



Office of Surveillance
Commissioners

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Swindon Borough Council

24 May 2016

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

OFFICIAL- SENSITIVE

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Office of Surveillance
Commissioners .

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3rd: June 2016

INSPECTION REPORT SWINDON BOROUGH COUNCIL

Inspection	24 th . May 2016
Inspector	His Honour Norman Jones, QC. Assistant Commissioner

Swindon Borough Council.

1. The Borough of Swindon is a local government unitary authority in the south-west of England. It covers an area of 88.84 square miles and the Council serves a population of about 216,000. The principal township is Swindon although the • Borough embraces- a number of outlying towns and villages.
2. The Corporate Management Team is led by the recently appointed CEO, Mr John Gilbert, who had previously served the Council • as a Director. He is supported by two Board Directors, four Directors and twelve Heads of Services.
3. Mr Stephen Taylor, Director of Law and Democratic Services, remains, as at the time of the last inspection, the Senior Responsible Officer (*SRO*) for *RIPA*. The *RIPA Co-ordinating Officer* is Mr Paul Simmonds, Public Protection Manager (embracing responsibility for Trading Standards and Environmental Health), who is also an authorising officer. He is recently appointed to the role.
4. Swindon BC was last inspected for the OSC in September 2013 by Mr Kevin Davis, Surveillance Inspector.
5. Since the last inspection the Council has maintained its level of authorisation as at the previous inspection having granted five *directed surveillance* authorisations and one for *Covert Human Intelligence Sources (CHIS)* (a second was not authorised).

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6. The Civic Offices are situated at Euclid Street, Swindon, SN1 2JH.

The Inspection.

7. Mr Taylor and Mr Simmonds extended a warm welcome to Swindon BC and remained throughout the inspection which was joined later by Mr Nick Hobbs, Head of Internal Audit and an authorising officer and Mr Mark Stratford, Security Manager (CCTV Manager). Their informed participation and enthusiasm was much appreciated.
8. The inspection was conducted by means of interview and discussion with the officers. The Central Record of authorisations and a sample of recent applications/ authorisations were examined. Among the *RIPA* issues discussed were actions taken on the recommendations of the last OSC report including Councillor responsibilities, *RIPA* management, authorising officers, training, *CHIS*, social media, and CCTV.

Examination of Central Record and Authorisations.

9. The **Central Record of Authorisations** is contained within a computerised spreadsheet and is compliant with the *Codes of Practice* save that it requires columns to record appearances for magistrate's approval. Contained within the record are additional columns providing a brief summary of the nature of the offending investigated, the outcome of the investigation and whether the target resides outside the Council area. Refusals to authorise are also recorded.

See recommendation.

- 10: One *directed surveillance* **application** related to the investigation of Council tax reduction fraud. It contained good detail of the offending being investigated with a sound intelligence basis. The planned operation was concisely outlined together with the anticipated product and collateral intrusion being well articulated. A consideration of *necessity* embraced the statutory requirements but did not outline why it was necessary to use covert surveillance. All three basic elements of *proportionality* were covered though no detail was given of other means that had been considered, merely a bald statement that no other means were possible. The acquisition of *confidential information* was considered "extremely unlikely" when in fact there was no likelihood. The terminology used would embrace some likelihood of its acquisition which would require the authorisation of the CEO. The **authorisation** was typed and thus did not follow the better practice of being handwritten. This avoids the risk of challenges at court suggesting either that the authorisation had been prepared prior to submission to the authorising officer who had not given it his personal consideration and would have merely signed it, or, alternatively, that alterations had been made *ex post facto*. If authorising officers type authorisations it should be remembered, in the event of a court appearance, that the authorising officer should be in a position to produce the file history to contradict such assertions. The authorisation meticulously argued the 5VV's. However the consideration of - *necessity* did not embrace why covert surveillance was required as an

investigatory tool and only the seriousness of the offence was discussed within *proportionality*. A review date was not set and the expiry date was set to reflect the date of authorisation rather than that of the magistrate's approval. Erroneously a renewal form, containing little detail, had been used to record a **review**. This was later recognised and a review form in considerable detail, more accurately recording what was undertaken at the review, was then placed upon the record. Whilst the officers are to be commended for recognising the mistake that had been made and seeking to correct it the process would be open to challenge in the event of a disputation at court. A **cancellation** containing appropriate detail completed the file.

