

The Rt. Hon Lord Justice Fulford
Investigatory Powers Commissioner,
PO Box 29105
London SW1V 1ZU

February 2nd, 2018.

**INSPECTION REPORT
REGULATION OF INVESTIGATORY POWERS ACT, PART II
TONBRIDGE AND WEST MALLING BOROUGH COUNCIL**

Inspector: His Honour Brian Barker CBE, Q.C.
Assistant Surveillance Commissioner.

Introduction

1. The Borough Council serves a population of about 127,000, covering an area of approximately 93 square miles in the mid west of Kent from the North Downs at Burnham in the north to the town of Tonbridge in the south. The area is mainly agricultural with remnants of the hop industry and has a number of ancient sites and buildings of historical interest
2. The Council operates on a leader and Cabinet basis. It has 54 councillors representing 24 wards; a number of those wards are within Tonbridge. The Mayor, Cllr Roger Dalton, is the first citizen and is elected annually. The office holder carries out civic and ceremonial duties and chairs full council meetings and acts as ambassador to promote the Council's name at home and elsewhere. There are 27 Parish Councils within the Borough representing their communities and providing services for them.
3. The Chief Executive, Julie Beilby, is supported by a senior team of four Directors namely of Financial Services, of Planning Housing and Environmental Health, of Central Services, and of Street Scene, Leisure and Technical Services.
4. The address for correspondence is Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ.
5. The last inspection was conducted by Kevin Davis, Surveillance Inspector, on November 27th 2014. There had been two uses of directed surveillance since the previous inspection, both of high standard, but none since the enactment of the Protection of Freedoms Act 2012. He noted the preference for the use of overt methods to drive the enforcement agenda and concluded that appropriate training and sound policies and procedures were in place.

6. There have been no subsequent applications. The reasons follow a familiar pattern. Benefit fraud investigation work has gone to the DWP and residual minor fraud investigations are dealt with by a team shared with Gravesham Borough Council. Following the 2012 legislation the number of potential offences meeting the custodial threshold decreased substantially and there has been a shift in policy to the use of overt investigation.
7. Based on the information provided and on a helpful and detailed phone conversation with Kevin Toogood, Principal Litigation Solicitor and Co-ordinating Officer, it is my view that it is sufficient to present a written report without the necessity of a visit.

Previous Recommendations:

8. None specified.

Central Records and Forms:

9. Mr. Toogood holds the computerized Central Record on a secure drive and the produced compliant records since the last inspection confirm the lack of applications. He has access to the current forms and has available the *Home Office Guides*. He will add the *Office of Surveillance Commissioners Procedures and Guidance 2016*.

RIPA Policy and Structure:

10. The "*Corporate Surveillance Guidance*" was last reviewed in December 2013. It is a clear and helpful guide for officers to requirements and procedure containing seventeen pages (including Communications Data) with two appendices.
11. Although balanced and solid, it is due for a review and update and there are a few areas where some changes and additions would add to its value and breadth. It would be useful in the initial summary provided at 1.1 to have reference to the *Home office Codes of Practice* (current edition is 2014), and this would be convenient position to add a reference, with link, to the *Office of Surveillance Commissioners' Procedures and Guidance 2016*.
12. Additionally in this 'Summary' section the two principal rules can be set out for maximum impact. Namely that it is the policy of the Borough Council that covert surveillance under the *RIPA* will only be considered as a last resort (I appreciate that there are later references at 4.1, 7.3 and

Appendix 2, point 1.) Second, although clear at the conclusion of the document, underlining the importance of initial consultation with the Senior Responsible Officer/Director of Central Services at the earliest opportunity if such action is contemplated.

13. It is pleasing to see in 'Background' (1.2) that the interaction with Article 8 of the Human Rights Act 1988 is clearly explained, and that any officer will have undertaken appropriate training before conducting *RIPA* investigations
14. An informative, and not often seen, section is 2.2 'Confidential Material; and an impressive chapter 'Identifying Direct Surveillance' is at 4 which gets the important points across through a series of every day questions and answers.
15. The definition for *Covert Human Intelligence Sources* is dealt with at section 5, although it is made clear that it the policy of the Borough Council not to use a *CHIS*, and if there is any potential for a person to become a *CHIS* then guidance should be sought from the Chief Executive or the Director of Central Services. Although aware of their legal responsibilities, the team recognize they do not have the experience or expertise to authorize the use of a *CHIS* and should such situation and should a situation arise would pass matters over to local Kent Police with whom there is a good working relationship.
16. The roles and responsibilities of the Senior Responsible Officer and the Co-ordinating Officer are helpfully listed at 7.1 – although Mr Toogood's name needs to be substituted for that of his predecessor.
17. Authorisation, properly, receives quality coverage at 7.2 through to 7.4. It would be convenient for the reader to add after the first sentence the names and contact details of the deputed Authorising Officers: the Chief Executive and the four Directors.
18. I notice that the second sentence of section 7.3 'Who can give Authorisations?' makes the point that an authority to undertake surveillance will only be given by the Chief Executive or in her absence by a member of the management team. I understand that this is a hold over reflecting the practice of a previous Chief Executive. It seems to me that this places an unnecessary burden on the busy Chief Executive and this a responsibility properly residing in the deputed Authorising Officer, or if necessary in the Director of Central Services. It is, however, the task of the Chief Executive to handle any of those rare cases involving juveniles (mentioned at 7.5.2[b]) or which are in the sensitive or confidential category.
19. The topics of the Authorising Officer exercising his/her mind independently and not operating in 'rubber stamp' mode, and the careful

consideration necessary in addressing collateral intrusion are both clearly addressed in section 7.4.

