

OSC/INSP/075

The Rt. Hon. the Lord Judge
Chief Surveillance Commissioner
Office of Surveillance Commissioners
PO Box 29105
London
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21st November 2016

OSC INSPECTION – London Borough of Brent

1 Date of inspection

Tuesday 8th November 2016

2 Inspector

Graham McCrory

3 Introduction

- 3.1 London Borough of Brent (LBB) is situated in North West London and forms part of outer London. The major areas are Kilburn, Wembley and Harlesden. The Council is situated at the very impressive Civic Centre directly beside the National football stadium at Engineers Way, Wembley. The Council serves a diverse population of approximately 320,000 people with large Indian, Pakistani, African and Caribbean communities. LBB has a mixture of residential, industrial and commercial land and covers an area of almost 17 square miles. The Council is responsible for the delivery of the usual local services such as leisure and culture, rubbish collection, licensing, housing, planning and social care.
- 3.2 The corporate management structure consists of a Chief Executive supported by four Strategic Heads for Resources, Children and Young People, Community Wellbeing, Regeneration and Environment as well as a Director for Performance, Policy and Partnerships. The Chief Legal Officer is nominated as the Senior Responsible Officer in relation to the Regulation of Investigatory Powers Act 2000 (RIPA).
- 3.3 The council, whilst reducing its usage of RIPA powers in recent years, has completed 14 authorisations since the last inspection in 2013.
- 3.4 The Chief Executive and Head of Paid Service is Ms Carolyn Downs and the address for correspondence is Civic Centre, Engineers Way, Wembley, HA9 0FJ.

4 Inspection approach

4.1 The inspection was conducted to examine compliance, policies, procedures, operations and administration in respect of directed surveillance and the use of covert human intelligence sources (CHIS) under the Regulation of Investigatory Powers Act 2000 (RIPA).

4.2 Meetings were held with the following:

- Carolyn Downs – Chief Executive and Head of Paid Services
- Fiona Alderman – Chief Legal Officer (Senior Responsible Officer, SRO and RIPA Monitoring Officer)
- Clorinda Goodman – RIPA Project Manager and Senior Governance Solicitor
- Looqman Desai – Senior Governance Lawyer
- Simon Legg – Head of Trading Standards (Authorising Officer, AO)
- Dave Verma – Audit and Investigations Manager (Authorising Officer)
- Alvin Wakeman – CCTV Control Room Manager

4.3 During the course of the inspection, the following records were viewed:

- Central Record of Authorisation
- Covert Surveillance and Covert Human Intelligence Sources Policy and Procedure Manual
- Directed Surveillance Authorisations
- Directed Surveillance Authorisations and requests from external customers

5 Review of progress on recommendations

5.1 The 2013 inspection made two recommendations.

5.2 1) *That LBB's RIPA Policy be further revised in accordance with paragraph 11 of the (2013) report (insert section to reflect the legislative changes which came into force on the 1st November 2012 Protection of Freedoms Act).*

Completed. See paragraph 6.2 below.

2) *That when authorising directed surveillance for juvenile test purchase operations, greater care is taken to select a more limited number of premises to be tested on the basis of evidence and intelligence pointing to non-compliance on their part.*

Completed. The majority of directed surveillance authorisations since the 2013 inspection have been for juvenile test purchase operations.

On inspection it was noted that intelligence cases were complete for all premises subject to the operation and each premises had been considered on an individual basis.