11. A second *directed surveillance* **application** related to a meat fraud and contained good detail of the nature of offending being investigated and the intelligence basis. However the proposed covert surveillance was to be undertaken by a firm of private investigators who would be acting as agents of the Council. No adequate detail was given of the nature of the investigations and the methodology proposed. It must be remembered that when agents are appointed and act under an authorisation of the Council such details should be contained within the authorisation. Both *necessity* and *proportionality* were well articulated covering all essential elements. The **authorisation** was not sufficiently complete since it also failed to give detail of the methodology authorised. The copy contained within the file was unsigned. An appropriate **review** was carried out and a **cancellation** in sufficient detail was produced.
12. A *CHIS* **application/authorisation** examined related to a "Facebook" investigation for the sale of counterfeit goods using a covert account operated by the Trading Standards Department. A pseudonym was assigned to the investigating officer. Within the **application** good detail was given of the nature of the investigation and *necessity* and *proportionality* were both well articulated. • *Confidential information* was appropriately argued. The **authorisation** was typed (see above) and contained adequate detail and set appropriate parameters. *Necessity* and *proportionality* were well articulated. A review date was set. Although this application had reached the stage of being considered for authorisation it was ultimately decided, before authorisation was granted, to discontinue the application on the basis recorded in the Central Record that this was an "ongoing investigation which may in due course lead to criminal proceedings. No further action being taken in view of lack of evidence. RIPA approval for surveillance not pursued or granted." Neither application nor authorisation were signed. Whilst this was to be expected of the authorisation it would have been anticipated that the application would have been signed before submission to the authorising officer. In the event this would have no consequence in the present ^{FIARR} but MA irripnrAnrA of ensuring that the relevant documents are signed at the relevant time should be noted.

See recommendation.

Previous Recommendations

13. Mr Davis made two recommendations in his previous report:
 - i. *that the Council complies with the provisions of paragraph 3.30 of the revised Code of Practice for Covert Surveillance and Property*

Interference. Paragraph 3.30 requires that the elected members review the authority's use of the 2000 Act and set the policy at least once a year. In addition they should also consider internal reports on the use of the act on at least a quarterly basis.

2.16.6 of the Council's *Policy and Protocol on RIPA 2000* states that "elected members of a local authority will review the authority's use of the 2000 Act and set the policy at least once a year. They will also consider internal reports on the use of the 2000 act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose". An annual report was prepared for March 2016 for the Cabinet which was made available to the inspection. It contained a brief outline of surveillance activities during 2014 and 2015 a report upon the inspection in 2013 and an endorsement of the above policy. The Council's policy and procedures document was provided in an appendix. However discussion with the officers indicated that regular reporting during the year has not yet been undertaken but is to be included in a briefing note which is regularly made available to all Councillors. This recommendation has been substantially discharged.

That future training highlights the requirement to comply with OSC guidance note 109 to ensure that all intelligence or information has the correct provenance to allow the authorising officer to reach a proper judgement.

Specific training has been given to highlight the significance of this issue. Examination of the most recent authorisation indicates that the training has been fruitful. This recommendation has been discharged.

Management of *RIPA*

14. Mr Taylor, as *SRO*, adopts overall responsibility for *RIPA* within the Council. He is aware of the requirements of the *Code of Practice for Covert Surveillance and Property Interference*, 3.29 and 3.34. He and Mr Simmonds work closely together and Mr. Taylor exercises oversight by personally checking **all** submitted documentation. Mr Simmonds has relatively recently taken on the role of *RIPA Co-ordinating Officer* having previously been the principal authorising officer at the Council. He has kept himself up-to-date by attending external courses and has a personal sound knowledge the subject. **It** is proposed that he relinquishes his role as an authorising officer since it is recognised that **this** would conflict with his oversight responsibilities.
15. **The** importance of ensuring that unauthorised surveillance is not undertaken was discussed. At present *RIPA* forms a module of the induction course of new members of staff but otherwise little information is given to the majority of Council officers concerning the requirements of authorisation in the event that the use of Surveillance considered. That leaves open the risk that officers who do not usually engage in covert surveillance may inadvertently do so without authorisation. It is **the responsibility of the *RIPA Co-ordinating Officer*** to ensure that such information is disseminated. Means of doing so were discussed including the placing of brief *RIPA* articles in weekly and monthly intranet

newsletters and by the cascading down of *RIPA* guidance from management meetings.

