

Sarah -
Response.

The Rt Hon. Sir Christopher Rose



Office of Surveillance
Commissioners

- 6 AUG 2012



Chief
Surveillance
Commissioner

Restricted

2 August 2012

Dear Mr. Lumley,

Covert Surveillance

On 10 July 2012, one of my Inspectors, Mr Neil Smart, visited your Council on my behalf to review your management of covert activities. I am grateful to you for the facilities afforded for the inspection.

I enclose a copy of Mr Smart's report which I endorse. I am pleased to see that the recommendations made following the last inspection, 3 years ago, have been discharged. Although you use your RIPA powers infrequently you have training policy and processes in place to use RIPA effectively.

The recommendations are that a programme of refresher training continue with particular attention to the content of RIPA forms and that your Policy and Procedure be revised to reflect current Codes of Practice and OSC Procedures and Guidance 2011.

I shall be glad to learn that your Council accepts the recommendations and will see that they are implemented.

One of the main functions of review is to enable public authorities to improve their understanding and conduct of covert activities. I hope your Council finds this process constructive. Please let this Office know if it can help at any time.

Yours sincerely,
Christopher Rose

Mr Wes Lumley
Chief Executive
Bolsover District Council
Sherwood Lodge
Derbyshire
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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Bolsover District Council

10th July 2012

**Assistant Surveillance Inspector:
Mr Neil Smart**

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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.

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Office of Surveillance
Commissioners

The Rt. Hon. Sir Christopher Rose
Chief Surveillance Commissioner
Office of Surveillance Commissioners
PO Box 29105
London
SW1V 1ZU

12th July 2012

OSC INSPECTION REPORT – BOLSOVER DISTRICT COUNCIL

1. Date of Inspection

10th July 2012

2. Inspector

Mr Neil Smart

3. General Description

- 3.1 Bolsover is a local government district in Derbyshire, England. Its main town is Bolsover where the Council is based covering some 61 square miles (160 square kilometres). The population is approximately 74,500 people served by 554 Council staff (437 full time equivalents).
- 3.2 Bolsover District Council has a 'strategic alliance with North East Derbyshire District Council (based in Saltergate, Chesterfield) resulting in a single Chief Executive for both Councils and a Joint Strategic Management Team. This comprises the Chief Executive, four Directors, six assistant Directors (Heads of Service) and three assistant Directors (Corporate Services i.e. Council Solicitor, Strategy and Performance and Human Resources). These staff have employment contacts with both Councils and are jointly employed.
- 3.3 There are additionally departments that provide joint services; Environmental Health (which provides services to the two councils) and IT Services, Internal Audit, Procurement and Building Services (which are part of a wider consortium of councils in the region).
- 3.4 The Chief Executive is Mr Wes Lumley. The address for correspondence is Bolsover District Council, Sherwood Lodge, Bolsover, Derbyshire. S44 6NF.
- 3.5 The Senior Responsible Officer (SRO) for RIPA within the Council is the Solicitor to the Council and Monitoring Officer Ms. Sarah Sternberg (who was on annual leave at the time of the inspection).

- 3.6 The grade prescribed by SI 2010 No 521 for authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA) for directed surveillance and the use of covert human intelligence sources (CHIS) within a Local Authority is 'Director, Head of Service, Service Manager or equivalent'.
- 3.7 There are five authorising officers (including the Chief Executive) designated for this Authority. There have been three authorisations for directed surveillance (in relation to benefit fraud) since the last OSC inspection (one in 2010, two in 2011 and none to date in 2012). There have been no authorisations made for the use and conduct of covert human intelligence sources (CHIS). There has been no confidential information obtained as referred in Chapter 4 of the Covert Surveillance Code of Practice.

4. Inspection.

- 4.1 The purpose of the inspection was to examine policies and procedures relating to the Regulation of Investigatory Powers Act 2000 (RIPA), in respect of directed surveillance and covert human intelligence sources, (CHIS).

