



Chief
Surveillance
Commissioner

Official -Sensitive

1 November 2016

OSC Inspection

Dear *Chief Executive,*

I enclose a copy the report dated 19 October 2016 prepared by His Honour Norman Jones QC, Assistant Commissioner, following his analysis of the material made available to enable him to inspect the arrangements made by the Council to ensure compliance with the legislative provisions which govern the use of covert surveillance. His Honour did not visit Cheltenham for this purpose. Neither he nor I think that anything would be gained from a personal visit, but if you take a different view and that a visit would be helpful, the necessary arrangements will be made.

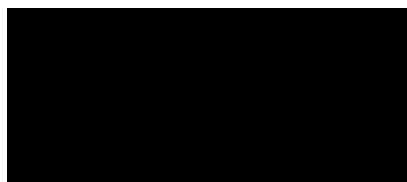
I have studied the report and endorse it.

Perhaps the striking feature of the report is that the Council has not used its statutory powers for many years. The likelihood of any change in this policy is remote. That, of course, is a matter for the Council, not the OSC. When a situation like this is present, care must be taken to see that, acting in good faith, and inadvertently, your officials do not find themselves acting without authorisation in situations which fall within the protective ambit of the legislation. The issue is carefully addressed at paragraph 12 of the report, and paragraphs 17-19 highlight the way in which these issues can arise, first in the context of investigations via social media sites, and second, in relation to CHIS. The first two recommendations made this year at paragraph 25 should be seen as part and parcel of a necessary education process.

Three of the four recommendations made by His Honour following his last visit in 2013 have been addressed and discharged. I am pleasantly struck by the speed with which they were completed. The fourth, relating to CHIS, has not been discharged and is in effect repeated in the report. Given the general policy relating to the use of the statutory powers, and the sheer unlikelihood that CHIS would be deployed, I understand, but do not agree with the failure to address this recommendation. I hope that between us we have explained why it must be addressed. I look forward to hearing from you that, despite the demands of your limited resources, this issue will now be resolved.

The remaining recommendation, relating to technical equipment, discussed at paragraph 20, should not present undue difficulty.

Mrs Pat Pratley
Cheltenham Borough Council
Municipal Offices
Promenade
Cheltenham GL50 9SA



Chief Surveillance Commissioner,
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19th. October 2016.

INSPECTION REPORT CHELTENHAM BOROUGH COUNCIL

Inspector His Honour Norman Jones, QC.
Assistant Commissioner

Cheltenham Borough Council.

1. Cheltenham Borough Council is a local government authority serving an area of 18 square miles and a population of about 116,000 in northern Gloucestershire. Its principal township is Cheltenham where its administrative headquarters are situated.
2. The Senior Management Team is headed by the Head of Paid Service Mrs Pat Pratley who has succeeded to the office since the last inspection at which time she was an Executive Director of the Council. She is immediately supported by a Deputy Chief Executive and the Borough Solicitor. Directors, Heads of Services, Service Managers and other Managers complete the other elements in the management structure.
3. Mrs Pratley remains, as at the time of the last inspection, the *Senior Responsible Officer (SRO)* as does Mr Bryan Parsons as the *RIPA Co-ordinating Officer*.
4. I conducted the last OSC inspection of Cheltenham BC in July 2013.
5. The Council has not resorted to authorised covert surveillance since the last inspection or indeed since before 2010.
6. I am preparing this report without visiting Cheltenham BC. Having considered this material in detail, I have concluded that I can properly report to you without a physical inspection. This is in accordance with your recent direction that not every second-tier district or borough council needs to be visited every three years as a matter of course.

7. The Council Offices are situated at the Municipal Offices, Promenade, Cheltenham, GL 50 9SA.

Central Record of Authorisations.

8. At the time of the last inspection a Central Record of Authorisations was being maintained on a computerised spreadsheet which was compliant with the *Code of Practice for Covert Surveillance and Property Interference*, 8.1 save that it required columns to represent attendances at the magistrates' court for approval. An action plan indicates that these columns were added by 1 September 2013. However the Council appears now to have abandoned the maintenance of a Central Record on the basis that no authorisations have been granted in recent years. Nevertheless such a record should be maintained in accordance with the *Code of Practice for Covert Surveillance and Property Interference*, 8.1 and in consequence should be reinstated and be available in the event that authorisation is granted or refused.

