

Chief Surveillance Commissioner,
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8th. August 2013.

INSPECTION REPORT CHELTENHAM BOROUGH COUNCIL

Inspection 26th. July 2013.

Inspector His Honour Norman Jones QC.
Assistant Commissioner

Cheltenham Borough Council.

1. Cheltenham Borough Council administers an area of some 18 square miles in the Cotswolds with a population of about 115,000. The principal township is Cheltenham where the Council Headquarters are situated.
2. The corporate Senior Management Structure continues to be lead by the Chief Executive, Mr. Andrew North who is directly supported by two Executive Directors, four Directors and the Borough Solicitor and Monitoring Officer. In turn they lead teams headed by Service Managers.
3. Since the last OSC inspection the Council has undergone a dramatic reorganisation which has seen the reduction of some 650 staff to 200. Certain services, including legal, are now shared with adjoining Councils under collaborative agreements.
4. The *Senior Responsible Officer (SRO)* for *RIPA* is Ms. Pat Pratley, Executive Director and the *RIPA Co-ordinating Officer* is Mr. Bryan Parsons, Corporate Governance, Risk and Compliance Officer.
5. I conducted the last inspection of the Council for the OSC in April 2010.
6. The Council has authorised no *RIPA* covert surveillance since the last inspection.
7. The Council headquarters is at the Municipal Offices, The Promenade, Cheltenham, Gloucestershire, GL50 9SA.

Inspection.

8. A warm welcome to Cheltenham was extended by both Ms. Pratley and Mr. Parsons who were the officers attending the inspection.

9. The inspection was conducted by interview and discussion with the officers and a later interview with Mr. Mark Sheldon, Director of Resources and Authorising Officer. Among the issues discussed were the Council's actions taken on the recommendations of the last report, the reasons for non usage of *RIPA*, the management of *RIPA*, Authorising Officers, Policy and Procedures, Training, the *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500, Covert Human Intelligence Sources (CHIS)*, CCTV and reporting to Elected Members.
10. Gratitude must be extended to all officers who afforded full assistance and enthusiastic participation throughout the inspection.

Central Record

11. The Central Record of Authorisations is in a spreadsheet format and is compliant with the requirements of the *Codes of Practice*. It will need some addition to accommodate the new Magistrates' Court procedure.

See recommendation

Previous Recommendations.

12. Five recommendations were made in the previous report:
 - I. *The recommendations from the last inspection report should be discharged.*

Three recommendations had featured in H.H. Dr. Kolbert's report of April 2007. At the time of the last inspection none of these had been fully discharged. This failure has been fully addressed since the last inspection. This recommendation has been discharged.

- II. *Further training should be urgently undertaken by authorising officers, including the Chief Executive and his Deputy, the RIPA Co-ordinator and potential RIPA applicants from all departments. Such training should be conducted by a reputable external trainer and should cover those matters identified as weaknesses within this report.*

Professional external training was conducted for all relevant officers in September and October 2010 and again in December 2012 and January 2013. The issues raised in the last report were covered. This recommendation has been discharged.

- III. *Steps must be taken within the Council to raise RIPA awareness.*

A high standard of awareness is now maintained at the Council. This is achieved by publishing contact details of the *SRO* and *RIPA Co-ordinating Officer* who are available to provide assistance to any officer; the active encouragement of officers to approach the *RIPA Co-ordinating Officer* before submitting any authorisation; the

use of the intranet to publicise *RIPA* and the cascading down of *RIPA* information through the Corporate Governance Group, the membership of which includes officers from most likely participant departments. Additionally the reduction in staff numbers means that the Council officers are operating within a close community where it is easy to dissipate information. This recommendation has been discharged.

- IV. *The number of authorising officers should be reduced and they should be identified in Annex A of the Procedural Guide both by office and name.*

The six Authorising Officers at the time of the last inspection have been reduced to three. The CEO and Mr. Grahame Lewis, Executive Director, are included in that number though it is anticipated that the CEO is unlikely to authorise other than for the sensitive *confidential information* and juvenile and vulnerable *CHIS* authorisations. Additionally he would authorise all *CHIS* applications. All are named in Appendix 1 of the Procedural Guide and have received appropriate training. This recommendation has been discharged.

- V. *Amendments should be made to the Procedural Guide.*

This recommendation has been discharged.

