



Chief
Surveillance
Commissioner

26th June 2014

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Dear M/s Simons,

Covert Surveillance

On 29 May 2014, one of my Surveillance Inspectors, Mr Kevin Davis, 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 Davis's report which I endorse. I am pleased to see that the recommendations made following Sir David Clarke's inspection 3 years ago have been discharged. I note that in the single authorisation by the Fire & Rescue Service since 2011 the issues were cogently addressed. Good practice is recognised in your innovative use of an IT based Central Record, production of a briefing document and joint training for magistrates and publication on the Council website of completed, suitably redacted, applications and authorisations. Your Council and the Fire & Rescue Service have a sound RIPA structure and policies and the Council has a positive approach to ensuring legislative compliance and transparency in relation to covert activity.

The single recommendation is that OSC Guidance para 105 in relation to cancellation of authorisations be complied with..

I shall be glad to learn that your Council accepts the recommendation and will see that it is 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*

M/s Joanna Simons CBE
Chief Executive
Oxfordshire County Council
County Hall
New Road
Oxford
OX1 1ND

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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Oxfordshire County Council & Oxfordshire Fire and Rescue Service

29th May 2014

**Surveillance Inspector:
Mr Kevin Davis.**

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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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OSC INSP/075

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

10 June 2014.

**OSC INSPECTION REPORT– OXFORDSHIRE COUNTY COUNCIL &
OXFORDSHIRE FIRE AND RESCUE SERVICE**

The inspection took place on Thursday 29 May 2014.

Inspector

Mr Kevin Davis.

General Description

- 1 Oxfordshire County Council, established in 1889, is the county council, or upper tier local authority, for the non metropolitan county of Oxfordshire in the South East of England, an elected body responsible for most strategic local government services in the county. The Council employs approximately 9000 personnel (excluding schools).
- 2 The Chief Executive leads a Senior Management Team that comprises four Directors for the following:
 - Environment and Economy
 - Children, Education and Families
 - Social and Community Services
 - Public Health.
- 3 The Chief Executive is Ms Joanna Simons CBE. The address for correspondence is Oxfordshire County Council, County Hall, New Road, Oxford, OX1 1ND.
- 4 The Oxfordshire Fire and Rescue Service is a service provided by the Council. The Chief Fire Officer is Mr David Etheridge.

Inspection Approach

- 5 The purpose of the inspection was to examine policies, procedures, operations and administration in relation to directed surveillance and covert human intelligence sources (CHIS) under the Regulation of Investigatory Powers Act 2000 (RIPA).

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6 During the inspection I had discussions with the following members of staff:

- Mr Peter G Clarke (County Solicitor and Head of Law and Governance)
- Mr Bill Stewart (Legal Practice Officer)
- Mr Richard Webb (Trading Standards and Community Safety Manager)
- Ms Davina Walkin (Trading Standards Team Leader)
- Ms Anna Humphrey (Trading Standards Officer)
- Ms Phillipa Green (Trading Standards Officer)
- Mr Steve Dunn (OFRS).

Review of Progress

7 Sir David Clarke, in the report of his inspection in May 2011 made three recommendations:

- 1) *That Appendix 1 of the Policy document, giving examples of RIPA usage, be dispensed with.*

Action

The Policy document has been amended.

Discharged

- 2) *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.*

Action

The Central Record of Authorisation is now compliant with the Code of Practice (see paragraph 13 of this report).

Discharged

- 3) *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.*

Action

This recommendation has been complied with.

Policies and procedures

8 Mr Peter G Clarke, who is the County Solicitor and Head of Law and Governance, is the Senior Responsible Officer (SRO) and Mr Richard Webb has day to day responsibility for

the administration of RIPA. Both Mr Clarke and Mr Webb act as authorising officers, along with the Chief Executive. In interview it was evident that Mr Clarke and Mr Webb were very knowledgeable with regard to the legislation and keen to ensure compliance. Mr Clarke is responsible for producing the annual report to elected members in accordance with paragraph 3.30 of the Covert Surveillance and Property Interference Code of Practice. The report is presented to the Audit and Governance committee of the Council. In addition a redacted version of this report and any RIPA authorisations are published on the Council website and are available for public scrutiny.

- 9 The RIPA policy document has been revised since the last inspection to encompass the changes in light of The Protection of Freedoms Act 2012. The document is comprehensive and easy to understand and gives guidance to both applicants and authorising officers. The Council took the unusual and innovative step of producing a briefing note for the local magistracy that outlines the roles and responsibilities of both the local authority and the judiciary.

Oxfordshire Fire and Rescue Service (OFRS)

- 10 OFRS is scheduled in Statutory Instrument 2010/521 as a public authority with RIPA powers and should theoretically should have and maintain a RIPA policy and structure, but the reality is that it is not a free standing public authority and is part of OCC. The majority of the work of the OFRS is overt and focused upon the core responsibilities of dealing with fire and rescue. The OFRS has however used RIPA powers on one occasion since the last inspection (see paragraph 20 of this report).

Training

- 11 Refresher training is undertaken within the Council by Mr Webb on an *ad hoc* basis. In addition any new employees to the Council receive RIPA awareness training as part of their induction. All Trading Standards officers have mandatory RIPA training as part of their professional development.

Significant issues

Council ethos

- 12 The Council is not a regular user of the powers vested under RIPA, preferring to secure compliance through education and raising awareness, but will utilise covert investigative techniques when necessary; historically the majority of applications and authorisations have emanated from Oxfordshire County Council Trading Standards.

Central Record of Authorisations

- 13 The Central Record of Authorisations is managed on an IT database by Mr Webb and is linked to all applications/authorisations. The system devised within the Council allows investigators to submit applications securely to any of the authorising officers who are able to complete an authorisation, sign electronically, and 'lock down' the document in a form that cannot be altered. This innovative system also creates an audit trail of all email traffic between applicants and authorising officers.