Actions Taken on Past Recommendations

9. I made four recommendations in my 2013 report.

- I. *Add columns to the Central Record to reflect magistrate court procedures.*

See paragraph 8 above. This recommendation has been discharged.

- II. *Nominate the SRO as an authorising officer though to authorise only in exceptional circumstances.*

This was undertaken by 1 September 2013. This recommendation has been discharged.

- III. *Train officers as controllers and handlers of CHIS.*

The Council considers that the use of *CHIS* would be so infrequent that any training would need to be refreshed on each occasion. In the circumstances it has decided that the *RIPA Co-ordinating Officer* should identify an external agency or other local authority with the expertise that the Council could engage if the need arose. This recommendation has not been discharged. (See **CHIS and Social Media** below).

- IV. *Amend the Forward to the RIPA Procedural Guide.*

This was undertaken by 1 September 2013. This recommendation has been discharged.

Policy and Procedures.

10. The Council's *RIPA Procedural Guide* was described at the time of the last inspection as "a first-class document which provides all the information and guidance necessary for an authorising officer or an applicant". These remarks continue to remain pertinent and the document, which undergoes annual revision, was last fully edited in March 2016. One amendment should be

undertaken and that is to include within the section relating to *CHIS* the requirement for a risk assessment to be in each case.

See recommendation

***RIPA* Awareness**

11. Cheltenham BC is reliant upon training and awareness guidance available for all its staff to avoid the risk of unauthorised surveillance. Officers most likely to engage in covert surveillance are grounded in a Counter Fraud Partnership with five other local councils. They have been trained to understand the legal requirements of *RIPA* and those embedded in the policies of its constituent Councils.
12. However this does not address the issue of overall *RIPA* awareness. The greatest risk of unauthorised surveillance does not arise from those who are trained to conduct surveillance on behalf of the Council, but from those officers who have little or no experience of covert surveillance or the requirements for authorisation and who may inadvertently drift into engaging in covert surveillance. These are probably the majority of Council staff. They do not require to be trained in detail about the requirements of *RIPA* and its regulatory framework but they do need to be instructed about the risks of undertaking any form of surveillance without first considering whether it needs authorisation. Such training/instruction can be easily provided without stretching limited resources. The use of the Council's intranet system, which will be used from time to time to disseminate information, may be used similarly to provide brief information to Council staff about surveillance and authorisation. It needs no more than a short message highlighting that in the event of an officer considering conducting any form of surveillance s/he must first consider whether it requires authorisation and if unsure the message should provide details of the *SRO* and the *RIPA Co-ordinating Officer* from whom advice may be obtained. Furthermore cascading information down from more senior officers to staff will further assist. At the time of the last inspection these practices had been adopted following advice from the previous inspection and if they have been abandoned should be reinstated.

See recommendation

Reports to members.

13. In accordance with the *Codes of Practice* an annual report is provided to the Audit, Governance and Standards Committee to enable it to be satisfied that the Council's *RIPA* policy remains fit for purpose. Reports are provided to the Audit Committee by the Counter Fraud Unit at quarterly intervals. Included in such reports is information relating to any authorisations undertaken. This does not fully satisfy the requirements of the *Code of Practice for Covert Surveillance and Property Interference*, 3.35 which requires that Elected Members "should also consider internal reports on the use of the 2000 Act on a regular basis to ensure that it is being used consistently with the local authorities policy and that the policy remains fit for purpose". The provision of such reports requires that councillors should be informed when covert surveillance is not being undertaken as well as when *RIPA* authorisations have been granted. The existing practice should be expanded to cover such reports.

Liaison with the Magistrate's Court.

14. The *RIPA Procedural Guide* provides structured guidance for the preparation and presentation of authorisations at a magistrates' court including the out of hours procedures. Arrangements have been made with the local magistrates in the event of an application for approval being made. The guide identifies the investigating officer as the officer to make the arrangements and attend. It is to be noted that at the time of the last inspection it was intended that the Borough Solicitor or another solicitor would attend with the investigating officer. It was remarked at that time that the legal officer should be alert to the risk of investigating officers giving hearsay evidence to the magistrate if asked about the considerations of the authorising officer at the time of authorisation. Attention is again drawn to OSC guidance that it would be appropriate for the authorising officer to attend since only that officer can answer questions raised relating to his/her considerations of *necessity* and *proportionality* or the reasons why specific limitations may have been placed on the authorisation.

