



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

Official - Sensitive

Covert Surveillance

Sarah Ahmed

24 February 2016

Dear *Mr Williams*

I enclose a copy of the report dated 31 January prepared by His Honour Norman Jones QC, an Assistant Commissioner, following his inspection of the arrangements made by the County Council to ensure compliance with the legislative provisions relating to covert surveillance.

I have studied the report and endorse it. Perhaps the starting point is that the Commissioner acknowledges that the Council has indeed adopted a good system for dealing with these problems, and that the authorisation responsibilities are in "capable hands".

I note that there has been a significant diminution in the use by the County Council of its statutory powers, and that no significant increase is anticipated. I further note that there have been organisational and management changes. These provide the background to the areas of possible concern found in the report.

Following the inspection, now nearly 4 years ago, five express recommendations were made. Although some had been sufficiently addressed to enable them to be discharged, some, set out in paragraph 15.1, 15.11, and 15.V, have only been partially completed. Unsurprisingly, therefore, it is a specific recommendation of this year's report that those recommendations should now be completed, and in view of the time which has elapsed since they were first made, perhaps this could be done as a matter of fairly urgent attention. I recognise that there are other demands being made on reducing resources, but these recommendations all relate to ensuring that as and when the statutory powers are exercised, they are exercised lawfully.

I note the arrangements which have been put in place for training purposes, and as far as they go, they are welcome. Paragraph 26 addresses the issue of regular training. This should be seen as a feature bearing on the outstanding recommendations and the new ones for this year. In other words regular training would, for example, help to avoid any omissions in the central record of authorisations. Indeed as the recommendations appear to me to arise as a result of inadvertence or oversight, perhaps the training arrangements will be at the heart of significant improvements.

I look forward to hearing that the recommendations made in the report will be adopted, and as far as practicable, addressed at an early stage.

Chris Williams Esq
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*Yours sincerely,
John Judge*

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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Buckinghamshire County Council

20th January 2016

**Assistant Surveillance Commissioner:
HH Norman Jones, QC.**

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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.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

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Office of Surveillance
Commissioners

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31st January 2016.

INSPECTION REPORT BUCKINGHAMSHIRE COUNTY COUNCIL

Inspection 20th January 2016.
Inspector His Honour Norman Jones, QC.
Assistant Commissioner

Buckinghamshire County Council.

1. Buckinghamshire County Council is a non metropolitan county council serving a population of about 507,000 and administering a geographic area of 604 square miles within the ceremonial County of Buckinghamshire. Not administered by the County Council within the historic boundaries of the County is the unitary authority of Milton Keynes.
2. The Senior Management Team is headed, as at the previous inspection, by Mr. Chris Williams, the Chief Executive, who is supported by two Managing Directors and three Directors. They in turn are supported by 29 senior officers who are Service Directors, Directors or Heads of Services.
3. The *Senior Responsible Officer (SRO)* for RIPA and *RIPA Co-ordinating Officer*, is the Director of Strategy and Policy and the Council Monitoring Officer, Ms. Sarah Ashmead.
4. I conducted the previous inspection of Buckingham CC in May 2012.
5. Since the last inspection the Council has granted seven *directed surveillance authorisations* and none for *CHIS* (to be compared with 27 *directed surveillance authorisations* granted in a shorter period prior to the last inspection). Six of these were for operations conducted by the Trading Standards Department and one by Environmental Services. The exercise of the *urgency* provisions, acquisition of *confidential information* or *self authorisation* did not feature. Only two authorisations have been granted since the commencement of the *Protection of Freedoms Act 2012*, the last being in June 2013. Both received magistrate's approval.
6. The address of the Council Offices is The County Hall, Walton Street, Aylesbury, Bucks, HP20 1UA.

Inspection.

7. Ms. Ashmead and Ms. Linda Forsyth, Assistant Director of Legal Services, a solicitor and authorising officer, extended a warm welcome to Buckinghamshire County Council.

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They were later joined by Ms. Amanda Poole, Assistant Head of Trading Standards for the joint Buckinghamshire and Surrey Trading Standards Unit and Mr Phil Dart, Director for Communities who, since April 2015, has been an authorising officer. Prior to its amalgamation with Surrey Trading Standards Mr Dart had been Chief Trading Standards Officer for Buckinghamshire and Ms. Poole had been an authorising officer for that authority. It is to be noted that Ms. Ashmead and Ms. Forsyth both adopted their *RIPA* responsibilities as recently as July 2015. All officers displayed a good working knowledge of *RIPA* and its regulatory framework and their enthusiastic and ready assistance was much appreciated.