Directed surveillance

- 14 Since the last inspection the Council has authorised directed surveillance on 28 occasions, a significant reduction from the figure of 69 reported by Sir David Clarke in 2011. Since the enactment of The Protection of Freedoms Act in 2012 there have only been twelve authorisations. A view was expressed that the Better Delivery Regulatory Office (BDRO) Code of Practice, published in January 2013, discourages covert activity and makes more restrictive the use of test purchase operations.
- 15 The BDRO guidance states the following:

'Where an enforcing authority is considering conducting a test purchase exercise, consisting of one or more test purchase attempts, it should consider the statutory requirements for authorisation under the Regulation of Investigatory Powers 2000, as amended. It is unlikely that authorisations under RIPA for covert methods will be considered proportionate without demonstration that overt methods have been attempted and failed'.
- 16 The Council has taken the view that the inclusion of the above paragraph in the Code bars local authorities from conducting test purchase operations in relation to the sale of age restricted products unless 'overt methods' have been attempted and failed. Their assumption is that if the Council did authorise activity and seek judicial approval from a magistrate without first having attempted 'overt methods', they would be doing so in breach of a legal code of practice, a course no magistrate would be likely to countenance, and that even if a magistrate did approve it, the covert activity would be likely to be ruled unlawful if subjected to a legal challenge.
- 17 I examined seven applications and make the following observations. The applications were of a good standard with comprehensive intelligence pictures contained within. The issues of proportionality and necessity were argued cogently. I was pleased to note that in a number of cases detailed attention had been paid to the management of collateral intrusion.
- 18 The authorisations were of a good standard and there was adherence to the advice contained in OSC guidance note 117 i.e. who, what, where, why, when and how.
- 19 Two of the applications/authorisations were for test purchase operations. I particularly liked the use of a tabular schedule of the premises subject to surveillance attached to the application. The schedule contained references to intelligence logs relevant to each of the premises.
- 20 URN 2013/2 was an investigation into the theft of property from an OFRS fire station. The application was detailed and catalogued the circumstances surrounding a number of criminal offences. This was accompanied by a detailed intelligence picture and the operational objectives. The issues of proportionality and necessity were expressed cogently.

- 21 The application was supported by the Assistant Chief Fire Officer who provided an assurance that resources would be dedicated to the investigation. The application was accompanied by a technical feasibility study for the benefit of the authorising officer that described the proposed positioning of four cameras and a plan to minimise collateral intrusion. This was particularly relevant having regard to the presence of other employees at the premises who were not suspected of any wrongdoing.
- 22 The authorisation was of a high standard and the covert activity resulted in subsequent criminal proceedings against an OFRS employee.
- 23 Reviews were detailed and submitted to the authorising officer on a regular basis.
- 24 Though the authorisation was cancelled promptly as soon as the covert activity was no longer required, the cancellation was scant and did not comply with the OSC guidance note 145 which states the following:

'Although paragraph 5.18 of the Covert Surveillance and Property Interference Code of Practice is correct in saying that there is no requirement for any further details to be recorded when cancelling a directed surveillance authorisation, the Commissioners considered that it would be sensible to complete the authorisation process in a form similar to other parts of the authorisation where relevant details can be retained together. When cancelling an authorisation, the authorising officer should:

- *Record the date and times (if at all) that surveillance took place and the order to cease the activity was made.*
 - *The reason for cancellation.*
 - *Ensure that surveillance equipment has been removed and returned.*
 - *Provide directions for the management of the product.*
 - *Ensure that detail of property interfered with, or persons subjected to surveillance, since the last review or renewal is properly recorded.*
 - *Record the value of the surveillance or interference (i.e. whether the objectives as set in the authorisation were met).'*
- 25 The failure to comply with the OSC guidance note 145 was also evident in a number of other cancellation documents.

CHIS

- 26 CHIS have been authorised on three occasions since the last inspection. I examined two of the applications and authorisations and make the following comments. Both of the deployments were for Trading Standards officers. The first operation related to items being

sold on E Bay that were suspected of being counterfeit and the second related to the sale of cars with false documentation.

- 27 The applications were of a good standard with detailed intelligence pictures contained within. All of the intelligence logs had the appropriate provenance. The risk assessments were comprehensive and had been completed with additional information supplied by Thames Valley Police.
- 28 The roles as described in section 29(5)(a) and 29(5)(b) of RIPA i.e. handler and controller respectively, were detailed and the names of the officers fulfilling these roles were shown.
- 29 The 'use and conduct' of the CHIS was documented to a good standard.
- 30 I was pleased to note that in the event of compromise that in both applications/authorisations there were clearly set out 'exit strategies' for the CHIS.

Focus group

- 31 I interviewed a focus group of Trading Standards investigators. All were experienced and had a good level of knowledge through practical application and training within Trading Standards. All interviewees were keen to ensure compliance and were familiar with the OSC guidance document and in particular note 308 in relation to the use of social media for investigative purposes.

Good practice

- 32 a) Innovative use of an IT based Central Record of Authorisation.
b) The production of a briefing document for the magistracy along with joint training.
c) Publication of completed (redacted) RIPA applications/authorisations on the Council website.

Observations

- 33 The Oxfordshire County Council and the Fire and Rescue Service have a sound RIPA structure and policies. The Council has a positive approach to ensuring compliance and also being transparent with members of the public as to its use of covert activity.
- 34 Finally, I would to thank all of those who participated so positively in the inspection process, and in particular Mr Stewart for making all the necessary arrangements.

Recommendation

- 35 That the Council ensures compliance with OSC guidance note 145 in relation to the cancellation of authorisations.

Kevin Davis

Surveillance Inspector

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