Training

13. There is now a structured *RIPA* training programme at Cheltenham BC. It is intended that the practice of engaging professional external training at regular intervals of every year or so will continue and is to be encouraged. It is hoped that the cost of this may be shared with other local authorities to reduce the economic demands on individual Councils.
14. In addition we discussed the possibility that additional training could be provided within those periods by the *SRO*, the *RIPA Co-ordinating Officer* or members of the legal staff if it was considered necessary. It is encouraging to note that attendance at the professional sessions run in 2010 and 2012/13 were high and included the CEO who takes an active interest in *RIPA*.

Unauthorised Surveillance

15. The risks of officers undertaking unauthorised covert surveillance were discussed. As indicated above (paragraph 12(III)) *RIPA* awareness is high within the Council and this acts as a primary bulwark against unauthorised surveillance. An active auditing system exists within the Council and at regular audits the possible unauthorised usage of covert surveillance is a subject of the review. No such activity has been identified. The auditing process also requires an examination of a sample of departmental files including looking for unauthorised covert

surveillance. Any cases which are prosecuted by the Council pass through the hands of the Council's prosecuting solicitor and any information gathered by unauthorised means would be immediately identified.

16. The Council has produced a form which emulates *RIPA* procedures but which could be used if it were to conduct covert surveillance outside the parameters of *RIPA* authorisation. This system was discussed and it was indicated to the officers that whilst such surveillance may not be illegal nevertheless a Court would be unlikely in the current climate to look favourably on any evidence gathered by a process beyond the limits identified within the *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500* . The officers indicated that it would be extremely unlikely that such intelligence/evidence gathering would be permitted in any event.

SRO and RIPA Co-ordinating Officer

17. Ms. Pratley has been *SRO* only since March of this year. Her background lies in auditing although she has had experience of *RIPA* some considerable time ago. Since undertaking the role she has re-familiarised herself with the *RIPA* process. She reviewed the last OSC report and determined that all issues raised had been actioned before this latest inspection. She has maintained close contact with the auditors who have undertaken audits of three local councils and determined that the *RIPA* system adopted at Cheltenham was the best of the three. In the event of any authorisation being granted she would review it probably with the assistance of legal officers.
18. At the time of the last OSC report Mr. Parsons had only assumed the role of *RIPA Co-ordinating Officer* three weeks before the inspection. The report was not favourable to the Council and Mr. Parsons took immediate steps to oversee the action programme which was devised following its reception. It is therefore largely due to his efforts that such a robust system is now installed at Cheltenham. Additionally the production of the excellent *RIPA Procedural Guide* is again due to his efforts.
19. The *SRO and RIPA Co-ordinating Officer* meet before each Council Audit Committee meeting to whose members Ms. Pratley would report any usage of *RIPA*.

Authorising Officers.

20. The decision to reduce the number of Authorising Officers has enabled the Council to concentrate the authorisation function largely in the hands of Mr. Sheldon and Mr. Lewis. In discussion with Mr. Sheldon it was clear that he was fully aware of the role he undertakes as Authorising Officer although he has had no resort to it since the last inspection. Whilst there has been an intention that the Authorising Officers should authorise mainly within their own fields of responsibility the point was made that an Authorising Officer should be capable of

authorising for any department since the role requires the exercise of good judgement rather than specific knowledge of departmental functions.

21. It is to be noted that each Authorising Officer is provided with an excellent folder produced by Mr. Parsons which contains the Council's *RIPA Procedural Guide*, all of the Home Office forms, a number of guidance documents provided by the external trainer and other *RIPA* information including a model completed form all of which provides an invaluable aid to the Authorising Officer.
22. The *SRO* is not specifically identified as an Authorising Officer though note 29 to the *Code of Practice for Covert Surveillance and Property Interference* appears to imply that she should be so. In any event she is likely to deputise for the CEO in his absence and thus could theoretically find herself required to authorise under one of the sensitive heads. In practice she should only authorise in exceptional circumstances.

See recommendation

23. The likelihood of the Council resorting to the use of Social Networking Sites (SNS) for the gathering of intelligence was discussed with Mr. Parsons and Mr. Sheldon. Whilst the Council holds an account on "Facebook" it is used solely for the promotion of Council services. A request by Housing Benefits to use the site for information gathering has been previously refused. The Council has no intention of permitting the use of SNS for intelligence gathering. It is aware of the risks involved and actively prevents any such usage.