8. The Inspection was conducted by means of discussion and interview with the officers followed by an examination of the Central Record of Authorisations and a sample of the authorisations undertaken. Thereafter feedback was provided to the officers concerning issues arising from the documentary examination. Among the issues discussed were reasons for reduction in authorisation, actions taken on past recommendations, the *RIPA* management structure, unauthorised surveillance, authorising officers, *Covert Human Intelligence Sources (CHIS)*, Social Media, the provisions of the Protection of Freedoms Act 2012, training, policy and procedures and the responsibilities of elected members.

Examination of Records.

9. The **Central Record of Authorisations** is retained on a computerised spreadsheet and is compliant with the *Code of Practice for Covert Surveillance and Property Interference*, 8.1 save that it requires a column for recording self authorisation (a previous recommendation) and columns to represent appearances for approval at a magistrate's court. The Central Record was, in the main, appropriately populated and up-to-date though it contained no entries since June 2013 reflecting the lack of resort to covert surveillance since that time. However an authorisation granted to Environmental Services on 11 May 2012, 10 days after the last inspection, had not been recorded in the Central Record, nor can the original authorisation be found, it clearly having not been filed with the Central Record. The Central Record is an essential document for the oversight of the *RIPA* process and is invaluable to those officers responsible for exercising that oversight. Whilst it is unlikely that such may occur again, all authorisations now requiring magistrate's approval with the original being filed with the Central Record, nevertheless this is an unfortunate occurrence and care must be taken to ensure that it is not repeated.

See recommendation

10. Four of the most recent authorisations were examined in detail. The two most recent of these provided good detail of the intelligence upon which the operation was based and of the proposed covert surveillance activity. The statutory provisions relied upon in the most recent were quoted and it is good practice to do so together with the maximum penal provisions. In both *proportionality* was poorly considered by applicants and authorising officer. Such requires a consideration of the three elements: (a) that the proposed covert surveillance is proportionate to the mischief under investigation; (b) that it is proportionate to the degree of anticipated intrusion on the target and others; (c) it is the only option, other overt means having been tried or considered and discounted. In each case only the issue of seriousness was articulated. *Collateral intrusion* was unrealistically said to be "unlikely" in an operation involving observations being kept on those using a petrol filling station.
11. In each of these cases the authorising officer paid meticulous attention to the "5W's" dealing with each in turn. This provided a comprehensive description of all that had been authorised. However in neither were first review dates set and the expiry date was not set in one and inaccurately set in the other, reflecting the date of the authorisation rather than that of magistrate's approval. The most recent was reviewed on three appropriate occasions. By the time of the first review no activity had been undertaken and by the time of the second three surveillance operations had produced no evidence. It was noted that appropriate consideration was given by the reviewing officer at that stage and reasons were given for continuing the operation but when three

further surveillance operations produced no evidence by the time of the third review, being the date when the authorisation ceased to have effect, the surveillance was ordered to cease. However the authorisation was not cancelled resulting in its remaining in existence. Attention should be paid to cancelling the authorisation whenever it is considered it is no longer required. The other authorisation was cancelled appropriately

12. The third authorisation examined related to the underage sale of alcohol and the fourth to the unlawful sale of cigarettes. That relating to the sale of alcohol was based on "police intelligence" which was not otherwise outlined. Four premises were concerned and if operations are to be mounted against identified premises the intelligence relied upon pertinent to each should be stated. In each similar problems arose in relation to the articulation of "Proportionality" as those seen in the most recent authorisations. Both applicant and authorising officers must pay greater attention to the essential elements of the legislation. Again the "5W's" were well considered and both were appropriately cancelled.

See recommendation.

Reduction in Authorisation

13. Since the last inspection there has been a 75% reduction in authorisation by Buckinghamshire CC. Reasons for that were explored with the officers and the following were considered most likely:
 - Authorisations relating to fly tipping (which represented 15 of the 27 authorisations between 2010 and 2012) are no longer required, the Environmental Services Department now relying entirely upon the examination of materials deposited and the use of overt, signed cameras.
 - The commencement of the *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500* has had a direct effect on the volume of authorisation undertaken.
 - Anti-social behaviour is now addressed in part by the usage of overt, signed cameras placed in visitors' doorways.
 - The appointment of two Financial Investigations Officers and the secondment of a police officer to the Trading Standards Unit have led to new overt avenues of approach to investigations. The police now lead on some trading standards operations and provide the necessary authorisation.
 - There has been a lack of adequate intelligence relating to underage sales of alcohol but it is hoped that an intelligence team within the Unit may cause an improvement in this field.
14. It was interesting to note that the officers considered resourcing as not being an issue in any reduction in authorisation.