See recommendation.

16. The system adopted for authorisation was discussed. A case officer considering using covert surveillance would first discuss the matter with his/her team leader. If it was decided to proceed Mr Simmonds would then be approached for advice and would make a preliminary decision as to whether the proposed application was appropriate. In the event that it was decided to proceed the application would be drafted which would then go to an authorising officer outside of the applicant's Department, probably after it had been given some consideration by an authorising officer connected to that Department. This provides a limited degree of gate keeping. If the authorising officer authorises the application it is returned to the case officer. The *RIPA Co-ordinating Officer* is given and records relevant details in the Central Record and the case officer makes the court arrangements and presents the case to the magistrate. The authorisation is then returned to the *RIPA Co-ordinating Officer* when it is electronically scanned and kept on the *RIPA Co-ordinating Officer's* record. The original is forwarded to the *SRO* and put into the Central Record file.
17. The weaknesses of this system were discussed. It provides little opportunity for either the *RIPA Co-ordinating Officer* or the *SRO* to examine the completed authorisation before its submission to the magistrates. Whilst it is ultimately a matter for Council it would be substantially improved by ensuring that upon authorisation the document is returned to the *RIPA Co-ordinating Officer* who with the *SRO* should review it, ensure that the Central Record has been fully completed and make the arrangements for attendance at the magistrates. The advisability of the authorising officer attending was discussed. This would ensure that oversight is exercised before any submission is made to the magistrate and would ensure that the officer attending was the one who would be capable of informing the magistrate of any relevant detail relating to the authorisation.
18. The *RIPA Co-ordinating Officer* is responsible for the organisation and delivery of training, a practice adopted from his predecessor.

Authorising Officers.

19. 10 officers of appropriate rank are designated as authorising officers. They include both the CEO and the *SRO*. The Council grants authorisations about twice a year and this will mean that most of the authorising officers rarely have an opportunity to exercise the power. The CEO, in his role, whoever deputises for him are likely only to authorise in the remote possibility that the Council employs juvenile or vulnerable *CHIS* or seeks to acquire confidential information. In the past Mr Simmonds has been the sole officer granting authorisations. The Council believes strongly in the authorising officer being independent of the Department for which the authorisation is being granted although it is to be noted that Mr Simmonds granted authorisation for departments within his remit. In any event it is important that active authorising officers gain as much experience as possible and do not get stale and it is with that in mind that the Council may wish to consider a reduction of the number of authorising officers to perhaps three or four in addition to the CEO and the *SRO*.

The *SRO* should be an authorising officer (see *Code of Practice for Covert Surveillance and Property Interference*, note 28) but should only authorise in exceptional circumstances thus providing some resilience.

See recommendation.

Training

20. The Council does not have an established training programme to ensure that authorising officers and others engaged in *RIPA Part II* receive regular training. Authorising officers including the CEO and Deputy CEO and investigating officers received training in April 2016, just prior to this inspection, but previous training was in February 2012. This period is too lengthy and a training programme with regular refresher training at perhaps 18 monthly intervals should be instituted. At present the only training received by investigating officers between training seminars is occasionally delivered as "awareness training" by email.
21. Since the inspection Mr Simmonds has kindly provided a copy of his training notes which he acquired from his predecessor. They provide a useful summary of *RIPA* and the history behind its promulgation although I would hope that the headings presented are filled out in more detail by Mr Simmonds during the presentation. Examples include that no 'description is provided of the elements of *necessity* and *proportionality*' no indication is given that only one of the six outlined grounds upon which an authorisation may be based is available to the Council and no definition is 'provided of *private information*. One detail is inaccurate in that urgent oral authorisation is no longer available to local authorities. There appears to be no discussion of *collateral intrusion*. A useful quiz posing practical examples is provided together with a surveillance exercise requiring the completion of an application based on an example given. Overall I must confess to having some reservations if this training is all that is received by authorising officers. With the very recent appointment of Mr Simmonds and the fact that the Council is presently in the transition stage between officers it may wish to give consideration to the engagement of an external professional trainer at this stage who would provide training to all authorising and investigating - officers. This would make a useful starting point for the establishment of a training programme which could revert to more regular refresher training given by Mr Simmonds who then would have the advantage of the material provided by the professional trainer.