CHIS

24. Cheltenham Council can barely envisage circumstances when it is likely to employ *CHIS*. It has never done so but does recognise that occasionally circumstances arise when to do so is unavoidable. Nevertheless processes are in place for the authorisation of such (by the CEO) which would be preceded by review by the legal department, and the *RIPA Procedural Guide* contains appropriate guidance for the event. However officers have not received any training to be controllers or handlers and this should be considered for future training events.

See recommendation

Policy and Procedures

25. Cheltenham BC's *RIPA Procedural Guide* was last revised in April 2013 and undergoes annual review. It is a first class document which provides all the information and guidance necessary for an Authorising Officer or an applicant. Within its appendices are documents obtained from the professional trainer which give further guidance and examples. The one matter which gives rise to some concern is the emphasis placed in the forward to the document on the possible usage of the non *RIPA* authorisation system outlined above (paragraph 16).

This would be better replaced with a caution against such action. No further amendments were suggested.

See recommendation

CCTV

26. The extensive CCTV system in Cheltenham continues to be managed as before by the police, though the Council makes a financial contribution to its maintenance through the Cheltenham Crime and Disorder Partnership.

***Protection of Freedoms Act 2012 and
RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI
2012/1500***

27. Cheltenham BC has made good preparation for authorisation under the recent legislation. The *RIPA Procedural Guide* has been amended to accommodate the provisions and a procedure is outlined for appearances before the Magistrates. The issues relating to *urgency* and duration, missed by most Councils, had been identified and appropriate note taken and guidance given. Liaison had been set up with the local Magistrates' Court to facilitate such applications if they were made. A copy of the Council's *RIPA Procedural Guide* and the *Codes of Practice* have been supplied by the Council to the Magistrates.
28. In the event of an application for approval being made to the Magistrates the Borough Solicitor would attend to present the case. Two other solicitors also have been trained for this purpose. Legal Services are now shared between three Councils and it is likely that they will perform this service for all. At present it is intended that the investigating officer will also attend, though it must be appreciated that there is a range of questions which s/he would not be able to respond to and which would require the attendance of the Authorising Officer. In that event the solicitor should be alert to the risk of the investigating officer giving hearsay evidence and should require an adjournment for the Authorising Officer to attend.

Elected Members.

29. *RIPA* activity is reported to the Elected Members via the Audit Committee. Both the Governance Group and the *SRO* report to that Committee and the Committee members have access to the Council intranet and can peruse the *RIPA* documentation available on the site. This does not include the actual authorisations or the Central Record. At the end of each year a fuller report is submitted to the Audit Committee to enable it to determine whether the *RIPA* policy remains fit for purpose.

Conclusions

30. Cheltenham BC has made excellent and commendable progress since the last inspection. Although it is not possible to test that progress against actual applications/authorisations nevertheless the system now in place gives confidence that any authorisations granted will be compliant with the legislation. Much of this achievement is due to the excellent work undertaken by Mr. Parsons and the Governance Group in ensuring that the recommendations of the last report and its predecessor are now fully discharged.
31. Whilst it is the determined intention of the Council to use *RIPA* only when every other avenue has been explored and there is no alternative nevertheless all officers who were interviewed now give encouragement to the view that they are competent to undertake all of the tasks which *RIPA* authorisation may require of them.
32. It is particularly encouraging to note the attention now paid to training and the production of a manual for Authorising Officers alongside the *RIPA Procedural Guide*.
33. The one word of caution relates to the devised procedure for non *RIPA* authorisation. Very great care should be exercised before engaging in such a process.
34. The few recommendations are all of a minor nature.

Recommendations

35. .
 - I. Add columns to the Central Record to reflect Magistrate Court procedures. (*Paragraph 11*)
 - II. Nominate the *SRO* as an Authorising Officer though to authorise only in exceptional circumstances. (*Paragraph 22*)
 - III. Train officers as controllers and handlers of *CHIS*. (*Paragraph 24*)
 - IV. Amend the Forward to the *RIPA Procedural Guide*. (*Paragraph 25*)

His Honour Norman Jones, QC.
Assistant Surveillance Commissioner.