



Office of Surveillance
Commissioners

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**OXFORDSHIRE COUNTY COUNCIL
OXFORDSHIRE FIRE AND RESCUE AUTHORITY**

INSPECTION REPORT

Inspection date 4 May 2011
Inspector Sir David Clarke
 Assistant Surveillance Commissioner

Oxfordshire County Council

1. The Council (OCC) is a traditional county authority in a county which has resisted the movement seen elsewhere towards the formation of unitary authorities. The collaboration agreements between some of the smaller district councils within Oxfordshire and across its boundary, described in my recent reports on three of them, are a sign of this resistance.
2. The Senior Corporate Management structure is headed by the Chief Executive, supported by an Assistant Chief Executive (Chief Finance Officer) and four Service Directors. The Chief Executive is still Joanna Simons, whose address is County Hall, New Road, Oxford OX1 1ND.
3. The Oxfordshire Fire and Rescue Service (OFRS) is a service of OCC and is therefore not a free-standing public authority. It is headed by the Chief Fire Officer, David Etheridge, whose position in OCC's hierarchy is immediately beneath the Director of Social and Community Services. His duties extend to being in overall charge of the Trading Standards and Community Safety Service, the acting head of which reports to him.
4. The most recent OSC inspection of OCC was conducted by HH Dr Colin Kolbert, Assistant Surveillance Commissioner, on 7th May 2008. He gave OCC a clean bill of health, making no recommendations and describing its RIPA arrangements as "a Rolls Royce kept in first class order, but only brought out occasionally".

5. By contrast with the position described by Dr Kolbert, when only two RIPA authorisations had been made in the previous two years, OCC is now a frequent user of RIPA, having granted 69 directed surveillance authorisations in the three years since his inspection.
6. A small number of these applications had used the urgency provisions¹, but none was concerned with the likely acquisition of confidential information, and none concerned Covert Human Intelligence Sources (CHIS).

Inspection

7. I carried out the inspection on 4 May 2011 at County Hall. I met the following council officers:
 - Peter Clark, County Solicitor and Monitoring Officer
 - Richard Webb, acting Head of Trading Standards and Community Safety.
8. Mr Clark is a veteran of the three previous OSC inspections. Mr Webb has effectively succeeded Mr Yendole, referred to in previous reports, who is no longer with OCC. Mr Webb was previously a trading standards group manager, and in practice he is the authorising officer (AO) in the vast majority of OCC's RIPA authorisations.
9. The inspection started with a discussion of the revised Codes of Practice and OSC Guidance, OCC's RIPA management, policy and procedures, designated AOs, OCC's increased usage of RIPA, and training. I then inspected a sample of the RIPA authorisations themselves. Finally I met Mr Clark and Mr Webb again for a short feedback discussion before departing County Hall.
10. I am grateful to Mr Clark and Mr Webb for their welcome and for their full and helpful engagement with my inspection.

RIPA Structure

11. As reported by Dr Kolbert, the Policy and Trading Standards Manual are succinct, accurate and clear. I made one suggestion for further improvement, to replace the ambiguous term "authorised officer" with "authorising officer" throughout. This will be done without the need for a formal recommendation.
12. Appendix 1 to the Policy, however, contains a long list of examples of (impliedly legitimate) use of surveillance in the Council's various Services. This includes various suggested uses which could not be said to be "for the purpose of the prevention or detection of crime or of preventing disorder", which is the only purpose for which local authorities may have resort to RIPA authorisation.² I cite some of the more striking examples:
 - *Any use of process servers or private investigators where enquiries may need to be made as to parents/children's whereabouts etc*
 - *Using clients (including vulnerable adults) to record times and duration of home care visits*

¹ I cannot give a precise number, for the reason given in paragraph 17 below

² RIPA, section 28(3)(b) and the Schedule to SI 2010/521 which replaced SI 2003/3171.