20. The necessary procedure for obtaining approval from the local Magistrates' Court brought about by the 2012 legislation is dealt with in section 7.5. Which type of officer should attend in support has been a subject of debate, but the preferred practice is for the Authorising Officer to attend if possible to field any questions from the Bench as he/she will have come to an independent judgment in conducting the authorization process. (see para. 292 on of *OSC Procedures and Guidance 2016*).
21. The care needed when other agencies have been instructed on behalf of the Council to undertake actions under *RIPA*, or when other agencies wish to use the Borough Council's resources or premises for their own actions is properly noted in section 9.
22. Two other updating points. Oral applications mentioned at part 10.1.(a) were abolished by the Protection of Freedoms Act 2012 and all applications now require judicial approval. Under 'Records' at section 11 any new application placed in the central register must be accompanied by an URN
23. A useful summary of the steps necessary for an Investigating Officer to take is covered in a page and a half as the second appendix, and this is designed to provide a succinct overview and 'check list.' It would be worthwhile to review points 6 and 7 on initial authorization, and also point 8 which is the job of the Co-ordinating Officer.
24. The single clear deficiency within the document is the lack of guidance regarding the use of social media. This area has been a particular concern of the Commissioner in the recent past and reference is made at *para. 289 of the OSC Procedures and Guidance 2016*
25. This topic, however, has not been missed and I understand was the subject of the training by the Kent Police officers from the Community Safety Partnership just prior to the last inspection. This led to the production of a short and separate Guidance reference document circulated to all investigative officers, and provided to me within the papers.
26. A further aspect to be incorporated dealing with the almost inevitable interrogation of social media and personal accounts occurs during an investigation, is the necessity for an officer to be aware and to avoid the possibility of slipping inadvertently into a *RIPA* situation without authorization having been considered. A combination of the above points should form the basis of a separate subject inserted into the Corporate Guidance, perhaps between existing parts 5 and 6.

see recommendation

Training:

27. There has been no formalized training since November 2014, although Kevin Toogood has recently contacted a specialist officer from the local Kent Police in order to arrange a refresher session; and a full updating session, possibly in collaboration with a neighbouring authority, is on the agenda for later this year.
28. The need for raising and maintaining awareness of *RIPA* and its scope is appreciated and news and changes are distributed to those affected when they arise. The intranet is a useful tool in this regard and Mr Toogood was attracted by the idea of a dedicated *RIPA* page where an outline of the purposes and the extent of the Act, as well as the Corporate Guidance and other reference sources could be found in one place, or easily accessed through links.

see recommendation

Councillors:

29. The last report of any activity was made to the General Purposes Committee in 2014 focusing on the last Inspection Report. The recent Annual reviews of corporate governance to the Executive have not included *RIPA* because of the lack of information to note, but the advantage of that vehicle to include a 'non-usage' section so as to trigger awareness among the elected members should be taken.
30. Newly elected members receive a wide ranging induction package and *RIPA* will be part of the induction for the next batch of members.

CCTV:

31. A jointly owned system with Tunbridge Wells Borough Council was instated in 1997 covering a number of towns, and expenditure is now met in full by the two Authorities. The last authorized request for use by the police was in 2011. The control rooms at Tunbridge Wells and Sevenoaks are managed Sharon Wright who won a national award in 2016 for her outstanding work. Accepted protocols and policies are in place and an independent audit of the facility dated March 2107 was highly complementary in all areas.
32. Consideration, however, is being given to the future of the system due to financial constraints and the likely closing of the Tunbridge Wells Town Hall and the moving of that authority to a new civic centre.

Conclusions:

33. Mr. Toogood is comparatively new in post and readily accepts that other more pressing issues have taken priority. Nevertheless, there is a close working relationship with the experienced Mr Stanfield the Senior Responsible Officer as well as continuing support from the Chief Executive. He recognizes that lack of use both in investigation and supervision can lead to 'rustiness' and already has taken steps to improve knowledge and understanding. Despite the unlikelihood of use, it is still important that investigative officers should be in a position to 'recognise a CHIS situation when they see one' and this requirement should be borne in mind in future training.
34. I note a clear desire that the Borough Council takes its responsibilities under the legislation seriously and to have sound working systems and guidance in place despite the move away from covert investigation. There can be confidence that with immanent 'brushing up', should the need for use arise in the future, surveillance will be performed in a compliant and effective manner.

Recommendations:

35. *(i) minor amendments to the Corporate Surveillance Guidance*
(ii) inclusion of advice on use of social media
(iii) updating of officers as a priority and a further training session in the course of the year

Brian Barker
Assistant Surveillance Commissioner.