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OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Tonbridge and Malling Borough Council

18th November 2014

**Surveillance Inspector:
Mr Kevin Davis.**

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OSC/INSP/075

The Rt. Hon. Sir Christopher Rose
Chief Surveillance Commissioner
Office of Surveillance Commissioners
PO Box 29105
London
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27 November 2014

OSC INSPECTION – TONBRIDGE AND MALLING BOROUGH COUNCIL

1. Date of inspection

18 November 2014.

2. Inspector

Mr Kevin Davis.

3. Introduction

3.1 Tonbridge and Malling is an English local government district with borough status in Kent. It is in the mid-west of the county. Tonbridge and Malling Borough covers an area from the North Downs at Burnham and Snodland in the north to the town of Tonbridge in the south. The district came into being in 1974 by the merger of the urban district council of Tonbridge, together with Malling Rural district and the villages of Hadlow and Hildenborough from Tonbridge Rural District.

3.2 At 31 March 2014 the Council employed 294 permanent staff. The estimated gross expenditure for the year 2014/2015 is approximately £84 million. Services provided by the Council include refuse collection and recycling, street cleansing, public and environmental health, housing, parks and open spaces, car parking, community safety and housing benefits; and serves a population of around 120,000.

3.3 The Chief Executive and four directors make up the Council's Management Team.

3.4 The Chief Executive is Ms Julie Beilby. Correspondence should be forwarded to the Chief Executive, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ.

4. Inspection approach

- 4.1 The purpose of the inspection was to examine policies, procedures, operations and administration in respect of directed surveillance and covert human intelligence sources (CHIS) under the Regulation of Investigatory Powers Act 2000 (RIPA).
- 4.2 A meeting was held with Mr Adrian Stansfield, the Director of Central Services and Monitoring Officer. Mr Stansfield who is also the Senior Responsible Officer (SRO) gave an insight into the structure and ethos of the Council. This was followed by a meeting with Mr Cliff Cochrane (Senior Legal Officer) who has day-to-day responsibility for RIPA. I then met Mr James Larkin the Head of the Fraud Investigation Team, which is a joint unit funded by both Tonbridge and Malling Borough Council and the neighbouring Gravesham Borough Council. At the conclusion of the inspection I again met with Mr Cochrane to give informal feedback.

5. Review of progress on recommendations

- 5.1 HH Dr Colin Kolbert, in his inspection report in October 2011 made one recommendation:

1) Only relatively minor issues arose: attention is drawn to paragraphs 12 (proportionality) and 16 (consideration of resilience).

Action

Paragraph 12 in Dr Kolbert's report referred to the need for the authorising officer to show clarity in relation to the issue of proportionality, and paragraph 16 mentioned the need for another person to be trained and available to act as an authorising officer. At the time of the 2011 inspection it was only the Chief Executive who fulfilled this role. The issue of proportionality was addressed by way of training and the Chief Executive still acts as the authorising officer but in his absence one of the four Directors is available to deputise.

Discharged

6. Policies and procedures

- 6.1 The Central Record of Authorisation is maintained by Mr Cochrane and is compliant with the revised Codes of Practice. All applications are submitted to, and quality assured, by Mr Cochrane before going to the Chief Executive or one of his deputies.
- 6.2 Policies and procedures are contained in a comprehensive but easy to understand document which is available to all relevant personnel via the Council Intranet.

6.3 Formal reporting in accordance with the revised Code of Practice on Covert Surveillance and Property Interference paragraph 3.30 is made to the Council's Scrutiny Committee.

7. Related training

7.1 Though the Council is an infrequent user of RIPA powers it was evident that there is a determination to ensure knowledge and awareness of the legislation is maintained among staff. RIPA refresher training was delivered in October 2013 by a private contractor. On 5 November 2014 another training event took place, the content was delivered by Kent Police and focused entirely on RIPA and the use of social media. I examined the training material and found it to be of a very high standard, relevant and up to date. In discussions with Mr Stansfield it was evident that he was keen to ensure that Council employees utilised social media as an investigative tool but in a controlled manner in accordance with the legislation. Mr Stansfield shared with me the content of an email he had circulated following the Kent Police training session where he explicitly set out the Council's guidelines for the use of social media.

8. Significant issues arising

Breaches

8.1 There have been no breaches of the legislation.

Confidential information

8.2 The Council did not disclose any activity that requires declaration by the legislation (i.e. activity likely to acquire confidential information or which involved juvenile or vulnerable CHIS) and I found none.

Directed Surveillance

8.3 Directed surveillance has been authorised on two occasions since the last inspection, but not since the enactment of the Protection of Freedoms Act 2012. I make the following observations on both of the application/authorisations examined.

8.4 The first investigation concerned offences of anti-social behaviour. The application was of a good standard and outlined the intelligence and information gathered from potential witnesses. The nature of the offending made it impossible to persuade victims to give evidence as they lived in a climate of fear. The descriptions of the failed attempts to succeed with alternative investigative strategies were included in the application.

8.5 The authorisation was of a good standard and was handwritten. The authorisation contained all of the points outlined in OSC guidance note 117.

8.6 There was one review, it was concise and gave the authorising officer the appropriate information upon which he was able to make his deliberations.

- 8.7 The cancellation was timely and included all of the information required in accordance with OSC guidance note 145. I was pleased to note that the authorising officer identified areas where the Council were able to pursue a prosecution and those which were clearly a matter for Kent Police; there were specific instructions to the applicant contained within the cancellation in this regard.
- 8.8 The second application/authorisation was of an equally high standard.

CHIS

- 8.9 There has not been an authorisation for a CHIS since the last inspection. The position of the Council is that they do not believe they have the expertise or experience to authorise CHIS but are aware of their legal responsibilities. In discussions with both Mr Stansfield and Mr Cochrane they stated that should circumstances arise where they would be required to utilise RIPA in this regard they would seek advice from their Community Safety Partnership colleagues from Kent Police.
- 8.10 The meeting with Mr Larkin the Head of the Fraud Investigation Team was informative. Mr Larkin had a good working knowledge of RIPA. He had a good understanding of the use of social media as an investigative tool and has taken the lead on behalf of the Council in updating the policy and procedures document. He is also in the process of designing a portal within the Council website to enable the reporting of fraud by members of the public. Mr Larkin was familiar with the definition of a CHIS and understood the concept of 'status drift'.

9 Conclusions

- 9.1 The Council does not utilise the powers vested under RIPA frequently, preferring to use overt methods to drive their enforcement agenda. The Council regardless of this do take their responsibilities under the legislation seriously and are well trained and have good policies and procedures in place. The positive action taken by the Council in enhancing the knowledge of their employees in relation to the use of social media is good practice.
- 9.2 I should like to thank Mr Cliff Cochrane for making all of the necessary arrangements.

10 Recommendations

- 10.1 I make no formal recommendations.

Kevin Davis

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