Past Recommendations.

15. Five recommendations were made in the previous inspection report.

- I. *Future training to address the weaknesses disclosed in this report.*

It was believed by the officers that the training received since the last inspection did cover these issues and, in the case of the Trading Standards Department, a note had been circulated to all officers outlining the problems. Nevertheless it was disappointing to note that a number of the issues raised at the last inspection have again appeared in the examination of documents at this inspection. This recommendation has been discharged but more needs to be done.

- II. *Discharge fully the recommendations in the last inspection report.*

In her report of May 2010 Mrs Ringshaw-Dowie raised a number of issues which had not been addressed by the time of the last inspection. Whilst most of those have now been addressed her observation that “--- proportionality--- should be commented on consistently and meaningfully by both applicants and authorising officers” remains to be addressed. This recommendation has been partly discharged.

III. *Establish a robust management and oversight system for RIPA.*

The examination of documents tends to indicate that such a system was not in existence as recently as mid-2013. However there were very substantial changes in the management of RIPA in mid-2015 with Ms. Ashmead undertaking the responsibilities of *SRO/RIPA Co-ordinating Officer* and the appointment of Ms. Forsyth and Mr Dart as authorising officers. In the absence of authorisation it has not been possible to assess the overall effect of these changes but it was clear that the officers had paid very close attention to the previous reports and were alert to the repeated comments relating to management and oversight. Insofar as it was possible to make an assessment it should be considered that this recommendation has been discharged.

IV. *Ensure sufficient authorising officers are designated to satisfy the Council's requirements and that they are fully trained.*

The Council is reliant on only two active authorising officers with the SRO also able to authorise in exceptional circumstances. At present it is considered that this is adequate although the officers indicated that they would review the situation. All have received recent training. This recommendation has been discharged.

V. *Amend the Covert Surveillance Policy and Procedure.*

Three recommendations were made of which one and a half have been completed. Outstanding is the recommendation that the responsibilities of a *RIPA Co-ordinating Officer* should appear in the document and that the management requirements for *CHIS* should appear in the attached flow chart. This recommendation has been partly discharged.

See recommendation

RIPA Management

16. Ms. Ashmead as *SRO* and *RIPA Co-ordinating Officer* holds ultimate and day-to-day responsibility for the *RIPA* process within the Council. Both she and Ms. Forsyth were clearly concerned about the criticisms previously made concerning the limited degree of oversight of the *RIPA* process exercised. Indeed they remarked that those concerns had been to the forefront of their minds in recent months. Ms. Ashmead had no experience of *RIPA* prior to her appointment in July 2015. Since that time she has received training undertaken, together with Ms. Forsyth and Mr Dart, at Harrow and Barnet LBCs where it was conducted by two of those authorities prosecuting solicitors.
17. It is Ms. Ashmead's intention to exercise robust oversight both on the overall *RIPA* process and on individual applications/authorisations, reviews, renewals and cancellations. She requires that any officer seeking application must first approach her for a URN. At that stage she will commence the population of the Central Record and thereafter anticipate the submission of the application to an authorising officer. She intends to work closely to the authorising officers and would anticipate her advice being sought at the time of authorisation. She is aware of the necessity to ensure that any decision is that of the authorising officer alone. She will ensure that the current Home Office forms are in use, that appropriate review dates have been set and will chase up officers to ensure that reviews are undertaken. Following the obtaining of approval by a magistrate she would ensure that the original authorisation/renewal was returned to her with the approval, these to be contained with the Central Record. The Trading

Standards Unit will seek authorisation from Buckinghamshire authorising officers for any operation undertaken by the Unit within Buckinghamshire. Ms. Ashmead recognises that that will require her to keep oversight on the progress of the authorisation within the Unit.

18. She will be responsible for organising the training both of authorising officers and likely applicants. In addition she recognises the importance of ensuring a good level of *RIPA* awareness within the Council an effective system for which had been established at the time of the last inspection.