- 4.2 The inspection programme was agreed with the Council in advance and took the form of an initial meeting with Mr Wes Lumley (Chief Executive) and Mr Jim Fieldsend (Senior Principal Solicitor). The inspection included examination of the *'Bolsover District Council's Policy and Procedures on the application of Part II RIPA'*, the *'Bolsover District Council Closed Circuit Television (CCTV) Code of Practice'*, RIPA training conducted since the last OSC Inspection, and the examination of the three applications and authorisations for directed surveillance conducted since the last OSC inspection. In addition a focus group meeting took place with the following:-

- a) Derek Ferguson - Housing enforcement officer
- b) Julian Handley - Community Services enforcement officer
- c) Tim White - Community enforcement officer
- d) Jim Wilmot - Planning enforcement officer
- e) Steve Firman - Revenue Services officer / RIPA applicant and surveillance officer
- f) Stuart Tomlinson - Neighbourhoods Director and RIPA authorising officer
- g) Kevin Revell - Environmental Health enforcement officer
- h) Helen Rawson - Environmental Health enforcement officer
- i) Anne Young - Environmental Health enforcement officer
- j) David Watts - Environmental Health enforcement officer
- k) Jim Fieldsend – Senior Principal Solicitor

- 4.3 Discussion included RIPA training, directed surveillance, statutory grounds for the use of RIPA by the Council, necessity, proportionality, 'less intrusive means', collateral intrusion, vital elements of a RIPA application and authorisation, application of the legislation in some practical scenarios and Covert Human Intelligence Sources (CHIS). Feedback was also given in respect of applications and authorisations examined during the inspection which generated further discussion. It is pleasing to report that the training provided

by the Council suitably equipped the officers in attendance with a good level of awareness in respect of the legislation and its practical application including an awareness of CHIS issues.

- 4.4 Feedback of the outcome of the inspection was given in a discussion with the Chief Executive and Senior Principal Solicitor.

5. Recommendations from the previous inspection.

- 5.1 The Council was previously inspected by His Honour Norman Jones QC on 13th July 2009. On that occasion there were three recommendations on which I report the progress to date.

5.2 *Recommendation 1 – That the Council appoints an officer to be the Council RIPA Monitoring Officer with the responsibilities outlined within the report. Such an officer should not be an authorising officer. (Paragraphs 9(iii), 15 and 16 refer).*

- 5.3 The recommendation has been somewhat superseded by the revised Codes of Practice that came into force in April 2010 and the appointment of the Senior Responsible Officer Ms Sarah Sternberg. She is responsible in addition to the responsibilities of SRO for the completion of the Central Record and oversight. **This recommendation is discharged.**

5.4 *Recommendation 2 – Training should be organised by an external trainer and thereafter a future training programme should be devised to ensure regular refresher training for all officers engaged in RIPA. (Paragraphs 9(iii), 20 and 21 refer).*

- 5.5 Training was conducted in December of 2009 by an external training company 'Xact Consultancy and Training Ltd'. Material was examined during the inspection and was of a high standard. Internal refresher training has been conducted with staff more recently by the Senior Principal Solicitor to the Council and further refresher training is scheduled for the future. Further comment in relation to training is documented in the 'Training' section of this report. **This recommendation is discharged.**

5.6 *Recommendation 3 – Amendment should be made to the RIPA Policy and Procedure document and to the FAQ document. (Paragraph 23 refers)*

- 5.7 The document was amended following the last inspection of the Council. It now requires further amendment to align the document to the revised Codes of Practice (April 2010) and OSC Procedures and Guidance 2011. There is in addition a requirement to amend the document further in respect of the Protection of Freedoms Act 2012 and SI 2012 / 1500. The matter is documented in detail in the Policy and Procedures section and forms a revised recommendation of this report. **This recommendation as it stands is discharged.**

6. Training.

6.1 Formal training has been conducted since the last OSC inspection using external trainers 'Xact Consultancy and Training Ltd' and is reinforced by refresher training sessions conducted by the Senior Principal Solicitor Mr Fieldsend. This is an excellent process to ensure practitioners and authorising officers remain up to date with the requirements of the legislation and developments in relation to the Protection of Freedoms Act 2012. There would be considerable benefit from the inclusion of practical scenario based exercises to ensure what should be written on the RIPA forms is adequately portrayed to applicants and authorising officers using the detail contained in the 'Significant Issues' section of this report as a guide as to what is required.

6.2 **A programme of refresher training should continue to ensure that staff who engage this legislation are suitably equipped for the roles they are expected to perform. There should be particular attention given in the training to what should be written on the RIPA forms.**

6.3 There is benefit to be derived in the sharing of training sessions and seminars with other councils in the area. The Council is invited to consider this matter further.