Authorising Officers

15. Two officers are designated as authorising officers both of whom are Directors. In addition the Head of Paid Service and, in his absence, whoever deputises for him would be required to authorise in the event of the employment of juvenile or vulnerable *CHIS* or the acquisition of *confidential information*. Whilst the two designated authorising officers have received training it is unclear whether the Head of Paid Service or his deputy have done so. It is important that all authorising officers receive refresher training at regular intervals.

See recommendation

Training

16. Cheltenham BC had established a structured *RIPA* training programme at the time of the last inspection with the intention of engaging professional external training at regular intervals. It is encouraging to note that in the period since that inspection some 16 officers, including the *RIPA Co-ordinating Officer*, have received refresher training.

CHIS and Social Media.

17. Although the Council is alert to the risks associated with investigations of social media it has not yet developed its own policy in relation to such operations. The Counter Fraud Unit is currently responsible for the development of such a policy following the adoption of which the Council intends to train officers in the use of such methods. It is important that the officers responsible develop this policy in the very near future since the Council will be at continuing risk of officers inadvertently engaging in covert surveillance until appropriate training is provided.

18. It may be helpful to consider providing officers with a short "rule of thumb" to the effect that:

Access to open source material does not require *RIPA* authorisation unless there are repeated visits to the same site. These normally occur when an attempt is being made to build a profile of the account operator. In that case *directed surveillance* authorisation is required. If the privacy controls are breached (eg. by becoming a 'friend'), and a pseudo account is used, ensuring that the officer's identity as a Council employee is hidden, then at least *directed surveillance* authorisation will be required. If direct contact is made with the account owner/operator and a relationship commences *CHIS* authorisation will be required. In the latter case it is a statutory requirement of *RIPA* that a controller, handler and recorder are appointed to manage the operation.

19. Cheltenham BC has not, at least in recent years, employed *CHIS*. Whilst it is careful to ensure that circumstances giving rise to "status drift" do not occur that does not cover all circumstances in which *CHIS* may be employed. Whilst the Council is unlikely to do so in the near future it must always be prepared to address the situation were to arise. It is noted that the Council's *RIPA Procedural Guide* gives guidance on the requirement for controllers and handlers. The requirement for *CHIS* authorisation may arise urgently and require to be dealt with immediately by which time it is too late to consider the training of *CHIS* managers. Comment has already been made (see paragraph 9(iii) above) on the lack of training of officers to carry out this function. This should be addressed in future training. It is not necessary that officers should be trained to police standards but there should be officers trained to understand the responsibilities of managing *CHIS* and the need for risk assessments and the keeping of appropriate records.

See recommendation

Technical Equipment.

20. The Council does not maintain a schedule of technical equipment it possesses which may be deployed in the event of covert surveillance being undertaken although it is considered that "there may be machinery utilised by specific enforcement teams". A schedule should be established recording these items and should be updated if fresh items are purchased.

See recommendation.

CCTV

21. The Council owns a town centre CCTV system which is managed by the Gloucestershire police with whom the Council has an agreed protocol in accordance with the *OSC Procedures and Guidance, note 271*. The system is operated in accordance with the Surveillance Camera Commissioners Code of Practice and the Third Party Self-Certification Scheme has been completed.

Conclusions.

22. It is unlikely that Cheltenham BC will undertake covert surveillance in the near future. If it were to do so the *RIPA Procedural Guide* provides excellent guidance for both applicant and authorising officers.
23. Some attention requires to be paid to the raising of *RIPA* awareness in the Council and the training of authorising officers and officers who, though unlikely, may be called upon to manage *CHIS*.
24. It was encouraging to note that three of the recommendations of the last report had been fully discharged although a fourth remains extant.

Recommendations.

25.
 - (i) Amend the *RIPA Procedural Guide*. (Paragraph 10).
 - (ii) Raise *RIPA* awareness throughout the Council. (Paragraph 12).
 - (iii) Establish regular refresher training for authorising officers and ensure officers are trained to manage *CHIS*. (Paragraphs 15 and 19).
 - (iv) Establish a schedule of equipment which may be deployed for covert surveillance purposes. (Paragraph 20).

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

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DISCLAIMER

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
INSPECTION REPORT

Cheltenham Borough Council

October 2016

Assistant Surveillance Commissioner:
His Honour Norman Jones, QC.