- *(debt collection) Use of private investigators to establish identity, whereabouts, background information of debtors*
- *(contract monitoring) Covert investigation to establish compliance (both surveillance and CHIS) e.g. pretending to be a customer/client to check level of service.*

13. Mr Clark explained that these examples were devised in the early days of RIPA, before local authorities' use of it became limited by SI 2003/3171 to crime and disorder cases. The examples are out-of-date and potentially misleading. Since every potential use of RIPA powers must be considered on its merits, it may be better not to include examples in the policy document at all.

See recommendation

14. Following earlier OSC recommendations the number of Authorising Officers (AOs) is commendably limited to four, including the Chief Executive (or Assistant Chief Executive in her absence) for cases involving confidential information or the use of a vulnerable or juvenile CHIS. The other two AOs are Mr Clark and Mr Webb. In practice, Mr Webb was AO in all the trading standards service cases, Mr Clark in the others.
15. Annexed to the Policy are the latest RIPA application, review, renewal and cancellation forms, including the prompts and references to paragraphs of the Home Office Codes of Practice (2010 revision).
16. Mr Clark is the Senior Responsible Officer for RIPA, exercising the responsibilities set out in paragraphs 3.28 and 3.29 of the Covert Surveillance Code of Practice. In discussion I suggested that it would be helpful to designate a subordinate officer to be RIPA coordinator, responsible for day-to-day oversight of RIPA authorisations, review dates, cancellations and the like, and for maintaining RIPA awareness throughout OCC. The great majority of authorisations are made in the trading standards service, and it may be that Mr Webb will be considered a suitable person to undertake this role even though he is himself an AO.³
17. There is presently no centrally retrievable record giving at-a-glance information of past or current RIPA authorisations, including renewals and cancellations, as recommended in paragraph 8.1 of the Covert Surveillance Code of Practice. Mr Webb maintains his own tabulated record of trading standards authorisations, which is a sufficient management tool for his purposes but is not sufficient for the purposes of oversight by the SRO or for an OSC inspection. Had there been a central record complying with the Code, I would, for example, have been able to see immediately how many authorisations were made under the "urgent oral" provisions, and whether any instances of self-authorisation took place. It would also have highlighted something which I later found on examining the documents, namely a tendency to allow authorisations to lapse without formal cancellation.

³ On examination of the papers, I found that Mr Webb had been involved in discussion of one of the non-trading standards cases before directed surveillance was authorised by Mr Clark.

See recommendation

RIPA usage

18. Of the 69 RIPA authorisations in the three years since the last OSC inspection, 67 were made in the trading standards service. Of these, 54 were for juvenile test purchase operations in relation to the sale of alcohol, tobacco products, knives and fireworks. These operations are carried out in accordance with the LACORS Practical Guide, being properly planned and recorded and including all necessary safeguards for the welfare and safety of the juvenile volunteers.
19. Until 2008 such operations were mounted without RIPA authorisations, a practice which is still followed by a minority of local authority trading standards departments. Since the last OSC inspection, OCC has started to make formal RIPA authorisations for these operations, as a precaution against any possible challenge. This is a commendably careful and cautious approach, and accords with paragraph 251 of the OSC Procedures and Guidance (2010 edition). Though covert recording equipment is not used, the juvenile volunteers and their attempted purchases are closely watched by adult officers.
20. Also in accordance with paragraph 252, a number of targeted premises are included within each authorisation. In most cases the number is small, up to 12 or 15, but in a few instances a larger number were listed. I drew attention to the last sentence of paragraph 252, calling for the issues of necessity and proportionality to be addressed in relation to each of the targeted premises, which is more difficult to achieve when multiple premises are included in a single authorisation.
21. Most of the other trading standards authorisations were made to support rogue trader investigations, where elderly or vulnerable persons have been targeted by roofers, tarmac layers, gardeners and the like, who are expected to return for more. The use of covert surveillance in these cases seemed to me entirely proper, as was the grant of urgent oral authorisation where the rogue trader's return to the premises was imminent.
22. The two authorisations from other services were in 2008 and 2010. I describe these at paragraphs 25 to 27 below.