6 Policies and procedures

- 6.1 It was noted that the Chief Legal Officer is performing a dual role (as well as her other duties), that of Senior Responsible Officer and that of RIPA Monitoring Officer. Whilst this officer is extremely competent and knowledgeable in matters of RIPA and has been very proactive in her role as SRO, such as when convening meetings with AOs to check on training needs, inspection of records and reviews of case law, the Codes of Practice at paragraph 3.34 (surveillance) and paragraph 9.2 (CHIS) state the role of Senior Responsible Officer should be a member of the corporate leadership team. The role has specific responsibilities defined in the relevant Codes, paragraph 3.29 (surveillance) and paragraph 9.2 (CHIS), relating to the integrity, compliance and oversight of the RIPA process. The role of RIPA Monitoring Officer is not defined in the Act or Codes but is often encountered as a role undertaken within the Legal Services department, as is the case here, to provide a more tactical and hands on approach to the process. Whilst the Chief Legal Officer is more than capable of delivering both functions, especially in light of the Council's reduced use of RIPA, she is not a member of the corporate leadership team. Whilst I am confident the Chief Legal Officer can promptly raise any significant issues to a corporate level, the Council may wish to review the appointment to determine if the current arrangements need revising to comply with the Codes of Practice and document its decision and expected satisfaction with the appointment.
- 6.2 The Council now has an appropriate policy document that provides clear and accurate guidance covering the use of RIPA including explanations of relevant legislation and directions on how to complete an application. The Policy document has been reviewed by the Senior Governance Solicitor, Ms Clorinda Goodman, who has been employed by the Council for this specific purpose and to act as 'RIPA Project Manager'. Ms Goodman is well qualified to review the policy, given her previous legal experience and is an academic having attained a PhD, and a double Masters in political and sociological studies.
- 6.3 The Policy document was reviewed and some suggestions offered for 'fine tuning' but overall this is an excellent document. It is very encouraging to see that some guidance has been provided on the use of the Internet and social media for investigative purposes, however as this technique of investigation and research is expanding exponentially with all manner of new technology, further information would benefit investigators. The key consideration when viewing publically available information where no privacy settings have been applied, often referred to as 'open source' material, is the **repeated** or **systematic** collection of private information. Initial research of social media to establish a fact or corroborate an intelligence picture is unlikely to require an

authorisation for directed surveillance; whereas repeated visits building up a profile of a person's lifestyle would do so. Each case must be considered on its individual circumstances and early discussion between the investigator, the RIPA Monitoring Officer and the Authorising Officer is advised to determine whether activity should be conducted with or without the protection of an authorisation. The Council may therefore wish to add to the policy and procedures for the use of the Internet and social media for research and investigation.

- 6.4 Applications for activity under RIPA and subsequent authorisations are completed in hard paper copy with the details and unique reference number for every application recorded on the central record. The central record is maintained by the RIPA Monitoring Officer on an electronic spreadsheet, which has been in existence since the introduction of RIPA. Once an application has been authorised it is taken before a Justice of the Peace for endorsement in accordance with the Protection of Freedoms Act 2012. The central record is currently being reviewed and Mr Looqman (Senior Governance Lawyer) has undertaken to ensure specific details of the judicial approval are inserted within the record.
- 6.5 A formal arrangement exists, through a report to the Cabinet, for elected members to review the Council's use of the Act as required by paragraph 3.35 (surveillance) and 3.27 (CHIS). In addition a yearly 'high level' review is conducted by the Audit Committee.

7 Related training

- 7.1 Training has been a focus for the SRO and the RIPA Project Manager. RIPA training has most recently been delivered by 'ACT NOW Training' in October 2016 for senior officers and to include the Chief Executive and the three AOs. Training records were viewed and it is admirable that the Council has had all officers trained, personally sign an acknowledgement of this, and those training details retained for inspection and the information of the Council. Training was also undertaken in October 2016 for other members of council staff. This training (records similarly inspected) was delivered by Ms Clorinda Goodman, over a two day period, to approximately 20 staff all of whom are involved in enforcement activities. The training was attended by the AOs who gave an input into the training. In addition to discussion forums during the training sessions a number of 'scenario based' case studies were undertaken and prompt or 'flip' cards used to assist in knowledge checks with those staff in attendance. The Council's attitude to RIPA training, the enhancing of its staff skill base and the practical and meaningful nature of the training delivered is to be congratulated. Regular training should be encouraged and continued, especially in the area of Internet investigation and should the Council engage in the use of CHIS.

