

Office of Surveillance Commissioners Inspection Report of Swindon Borough Council 2016

Cabinet

Date: 7th September 2016

Author:	Leader of the Council, and Director of Law and Democratic Services
Wards:	All
Locality Affected:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 To present the Office of Surveillance Commissioners' Inspection Report of Swindon Borough Council 2016 and provide Cabinet with the opportunity to consider and endorse the Inspector's recommendations.
- 1.2 Councillors should have oversight of how the Council uses its powers to undertake surveillance activities and to be assured that it uses its powers responsibly and in accordance with the Regulation of Investigatory Powers Act (RIPA) and associated codes of practice.
- 1.3 The report evidences compliance with the provisions of the Regulation of Investigatory Powers Act 2000 and codes of practice for covert surveillance and property interference, and with the Council's own Policy and Protocol on RIPA 2000. The report has particular reference to the Council's Vision Priority to "Ensure clean and safe streets and improve public spaces and local culture."

2. Recommendations

Cabinet is recommended to:

- 2.1 Welcome the report and accept the Surveillance Inspector's recommendations.
- 2.2 Note the Surveillance Inspector's recommendations, as set out in the Inspection report, and also the actions taken by officers in response to these recommendations (as summarised in Paragraph 3.8 of the report).

3. Detail

Surveillance activities that can be undertaken by the Council

- 3.1 Swindon Borough Council has a number of powers of covert surveillance which are supervised by the Regulation of Investigatory Powers Act (RIPA) which allows the Council to authorise the use of three covert techniques:
 - 3.1.1 One: covert surveillance on individuals in public places, that is, **directed surveillance** using cameras and other methods such as photography or covert following of individuals;

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3.1.2 **Two: communications data** (such as telephone billing information – but not traffic data, which is the most intrusive form of communications data, which can be used to identify the location of devices); and

3.1.3 **Three: covert human intelligence sources** (CHISs), where individuals interact with suspected offenders in order to investigate crime; almost exclusively these are Council's enforcement officers.

Surveillance activities undertaken by the Council during 2016

3.2 Since the last inspection in September 2013, the Council has maintained a similar level of authorisation, having granted five directed surveillance authorisations and one for Covert Human intelligence Sources (CHIS).

3.3 For members' information, and to offer perspective, during the calendar year 2016, the Council undertook two directed surveillances and authorised one CHIS surveillance. There were no requests for Communication Data. The directed surveillances related to an investigation of alleged Council tax reduction fraud and an allegation of meat fraud. The CHIS authorisation was used in relation to a "Facebook" investigation for the sale of counterfeit goods.

3.4 To put the Council use of surveillance powers in to context, in 2011 the Office of the Surveillance Commissioners, reported that generally speaking local authorities use surveillance powers sparingly with over 50% of Authorities granting five or fewer directed surveillance authorisations and 16% none at all.

Inspections conducted by Government Bodies

3.5 The Council is regularly inspected by the Office of Surveillance Commissioners (OSC). The OSC inspects the Council's procedures relating to Direct Surveillance and the use of CHIS's and, where necessary, will make recommendations around issues of process and compliance. The Council was inspected on 24th May 2016 and the resulting Inspection Report is attached as Appendix 1 to this report.

3.6 The Inspection was conducted by means of interview and discussion with Stephen Taylor, the Council's Director of Law and Democratic Services, in his capacity as the Council's senior responsible Officer for RIPA, Paul Simmonds, the Council's Public Protection Manager, in his capacity as an authorising officer for RIPA, Nick Hobbs, the Council's Head of Internal Audit, and Mark Stratford, the Council's Security Manager. The Inspector makes particular reference in his report to "impressive officers with the clear intention of ensuring that the Council remains compliant with the legislation."

3.7 The main focus of the inspection was an examination of the central record of authorisations, including the review of a sample of recent

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applications/authorisations, and particular RIPA issues where action had been recommended in the previous (2013) OCS report.

3.8 Summary of OSC recommendations

Central record and authorisations

3.8.1 The Inspector determined that the central record of authorisations was compliant with the Codes of Practice but was of the view that it might be amended to include appearances for magistrate's approval. **This requirement has been incorporated into the council's process for the recording of authorisations.**

Training

3.8.2 It was the Inspector's view that the Council did not have in place an established training programme to ensure that authorising officers and others engaged in RIPA Part II receive regular training. He recognised that the Council's RIPA arrangements were in a state of transition, following the very recent appointment of Mr Simmonds to the role of co-ordinating officer, and suggested that the Council might wish to give consideration to the engagement of an external professional trainer to provide training to all authorising and investigating officers and as a useful starting point for the establishment of a training programme which could revert to more regular refresher training given by Mr Simmonds, who would then have the advantage of having access to the material provided by the professional trainer.

3.8.3 It was the Inspector's recommendation that the Council establish a regular training programme and address by training the issues raised in the examination of documents. **Cabinet is advised that this suggestion has been accepted by officers for implementation and that, in addition, it is intended that basic RIPA advice, and the restrictions it places on all staff, will be introduced into the Staff Induction Programme.**

Management of RIPA

3.8.4 In his discussions with the officers, the Inspector observed that, whilst, at present, RIPA forms a module of the induction course for new members of staff, little information is given to the majority of Council officers concerning the requirements of authorisation in the event that the use of Surveillance considered. He felt that this presented the risk that officers who do not usually engage in covert surveillance may inadvertently do so without authorisation. It was his recommendation that measures be put in place to ensure that the awareness of RIPA is raised throughout the Council. **As referred to above, Cabinet is advised that it is intended that basic**

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RIPA advice, and the restrictions it places on all staff, will be introduced into the Staff Induction Programme.

Policy and Procedures

3.8.5 The Inspector was of the opinion that the Council's policy and guidance on RIPA, as set out in its "Policy and Protocol on RIPA 2000" document, was a concise and helpful guide for all those who may be involved with the RIPA process. However, following his discussions with the officers, he suggested that the following minor amendments would be helpful.

- An indication that a vulnerable CHIS may only be authorised by the Chief Executive or, in his absence, his nominated deputy.
- The inclusion of a definition of intrusive surveillance indicating that it is not available to the Council.
- An indication that the effective duration of an authorisation (three months for directed surveillance and 12 months for CHIS) commences with the magistrate's approval.
The removal of references to oral urgent authorisations (which are no longer available for use by local authorities)

3.8.6 **Cabinet is advised that the above changes, recommended by the Inspector, have been made to the Council's policy and guidance on RIPA, as set out in its "Policy and Protocol on RIPA 2000" document**

3.9 The Office of Surveillance Commissioners (OCS) has given permission for the Council to publish the Inspection Report as an appendix to this report.

4. Alternative Options

4.1 The Council could decide not to accept or to challenge the findings of the inspector's report and recommendations.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

5.1 There are no direct financial implications from this report.

Legal and Human Rights Implications

5.2 Legal and human rights implications have been taken into account in the preparation of this report. It is believed that the recommendations within this report are compatible with Convention rights.

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All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 No other implications have been identified within the contents of this report.

Diversity Impact Assessment (DIA)

- 5.4 A DIA has not been carried out as part of this report, if a DIA becomes necessary it will be completed at the appropriate time.

Risk Management

- 5.5 No risk management issues have been identified within the contents of this report.

6. Consultees

- 6.1 The Corporate Director, Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 Appendix 1 - Office of Surveillance Commissioners Inspection Report of Swindon Borough Council 2016

9. Key Decision/Decision in Forward Plan

- 9.1 This is not a Key Decision and is included in the Cabinet Work Programme / Forward Plan for September 2016.