Authorising Officers

19. As reported above there are now two active authorising officers within the Council, Ms. Forsyth and Mr Dart. Both are of appropriate rank and both have been appropriately trained though neither has engaged in authorisation. The CEO, and in his absence whoever deputises for him, is responsible for the authorisation of juvenile or vulnerable *CHIS* or the acquisition of *confidential information*. There is no evidence that these officers have received training to authorise and although it is appreciated to be unlikely that they will be required to authorise nevertheless they should be trained to do so and this issue should be addressed. Ms. Ashmead should be an authorising officer (see *Code of Practice for Covert Surveillance and Property Interference, note 28*) but should only authorise in exceptional circumstances since to do so conflicts with her oversight role. Although as such she can provide some resilience it would be preferable if the number of authorising officers were marginally increased to provide resilience.
20. Currently an authorising officer is required not to authorise for his/her own Department. Whilst the reasons for such a requirement are understood nevertheless an authorising officer should be competent to authorise for all departments. Additionally the present requirement could cause resilience problems.

Trading Standards

21. Trading Standards is the only current user of *RIPA*. That Department is embraced within a joint Unit with Surrey CC the latter authority having overall responsibility and employing the trading standards officers though a contribution is made by Buckinghamshire CC. A process has been developed, as briefly related above (see paragraph 17), for the submission of applications to a Buckinghamshire authorising officer when the operation is to be conducted within that County. The application would be sent in hardcopy to the authorising officer, likely to be Ms. Forsyth, who, if she grants the authorisation, will return the original to the Trading Standards Unit. Arrangements will be made by Legal Services for an appointment at the magistrates' court to seek approval. In each of the two cases previously presented the applicant attended in one case with a solicitor and in the other with the Trading Standards Team Leader. On obtaining approval the original document is returned to the *SRO* and the Unit operates from a copy.
22. The practice of sending the applicant alone to seek approval from a magistrate, which concerns the whole of the Council as well as trading standards, was discussed with the officers and the advisability of the authorising officer attending was considered and appreciated.

CHIS and Social Media

23. The Council continues to consider itself unlikely to employ *CHIS*. Nevertheless there is an ever present possibility that it may be required to do so. In such an event the Council must have the facility to manage the *CHIS*. The requirement to train officers to act as controller or handler was raised in the last inspection report. Such officers have as yet to be trained and the Trading Standards Unit likewise has no officers trained to undertake this function. Such training does not need to be to the standard required by the police but does require officers to understand the responsibilities of undertaking those roles and the basic requirements of doing so.

24. The use of social media for the obtaining of intelligence and evidence was discussed. With the departure of trading standards into the joint unit the likelihood of such activity occurring within the Council has been substantially reduced. Nevertheless it is important to be aware of the authorisation requirements in the event that social media sites are explored with such intention. The basic guidance was considered and may be briefly outlined as:

Reviewing open source sites does not require authorisation unless the review is carried out with some regularity, usually when creating a profile, in which case *directed surveillance* authorisation will be required. If it becomes necessary to breach the privacy controls and become, for example, a "friend" on the Facebook site, with the investigating officer utilising a false account concealing his/her identity as a Council officer for the purposes of gleaning intelligence, this is a covert operation intended to obtain private information and should be authorised, at the minimum, as *directed surveillance*. If the investigator engages in any form of relationship with the account operator then s/he becomes a *CHIS* requiring authorisation as such and management by a Controller and Handler with a record being kept and a risk assessment created.

See recommendation

25. It was considered that currently any exploration of social media sites, in particular Facebook, would be confined to open source material. The Trading Standards Unit does use covert identities and credit card when ordering counterfeit goods but does not do so in circumstances which could be regarded as surveillance.

Training

26. Buckinghamshire CC has established a *RIPA* training programme which provides training for all authorising officers and a substantial number of identified likely applicants. The only criticism which may be levelled is that there is some inconsistency in the periods between training. A training schedule was made available before the inspection which discloses:

- 12 July 2012 - a half day training course entirely related to Part II of *RIPA* attended by all authorising officers and a number of applicant officers and delivered by a Queen's Counsel and a barrister.
- 4 December 2012 - two authorising officers attended a course provided by a professional external trainer directed to the effects of the *Protection of Freedoms Act 2012* legislation.
- 28 February 2013 - all authorising officers and applicant officers from the Trading Standards and Waste Departments attended a *RIPA* Refresher and Introduction to the Use of the NAFN System course which was provided by NAFN.
- 22 December 2015 - the authorising officers and *SRO* attended a half day refresher seminar conducted by two prosecuting officers from the joint Harrow and Barnet LBC Legal Service (HB Law) (Buckinghamshire CC Legal Services and HB Law have a close relationship sharing their Head of Service).
- 27 April 2015 - Mr Dart and likely applicants from trading standards attended a *RIPA* refresher course conducted by an experienced barrister in this field of work.