See recommendation.

CHM and Social Media,

22. *CHIS*, in the sense of informants, have not been employed by the Council for many years and it is unlikely to do so in the immediate future. Nevertheless it is aware of the requirement that in the event of the employment of any form of *CHIS* a controller and handler must be appointed and a risk assessment raised. The Trading Standards Department undertakes investigations of social networking sites for the sale of counterfeit and other illegal items. In doing so covert identities are used and appropriate authorisation is obtained, including *CH/S*. The Department, on the rare occasions they have done so, follow correct procedures. It is to be noted that in the May 2016 edition of the Council's *Policy and Protocol on RIPA 2000* a section appears relating to the use of social media

which rests heavily upon the guidance given in the USC *Procedures and Guidance*, paragraph 308 which is extensively quoted. This was discussed together with general guidance that may be made available to officers. A "rule of thumb" guide may usefully be stated as:

Reviewing open source sites does not require authorisation unless the review is carried out with some regularity, usually when creating a profile, in which case directed surveillance authorisation will be required. If it becomes necessary to breach the privacy controls and become, for example, a "friend" on the Facebook site, with the investigating officer utilising a false account concealing his/her identity as an officer for the purposes of gleaning intelligence, this is a covert operation intended to obtain private information and should be authorised, at the minimum, as directed surveillance. If the investigator engages in any form of relationship with the account operator then s/he becomes a CHIS requiring authorisation as such and management by a Controller and Handler with a record, being kept and a risk assessment created.

23. It was noted that the Children's Department had raised with Mr Simmonds the requirements for the investigation of SNS but only on the basis that open source material would be accessed. Nevertheless it is wise to ensure that departments outside of Trading Standards are aware of the requirements of *RIPA* in the event that they seek to engage in such investigations.

Policy and Procedures

24. The Council's policy and guidance on *RUDA* is to be found **in its Policy and Protocol on RIPA 2000**. This is a concise and helpful guide for all those who may be involved with the *RIPA* process. It is regularly updated the current edition being the 18th produced in May 2016. It has useful flowcharts attached and appendices with links to all Home Office forms and *Codes of Practice*, a useful list of authorising officers and a specimen *directed surveillance* application form. A few minor amendments which may be made were discussed which include:

Indicating that a vulnerable *CHIS* may only be authorised by the CEO or, in his absence, whoever deputises.

A definition of *intrusive surveillance* indicating that it is not available to the Council.

Indicating that the effective duration of an authorisation (three months for *directed surveillance* and 12 months for *CHIS*) commences with the magistrate's approval.

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See recommendation.

CCTV

25. The Council operates a 24/7 public areas CCTV system with 700 cameras situated in public areas and high risk flat blocks. All cameras are appropriately signed and all staff operating within the CCTV centre are trained to SIA standard. It is the recent experience of the unit that police officers are not

seeking to use the cameras for covert surveillance and no application has been received since the last inspection. If officers were to do so access would only be granted upon the basis that an authorisation was produced. Whilst there is a possibility that the police in future may be permitted a remote "live feed" from limited cameras they would be given no direct control of the system.

Conclusions

26, Swindon Borough Council remains a limited user of covert surveillance techniques. It has in place a good structure of *RIPA* management with Mr Simmonds, the recently appointed *RIPA Coordinating Officer*, manfully picking up the responsibilities of that role from his long serving predecessor. Both Mr Taylor and Mr Simmonds are impressive officers with the clear intention of ensuring that the Council remains compliant with the legislation.

27. It was encouraging to note that the recommendations in the previous report were largely discharged.

28. The principal concern would • be the establishment of a regular training programme soundly based and with refresher training at regular intervals of about 18 months. The present system permitting of some four years between authorising officer and investigating officer training seminars is too long, especially in a large Council undertaking little covert surveillance when there is a high likelihood that officers will become stale.

Recommendations

29.

- I. Amend the Central Record of Authorisations to include appearances at the magistrates court for approval. (Paragraph 9). **\$013c.**
- II. • Establish a regular training programme and address by training the issues raised in the examination of documents. (Paragraphs 11, 12 and 21).
- III. Raise *RIPA* awareness throughout the Council. (Paragraph 15).
- IV. Amend the *Policy and Protocol on RIPA 2000*. (Paragraph 24)

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