7. Policies and Procedures

7.1 The senior responsible officer of the Council in relation to RIPA is the Solicitor to the Council and Monitoring Officer. Despite the low usage of the legislation by the Council it would be wise for the SRO to formalise a reporting process to the Chief Executive in respect of RIPA matters.

7.2 The 'Central Record of Authorisations' is in the form of an Excel spreadsheet which is printed off and forms an index to the centrally held file of authorisations. It is fully compliant with the statutory Code of Practice (Surveillance) containing all the details required in paragraph 8.1 except for the inclusion of renewal dates, the name and grade of the authorising officer and whether the authorising officer is 'directly involved' in the investigation. This matter was immediately dealt with by the Senior Principal Solicitor and requires no further action. Although not a statutory requirement it may be useful for management and oversight purposes (as discussed during the inspection) to include review dates and a 'comments' box within the Central Record to enable analysis of issues over the year.

7.3 The Council has not authorised the use and conduct of CHIS but is empowered to do so. It is advised that the Council introduce a Central Record in respect of CHIS as described in Paragraph 7.1 of the Covert Human Intelligence Sources Code of Practice as an official record of the current status, or ensure a separate section is made within the existing central record being used to accurately document the Council's current position.

7.4 The Council currently has five authorising officers designated for the role (including the Chief Executive who would be the authorising officer in the event of confidential information being likely / obtained). This appears

sufficient to ensure resilience whilst attempting to ensure authorising officers get some experience in the role.

- 7.5 Authorising officers have received training for the role. The authorising officers are detailed within the policy document at Appendix A. In such a small Council authorising officers should be suitably aware of the 'self authorisation' issue as referred in paragraph 5.7 of the Covert Surveillance Code of Practice.
- 7.6 The Council is working from the extant Codes of Practice for Covert Surveillance and Covert Human Intelligence Sources (CHIS) and the current OSC Procedures and Guidance 2011 document is available to staff.
- 7.7 The Council has a 21 page document (including appendices) the '*Bolsover District Council's Policy and Procedure on the application of Part II RIPA*' as policy and guidance to practitioners on the use of this legislation. The document has been updated since 2009 most recently in June 2012. Some issues remain in respect of the document in order to create total clarity for practitioners on the use of the legislation. Further revision of the document will be required in order to update it with the requirements and new processes imposed by the Protection of Freedoms Act 2012 and UKSI 2012 / 1500. Issues identified during the inspection are documented below:-
- a) Paragraphs 6.1 – 6.3 confirm quite rightly that the Council can not authorise intrusive surveillance. There should also be appropriate reference that the Council has no statutory powers to interfere with private property. Although the Council can not authorise the 'interference with property or wireless telegraphy' circumstances may arise that may involve some degree of trespass in order to conduct surveillance activity (e.g. the placing of a camera in a hedge to deal with fly-tipping as discussed during the inspection). The section would benefit from a caveat that if any 'trespass' is being considered by council staff during the course of surveillance the matter should be referred to the Solicitor to the Council as a matter of urgency.
 - b) The Covert Surveillance and Covert Human Intelligence Sources (CHIS) sections of the document would benefit from being in two separate sections to avoid confusion.
 - c) Paragraph 7.9 in relation to CHIS makes reference to 'handler' 'manager' and 'recorder'. Section 29 (5) (a) and (b) RIPA refer to a handler and controller referred at paragraphs 6.5 – 6.9 of the Code of Practice (CHIS).
 - d) Paragraphs 8.4 – 8.8 deal with necessity and proportionality. 'Necessity' should be aligned to note 105 of the OSC Procedures and Guidance 2011. 'Proportionality' should be aligned to advice given at notes 106 and 107 of the OSC Procedures and Guidance 2011.
 - e) Paragraph 8.9 refers to the Home Office forms. It would be useful to reiterate the contents required within an authorisation, i.e. the 5 Ws and H (who, what, why, where, when and how) the directed surveillance is to be conducted. In particular that full details of the subjects, addresses and whether static, foot or mobile (or a combination of the three) surveillance is being authorised.