27. Attention was drawn to the advisability of ensuring that officers receive refresher training at regular intervals to ensure that they do not become stale. Intervals of about 18 months are advisable and these need to embrace the CEO and whoever deputises in his absence. It is appreciated that the present CEO is likely to retire in March 2016 and this requirement should be taken up with his successor. As an alternative to face-to-face training the adoption of an e-learning *RIPA* module could be considered as part of the already existing e-learning system within the Council.

See recommendation

Policy and Procedures.

28. Buckinghamshire CC's policy and procedural guide to *RIPA* is to be found in its *Covert Surveillance Policy and Procedure, RIPA Part 2* document. Described at the time of the last inspection as a "concise and informative document which provides an excellent guide for any applicant or authorising officer", it remains so. It was last revised in December 2015. Web links are provided to Home Office sites for the downloading of current forms and the *Codes of Practice*. It would be useful to add to those a link to the OSC website. The document currently, but inadvertently, refers to the most recent codes as 2010 which should be amended to 2014. A few further amendments were discussed with the officers, in particular:
- indicating where relevant that the duration of an authorisation commences with the approval of a magistrate;
 - that the controller and handler managing a source must be two separate individuals and not "an individual officer" as presently described;
 - include *reviews* within the information database maintained by the *SRO*;
 - add a section relating to social media investigations.

See recommendation

Councillor Responsibilities

29. An annual *RIPA* report is delivered to the Regulatory and Audit Committee of the Council and since November 2015 Ms. Ashmead has commenced the delivery of a quarterly report to the same committee. This is in accordance with the *Code of Practice for Covert Surveillance and Property Interference*, 3.35. Quarterly reports should indicate both activity and inactivity.

CCTV

30. CCTV cameras are operated on Council buildings for security purposes and other cameras are used for traffic control. All are appropriately signed and overt.

Conclusions

31. Buckinghamshire County Council has undergone considerable organisational changes in the recent past and they include, in 2015, changes to the management and authorising personnel engaged with *RIPA*. It was most encouraging to note that those officers who had undertaken new roles were conscientiously concerned to ensure that the Council remains compliant with the legislation. Changes directed to a more robust approach to oversight were clear and if maintained should ensure a further improvement in the standard of application and authorisation.
32. The Council has substantially reduced its reliance on covert surveillance as a tool of investigation. Reasons for that had been given above and it is likely that the reduced levels of authorisation will continue. The only area actively concerned is trading standards and, although now embraced by the joint Trading Standards Unit within the responsibility of Surrey CC, authorisations affecting Buckinghamshire will still be granted by the Council's authorising officers. This will continue to require the oversight of the Buckinghamshire *SRO/RIPA Co-ordinating Officer*.
33. Ms. Ashmead is confident that she can retain both overall and day-to-day responsibility for *RIPA* whilst authorisation remains at its present level. Further consideration may have to be given to the separation of these roles in the event that the level of authorisation increases.
34. Whilst it was encouraging to note that most of the recommendations of the previous report had been discharged it was somewhat disappointing that some of the proposed amendments to the *Covert Surveillance Policy and Procedure* document remain outstanding and to further note that some of the weaknesses in application/authorisation identified in the last report remain to be addressed. It is to be hoped that these will be among the first issues addressed following this report. Overall

the Council has adopted a good system for the management of *RIPA* and authorisation is concentrated very capable hands.

Recommendations

35.

- I. Amend the central record of authorisations and ensure that it reflects all authorisations granted by the Council. (paragraph 9).
- II. Address by training the weaknesses highlighted in the examination of documents and establish a programme of regular refresher training of authorising officers and likely applicants. (paragraphs 10-12, 27).
- III. Fully discharge the recommendations of the last inspection report and amend the *Covert Surveillance Policy and Procedure* in accordance with this report. (paragraphs 15,24 and 28).

**His Honour Norman Jones, QC,
Assistant Surveillance Commissioner.**