



Office of Surveillance
Commissioners

Chief Surveillance Commissioner
Office of Surveillance Commissioners
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9th January 2017

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

REPORT

Inspector Sir David Clarke
 Assistant Surveillance Commissioner

Introduction

1. The Council (NWL) is a second-tier local authority serving Ashby-de-la-Zouch, Coalville, Kegworth and the surrounding area, including East Midlands Airport.
2. NWL's management structure is headed by the Chief Executive, supported by Directors and Heads of Service. The long-serving Chief Executive is Christine Fisher, whose address is Council Offices, Whitwick Road, Coalville, Leicestershire LE67 3FJ.
3. The last OSC inspection of NWL was carried out by His Honour David Hodson, Assistant Surveillance Commissioner, on 20th August 2013. He identified a number of errors and made four formal recommendations.
4. Since that inspection there have been no RIPA authorisations of directed surveillance or covert human intelligence sources (CHIS). Indeed, there has been none since the legislative changes of November 2012.
5. NWL's RIPA Senior Responsible Officer (SRO) is the Chief Executive herself, and it is encouraging that she personally participated in the 2013 inspection. The Central Record of authorisations is kept by Lisa Cotton, Senior Internal Auditor, but primary RIPA oversight is in the hands of Dave Gill, Legal Services Team Manager and Deputy Monitoring Officer to the Council. He has completed the questionnaire provided by the OSC and has supplied NWL's current RIPA Policy document and details of RIPA training for my perusal. I have had a useful telephone discussion with him, and I am grateful for his ready cooperation. I apologise for the delay in completing my report since the initial information was provided.
6. I am preparing this report without visiting NWL. Having considered the material in detail, I have concluded that I can properly report to you without a physical inspection. This is in accordance with your direction that not every second-tier district or borough council needs to be visited every three years as a matter of course.

Progress against recommendations

7. HH David Hodson made four formal recommendations

- I. *Ms Fisher should cease to be an authorising officer if she remains SRO. If she remains SRO then Mr David Hughes should be an authorising officer in her stead.*

This recommendation was promptly heeded. Ms Fisher remains as SRO and is no longer an authorising officer (AO). The present authorising officers are all at Director or Assistant Director level. Discharged.

- II. *Amend Corporate Policy and Procedure document as follows . . .*
These minor amendments were promptly made. Discharged.

- III. *Ensure that the training suggested by Mr Kevin Davis relating to the provision of specific guidance relating to the content and duration of authorisations for directed surveillance be reinforced. Additionally there should be further training relating to the setting of review dates and the importance of immediate cancellation of authorisations . .*

- IV. *Begin forward planning for further refresher training to take place no later than March 2014*

These two recommendations relating to RIPA training were heeded. Training courses were held on 28th February 2014 and again on 15th June 2016. Discharged

RIPA Structure and Policy

8. There are three designated AOs, namely the Directors or Services and Housing and the Assistant Director of Resources. NWL are aware that although the Chief Executive (as SRO) is not listed as an AO, only she (being Head of Paid Service) can authorise in the unlikely event of an application falling within Annex A of the Codes of Practice.¹

9. NWL's *Policy and Guidance* document is simple, clear and essentially accurate. In particular, I was pleased to see that it includes guidance on the relevance of RIPA to the use of the internet and social network sites in investigation work. Paragraph 19 accurately reflects the Commissioners' Guidance² on this increasingly important topic.

10. I have, however, two improvements to suggest.

- Paragraph 10 contains an unduly restrictive definition of *private information*. It should make clear that the concept has been broadly

¹ An application in which confidential information is likely to be acquired, and an application to authorise a vulnerable or juvenile CHIS. Such an application is highly unlikely to arise in a local authority context.

² OSC Procedures & Guidance, July 2016 revision, paragraph 289.

defined to include those professional and business activities for which there is a reasonable expectation of privacy.³

- At paragraph 19 it is stated that RIPA does not apply in circumstances where members of the public volunteer information to the Council as part of their normal civic responsibilities. This is too baldly stated; it depends on how the information has been obtained. If the informant has obtained it as an “insider”, i.e. in the course of a personal or other relationship or *as a result of the existence of such a relationship*⁴, then he is likely to be a CHIS even if the relationship was not one formed or maintained for that purpose. If he has obtained it as an outside observer, he is not. This is an important principle to be recognised by all those with investigative or enforcement responsibilities, because of the duty of care owed to an informant in deciding how to handle and use the information which he has provided.

See recommendation

11. If the standard Home Office forms are used, they will include the standard cancellation form, which does not reflect OSC guidance on the information and directions which should be recorded by the AO at the time of cancellation. This is contained in paragraph 110 of the latest version of OSC Procedures & Guidance, published in July 2016. I am supplying the OSC-preferred cancellation form to Mr Gill, to be used in cancelling any future directed surveillance authorisations.

Reports to Members

12. Quarterly reports are submitted. The relevant committee is kept informed of any RIPA usage and approves any policy or procedure amendments.

Applications to magistrates’ court for approval of authorisations

13. Arrangements are in place with Leicester Magistrates Court. I draw NWL’s attention to OSC Procedures & Guidance, paragraph 292, which suggests that ideally it is the AO, rather than (or in addition to) the investigator, who should attend court, since it is the AO’s decision which the court is required to consider for approval or otherwise. However, I recognise that this may well be impractical where the AO is a senior Corporate Director and there is no magistrate’s court on the council’s doorstep. In these circumstances OSC paragraph 293 should be carefully observed.

Training

14. Internal RIPA training was provided by Mr Gill in February 2014, repeated and updated in June 2016, for Investigators, AOs and the Chief Executive (SRO). Attendance lists were provided to me. Mr Gill has long experience in RIPA

³ Covert Surveillance etc Code of Practice, paragraph 2.4; OSC Procedures & Guidance, paragraph 127.3

⁴ RIPA, Section 26(8)(c)

matters, and was able to provide training also to some officers of the neighbouring Oadby and Wigston District Council.

CCTV

15. NWL operates a public space CCTV system with fully trained operators. It has supplied its action plan to the Surveillance Camera Commissioner, and is aware of the need for RIPA authorisation for any covert (targeted) use of the overt CCTV system.

Conclusions

16. NWL's arrangements for RIPA compliance are good. In particular, after some criticisms in earlier inspections, the attention which is given to continuing RIPA training is commendable. Lack of usage of these powers does not diminish the need for awareness to be maintained; if anything, it enhances that need. The updating of the *Policy and Guidance* to cover the important topic of social network sites is particularly noted with approval.

17. I make but one formal

Recommendation

That NWL's RIPA Policy and Guidance document be revised to incorporate the points made in paragraph 10 of this report.

David Clarke
Assistant Surveillance Commissioner