC report. Undoubtedly the training provided in February 2011 was of a high standard and it would have provided a basis upon which to commence a training programme, but it did not serve to be the programme in its entirety. Whilst the *Enforcement Forum* serves a valuable purpose in alerting officers to changes in the legislation or procedures it does not appear to provide training of the type envisaged by Mrs. Ringshawe-Dowle and does not appear to address the issues raised in her report. The need for a system designed to achieve uniformity of high performance was demonstrated during the examination of the two authorisations produced since the last inspection.
20. Whilst it has never been the practice for the Council to employ *CHIS* it does recognise that circumstances may arise where to do so is unavoidable. Parliament, having given local authorities the power to authorise such deployment, expects that they should be equipped to do so. That means that they are required to have in place a system for the management of *CHIS* and in particular officers trained to be controllers and handlers. This is not the position at North Hertfordshire DC, a fact which was highlighted in the previous report. Training should be undertaken to equip the appropriate officers with the capacity to undertake these roles. Furthermore there remain the risks associated with the failure to identify a *CHIS*, often associated with "status drift" of individuals from that of casual informant to *CHIS*. The ability to recognise such situations is of importance and again may only be addressed by regular training.
21. In saying that the Council should institute such a training programme this report merely reflects the comments and recommendations of its predecessor. Such training can be arranged at 12 to 18 monthly intervals by the *RIPA Co-ordinating Officer* and could be provided in house by legal officers. Additionally the Council may wish to consider the use of e-training now made available by some of the professional training companies.

See recommendation

Policy and Procedures.

22. The Council's *RIPA Policy and Procedures* has been revised to accommodate the changes made by the *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500*. It

has been described as "exemplary" and "excellent" in previous reports and remains so. A few minor amendments were discussed which included:

- Removing the references to the *urgency* provisions.
- Outlining the three elements to be considered in regard to *proportionality*. (see *Paragraph 11* above)
- Reviews to be conducted at least monthly.
- Include under "Authorising Officers" that only the CEO, or whoever deputises for him in his absence, may authorise the acquisition of *confidential information* as well as the employment of juvenile and vulnerable *CHIS*.
- Identify the requirement for a Controller and Handler to manage *CHIS*.
- Require original documents to be forwarded to the *RIPA Co-ordinating Officer*.
- Identify the roles of *SRO* and *RIPA Co-ordinating Officer*.

See recommendation

Councillors

23. The elected members have a responsibility to oversee the Council's *RIPA* policy and to ensure it accords with Council requirements. To ensure that they are sufficiently informed a quarterly statistical report on *RIPA* activity is prepared by the *RIPA Co-ordinating Officer* and goes to Elected Members, with an annual report to enable Councillors to satisfy themselves that the Council's *RIPA* policy is fit for purpose. Councillors are aware that they may not be concerned with individual authorisations.

CCTV

24. A CCTV system continues to be operated as before. The processes of authorisation remain as at the previous inspection.

Protection of Freedoms Act 2012

25. The provisions of this Act, in so far as they relate to *RIPA*, were discussed. The provisions for acquiring the approval of Magistrates following an authorisation were considered. Arrangements have already been made with the Clerk to the local Magistrates for the submission of authorisations for approval. The appropriate officers to attend were discussed. At present the Council is minded to send the investigating officer accompanied by a member of the Legal Department. The type of enquiry likely to be raised by a Magistrate was considered and it was appreciated that the investigating officer may be unable to assist with regard to the content of the authorisation. In that event it was appreciated that the Authorising Officer may be the better representative.

Conclusions.

26. It was disappointing to note that North Hertfordshire DC had failed to discharge two and only partially discharged another two of the recommendations set out in the last inspection report in spite of the then CEO's, Mr. Campbell, assurances that these were being addressed. These continue to require attention and are repeated within this report.

27. Since the last report there have been a number of changes at North Hertfordshire Council which include those who manage *RIPA*. Those changes mean that a number of officers have assumed new roles and need to bed themselves into them. Mr. Roche and Ms. Everett impress as dedicated and efficient officers who are determined to achieve high standards and are working to create a system which will produce them.
28. Training remains of concern. Whilst there was a swift response to the previous report by the provision of a day of professional training, the continuation process of refresher training within a structured training programme still requires to be addressed. Only by such a process can the officers involved with *RIPA* be regularly reminded of the requirements of the application and authorisation processes and be brought to produce authorisation documentation of a uniformly high quality.
29. The examination of *RIPA* documentation indicated that errors were not being identified at and following the moment of authorisation. This identifies weakness in the oversight and quality control practices partly due to the *RIPA Co-ordinating Officer* needing to be more comprehensively trained to identify poor quality and partly due to the lack of a structured oversight process by the *SRO*. Robust quality control and oversight is one of the main tools by which authorisation standards are improved.
30. The Council does have good structures already in place for which it should be commended. The *RIPA Policy and Procedures* is of a high standard, the management structure for *RIPA* is sound, the *Enforcement Forum* serves a useful purpose and systems exist for raising awareness and avoiding unauthorised surveillance.
- 31.
- (i) Make the Central Record of Authorisations compliant with the *Codes of Practice*. (Paragraph 9)
 - (ii) Adopt the current Home Office forms. (Paragraph 12)
 - (iii) Discharge fully the recommendations of the 2010 OSC Report. (Paragraph 15)
 - (iv) Design a training programme which addresses the issues in this report. (Paragraphs 10 to 14, 19 to 21)
 - (v) Amend the *RIPA Policy and Procedures*. (Paragraph 22)

**His Honour Norman Jones, QC,
Assistant Surveillance Commissioner.**