- f) Paragraph 8.11 refers to the urgent oral process. This should be aligned to advice given at paragraph 3.27 of the Code of Practice (Surveillance).
- g) Paragraph 8.17 refers to renewals. It should be made clear for practical purposes that the authorisation expires at 2359 hrs on the day preceding the 3 month date.
- h) Paragraph 8.20 makes reference to reviews. Additional guidance should be given that reviews should be allocated for shorter durations if the level of intrusion / collateral intrusion is high or it is likely that confidential information will be obtained. It should also be noted that a high level of collateral intrusion may also impact on 'proportionality'.
- i) Paragraph 8.21 makes reference to cancellations and states that '*all authorisations need to be cancelled at the end of their use*'. This should be aligned to advice given at notes 141 – 145 of the OSC procedures and Guidance 2011.
- j) Paragraph 8.23 refers to 'Combined Surveillance' with another agency. It should be included that officers so assisting should see the authorisation and understand what has been authorised before engaging in covert surveillance (R v Sutherland) and managers should also be sighted to ensure staff are not exceeding their training in engaging in such activity (for example mobile surveillance may involve advanced driving).
- k) Paragraph 9.1 refers to the Central Record of Authorisations. This should be aligned to paragraph 8.1 of the Code of Practice (Surveillance).
- l) Appendix A refers to authorising officers in respect of Section 28 RIPA 2000. This should also include CHIS at Section 29.
- m) Appendix D A4 should refer to SI 2010 / 521.
- n) Appendix D A5 should be aligned to notes 105 – 108 of the OSC Procedures and Guidance 2011.
- o) Examples given in respect of CHIS at Appendix D A10 are erroneous and misleading. These should be reconsidered or omitted. Paragraph 7.11 directs that if a CHIS authorisation is being considered advice must be first sought from the Solicitor to the Council. This is good advice allowing each case to be considered on its own merits. There appears to be no need for practical examples that may be misleading.
- p) Appendix D A21 private information should be aligned to the definition given at paragraph 2.4 of the Code of Practice (Surveillance).
- q) Appendix D A22 in relation to CCTV should be aligned to paragraphs 2.27 and 2.28 of the Code of Practice (Surveillance).
- r) Appendix E paragraph 2 should be aligned to notes 105 – 107 of the OSC Procedures and Guidance 2011.

7.8 **The 'Bolsover District Council's Policy and Procedure on the application of Part II RIPA' document should be revised in order to align it to the extant Covert Surveillance / CHIS Codes of Practice and OSC Procedures and Guidance 2011.**

7.9 Oversight is in the form of retrospective quality assurance conducted by the Solicitor to the Council. I advise that this process is documented on a spread sheet recording issues identified for each statutory consideration and matters

identified from the scrutiny of the authorisation which will enable analysis of these matters over the year and the result e.g. appropriate feedback to authorising officer given , or perhaps refresher training. It is important that issues identified in the oversight process lead to remedial action where required (a full audit trail of all documents should be maintained) and in addition are fed into RIPA training to ensure these matters are corporately addressed and others have the benefit of the learning. In addition benefit would be derived from the occasional dip sampling of investigations to ensure no unauthorised covert surveillance is being conducted.

- 7.10 A formal process is conducted annually by the Solicitor to the Council who submits a detailed report of covert activity to the Standards Committee to ensure that elected members of the Council are advised of the level of covert activity and the use of RIPA.

8. Significant Issues

- 8.1 The three applications /authorisations conducted by the Council in relation to benefit fraud since the last OSC inspection were examined. Issues are identified below. The level of detail is such to assist the Council in the identification of training needs and matters that should be the subject of focus in quality assurance and oversight processes.