Training

23. A further corporate training session is being arranged for July 2011. All trading standards officers have received professional training and I am satisfied that RIPA awareness is maintained across all relevant services of OCC.

Examination of Records.

24. I examined the two non-trading standards authorisations and a representative sample of the others, concentrating on those most recently made.

25. The most recent non-trading standards authorisation (URN 6/2010) was made in connection with repeated and systematic criminal damage to countryside fingerposts. It appeared that "off-roaders" had repeatedly removed reinforced metal signs with an angle-grinder or the like. Nevertheless, Mr Clark as AO was commendably cautious on the question of proportionality, discussing it with Mr Webb and seeking advice from OSC before authorising. I considered that this was a proper use of RIPA powers and that necessity and proportionality were well addressed.
26. In 2008 Mr Clark as AO authorised directed surveillance on a residential child care worker who had been suspended for over-familiarity with children in care, and who was thought to be continuing to meet a vulnerable girl aged 14. This again was entirely appropriate.
27. In both cases, however, the wrong expiry date was set, a month after the respective authorisations. In both cases the AO understandably wished to limit the periods of covert surveillance, but the correct way of doing this is to set an early review date and then to proceed (if appropriate) to formal cancellation. All directed surveillance authorisations should be specified to expire at 2359 hrs on the day before the day which falls three months after the authorisation, and the current forms contain a clear prompt to this effect. If this had been done in the "fingerpost" case, it would not have been necessary to make a formal renewal to enable the covert surveillance to continue into a second month.
28. I found that although the current RIPA forms are annexed to OCC's policy, all the trading standards authorisations were made on an outdated form which refers to the AO's "recommendation" rather than his decision. More importantly, it incorporates no box for the AO to record the expiration date of the authorisation. Though Mr Webb keeps his own record of these dates, they should be specified in the authorisations themselves. I also found that in some cases no formal cancellation was effected, but some had been cancelled on review forms and some appeared to have lapsed by effluxion of time.

See recommendation

29. In the juvenile test purchase operations there was some evidence of templating of entries, but necessity and proportionality were generally well expressed. I found a particularly good practice in some review forms, colour-coding the categories of shops which have passed or failed the test, or have not yet been tested, or have ceased to trade. This is valuable for those who must consider the necessity and proportionality of further test purchase operations.
30. The "rogue trader" cases were also well documented. I was interested to see that the applicant in these cases was a police officer, yet these were county council authorisations. It was explained to me that the officer is on permanent secondment to the "Doorstep Crime Team" of the Trading Standards Service, which struck me as a valuable cooperative venture.

Fire and Rescue Service

31. OFRS has had no occasion to use covert surveillance. Its activities, both reactive in responding to emergency and other calls, and proactive in education and enforcement, are carried out overtly. Though their fire investigation work may have criminal implications, in such cases they work with and on behalf of the police.
32. As a Fire and Rescue Service, OFRC is scheduled in SI 2010/521 as a public authority with RIPA powers. Theoretically, therefore, it should have and maintain a RIPA policy and structure. In practice, however, since it is encompassed within OCC and is not a free-standing public authority, this seems to me unnecessary. Other Fire and Rescue Services, particularly those which have been established across council boundaries and are free-standing public authorities, will no doubt be required to maintain such a structure and will be subject to separate OSC inspections.

Conclusion

33. OCC continues to have a sound RIPA structure, with good policies and procedures and good training. The Rolls Royce remains in generally good order but with occasional minor blemishes.

34. I make the following

Recommendations

- I. That Appendix 1 of the Policy document, giving examples of RIPA usage, be dispensed with;*
- II. That a centrally-retrievable record of RIPA authorisations be established and maintained, containing the information specified in paragraph 8.1 of the Covert Surveillance Code of Practice; and*
- III. That only the latest versions of the RIPA forms be used in all future applications and authorisations, care being taken to specify correct expiration dates.*

David Clarke
Assistant Surveillance Commissioner