8 Inspection Findings

Directed Surveillance

- 8.1 The Council explained how a greater use of overt investigation methods and direct enforcement had resulted in less use being made of directed surveillance than in previous years. That said, the Council has completed 14 directed surveillance authorisations since the last inspection. The directed surveillance authorised related mainly to juvenile test purchase operations.
- 8.2 The directed surveillance applications and authorisations were examined and found to have been completed to a good standard. The authorisations had received the required endorsement from a magistrate who had provided, on a number of occasions, the reasoning as "Good information given". When providing the grounds for an application and authorisation as the prevention and detection of crime the crime under investigation including the Act and Section was noted. Explanations of collateral intrusion (obtaining unrelated private information) were detailed and specific to the circumstances. Review dates were timely and cancellations were made almost immediately the authorised activity had ceased or was no longer required. Cancellation statements were detailed and outlined how the activity authorised had assisted the investigation. One area, in an otherwise excellent authorisation process, that the AO may wish to update is when assessing proportionality. It is good practice to state what alternative options have been tried or considered and an explanation of why they were unsuccessful or not considered suitable. The four bullet points at paragraph 3.6 in the Code of Practice should always be taken into account by applicants and Authorising Officers.
- 8.3 One application and authorisation was subject to a presentation during the inspection. The details of the specific operation are not suitable for inclusion in this report given the sensitive nature of the details and the ongoing investigative matters still to be resolved. The application and authorisation process was of a high quality. The considerations before covert activity was undertaken and when authorised were documented in a way that is commendable. Significant legal advice was undertaken and practitioner advice and support sought from the Metropolitan Police. The Chief Executive took a personal interest in the development of the covert tactics by meeting with senior police officers to discuss future steps but in a way that was supportive to the AO and without operational interference. The AO recognised the need to engage with and request practical support from police partners at an early stage and the potential for the use and development of a CHIS operation. Overall the application and authorisation process and the development of the decision log and practical support and guidance was exceptional.

CHIS

- 8.4 The Council has not made any use of CHIS and is unlikely to do so in the foreseeable future. As highlighted previously any potential use of CHIS is subject to early discussion with the Metropolitan Police who would most likely undertake the authorisation process on behalf of the Council. The policy and procedures, and the knowledge of staff as to what constitutes a CHIS is good, but the Council should continue to reinforce this knowledge to ensure there is no 'status drift' when Council employees are engaging with helpful public spirited individuals.

CCTV

- 8.5 The CCTV suite was not visited but a brief meeting was held with Alvin Wakeman, CCTV manager. The Council currently controls approximately 200 cameras. The CCTV manager is supported by seven staff that perform duties as per a scheduled shift pattern with extended hours covered over busy or weekend periods. The CCTV manager reported a good relationship with external organisations who request use of the Council's CCTV facilities. In the main these requests come from the Metropolitan Police or the National Crime Agency (NCA).
- 8.6 I inspected a small number of requests, made by external agencies, for use of the CCTV systems for covert operations and under a directed surveillance authorisation. The authorisation detail contained within some of these forms was lacking and not sufficient enough to identify that CCTV had been authorised as a tactic and which would allow the CCTV staff to satisfy the *R v Sutherland* conditions. It was acknowledged by Mr Wakeman that more detail should be requested and that a stronger and more defined protocol would assist in ensuring this is the case. Mr Looqman assured that the Council was in the process of reviewing the CCTV protocol and the advice given would be taken on board. It is recommended that the revised CCTV protocol should include a requirement that the Council should see the authorisation (redacted if necessary to prevent disclosure of sensitive information) and only allow its equipment to be used in these circumstances.

Focus Group

- 8.7 A small focus group was held with managers (AOs) and the CCTV manager. The nature of some of the current problems and investigations where surveillance may be an appropriate tactic were discussed and it was apparent that the teams are very motivated in their work and keen to explore and develop options to maximise the results of their investigations.

- 8.8 Discussions were held around the use of the Internet and social media. Although some investigation teams may already use these avenues during investigations, they would benefit from additional guidance of what constitutes 'open source' research and what could constitute repeated or systematic intelligence gathering amounting to covert surveillance (highlighted at paragraph 6.3).

9 Conclusions

- 9.1 The London Borough of Brent has been a consistent user of the powers available under RIPA although it has also resorted to the use of overt methods of investigation wherever possible. The use of internet investigations in the future may increase its RIPA authorisations. The training schedule developed, documenting of the AO's decisions and the supportive nature of the Chief Executive and her legal team is to be congratulated. The development of the guidance and policy document, through the employment of Ms Goodman, is yet another area which is to be applauded. The minor advisory points highlighted should enhance what is a well formed RIPA authorisation and governance process.

10 Recommendations

- 10.1 No formal authorisations are required.

Graham McCrory
Surveillance Inspector