- a) Applicants must 'paint the picture' at the start of applications to outline the case as to why directed surveillance is being considered as a tactic. This should include how the matter came to light, the volume of complaints, the reliability of the complaint and any supporting intelligence that corroborates an offence is suspected.
- b) Care should be taken to identify all subjects that may be subject to surveillance. In those examined only the claimant was being documented in the applications although the claimant and partner were likely to be the subjects of the surveillance. Suspected collusion of both should be suitably explained in the intelligence case supporting the application.
- c) 'Necessity' should include the offences under investigation and why it is considered that the use of directed surveillance is the most reasonable means to gather the evidence / intelligence to support a prosecution.
- d) Proportionality was poorly articulated and was generally a documented summary of intent. Notes 106 and 107 of the OSC Procedures and Guidance 2011 deal with this issue. Additional practical benefit would be derived from explaining what level of priority the investigation is for the Council and public expectation of enforcement activity i.e. is there a 'pressing social need' for intervention and enforcement. It is important to document what less intrusive methods have been tried or considered.
- e) Collateral intrusion was well documented but the statutory obligation to document how such collateral intrusion would be minimised was not addressed.
- f) Authorisations were sub-headed with the 5Ws and H as documented within the extant Home Office forms and then an explanation given at the side explaining each. Although rather basic this is acceptable if the

detail is sufficient in support. In the cases examined that detailed text was absent for example the full names and dates of birth of subjects, of addresses using the term 'the address' referring to the application rather than the full postal address including post code.

- g) It was unclear what surveillance had been authorised i.e. static, foot and mobile (or a combination of such tactics).
- h) The reason for the surveillance was to obtain evidence or intelligence of benefit fraud. This was not articulated.
- i) Technical equipment i.e. cameras were not authorised or used. This seems at odds with the requirement to provide 'best evidence' and is likely to lead to evidential difficulties in relation to identification where as in the cases examined the applicant; surveillance practitioner and investigator were the same person.
- j) Cancellations were generally well documented and submitted in a timely fashion. Authorising officers should include more detail (at present a signature is appended to a pre printed cancellation statement) and ensure that direction is made in relation to the management of surveillance product. Note 145 of the OSC Procedures and Guidance 2011 refers.
- k) Authorising officer documentation of statutory considerations was poor. Detail is required to show why the AO considers the application to be necessary and proportionate. A bare assertion is insufficient. (Note 108 of the OSC Procedures and Guidance 2011 refers).
- l) In respect of URN 1/2010 the proportionality box was not completed in the application which was surprisingly still authorised. This issue was identified in the oversight process. The correct process would have been a cancellation and new application / authorisation. A new authorisation was given causing two authorisations to be in force at the same time. Critical dates became confused as a result. The correct process should have been cancellation and a new authorisation being sought.

9. CCTV

- 9.1 The Council's CCTV is operated by a security company called 'Advance' from premises in Barlborough. The system covers Bolsover Town Centre, Creswell, South Normanton, Shirebrook. In addition there is a vehicle CCTV system to assist with the detection of anti-social behaviour and a rapid deployment CCTV system for tracking anti-social behaviour. There is sufficient signage displayed to render the use of the system 'overt'.
- 9.2 There is in place a comprehensive CCTV Code of Practice document that deals with RIPA and covert use of the system by the police at paragraphs 2.10 – 2.15. Staff are Security Industry Authority (SIA) trained and have received RIPA awareness as part of that accredited training. Processes dictate sight of the RIPA authorisation by staff using the system before it is used for covert surveillance. The off-site premises were not visited on this occasion.

10. Observations

- 10.1 Although a low user of this legislation Bolsover District Council has training, policy and processes in place to use RIPA effectively. They choose to take an

overt 'problem solving' approach to investigations. Processes have improved since the last OSC inspection of the Council however the aim is to produce applications and authorisations that would withstand challenge in legal proceedings. There remains a vulnerability from the standard of those examined during this inspection.

- 10.2 It is vital that training continues. Particular focus should be given in training to what should be written on the RIPA forms by applicants and authorising officers. Matters identified in this inspection will assist the Council to reach the standards desired by the Chief Executive who continues to provide enthusiastic support for the appropriate use of this legislation.
- 10.3 I would like to thank the staff from Bolsover District Council for their participation in the inspection process in particular Mr Jim Fieldsend who facilitated it.

11. Recommendations.

- 11.1 A programme of refresher training should continue to ensure that staff who engage this legislation are suitably equipped for the roles they are expected to perform. There should be particular attention given in the training to what should be written on the RIPA forms. (Paragraph 6.2 refers).
- 11.2 The '*Bolsover District Council's Policy and Procedure on the application of Part II RIPA*' document should be revised in order to align it to the extant Covert Surveillance / CHIS Codes of Practice and OSC Procedures and Guidance 2011.(Paragraph 7.8 refers).



Surveillance Inspector