



Office of Surveillance
Commissioners

OSC/INSP/075

The Rt.Hon Sir Christopher Rose
Chief Surveillance Commissioner
Office of Surveillance Commissioners
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31st July 2007

**OSC INSPECTION REPORT – WIRRAL METROPOLITAN BOROUGH
COUNCIL**

Date of Inspection : 30th July 2007

Inspector : Mr Richard Allsopp

Address of Public Authority : This report should be sent to Mr Stephen Maddox, Chief Executive, Wirral Metropolitan Borough Council, Town Hall, Brighton Street, Wallasey, Wirral, Merseyside CH44 8ED.

REVIEW OF PROGRESS

Structures and Procedures

1. The last OSC inspection of the Wirral Metropolitan Borough Council was conducted in June 2003 by an Assistant Surveillance Commissioner with the subsequent report dated 2nd July 2003. The overall structure of the Council remains as previously reported.
2. At the time of the last inspection the Council had no corporate guidance document covering the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) relying instead on various documents adopted by the departments involved in covert activity. A centrally retrievable record of authorisations had not been established and departments were keeping their own records. Acting on the advice of the Assistant Surveillance Commissioner, all the matters raised at the last inspection have been incorporated into a Council RIPA Policy and Employees Guide covering Directed Surveillance and the Use of Covert Human Intelligence Sources. It was published to all departments in December 2003 and revised in 2004 in order to reflect the changes brought about by Statutory Instrument 2003 No 3171.

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3. The latest version of the RIPA forms have been obtained from the Home Office but as yet they have not been brought into use.
4. Six Authorising Officers have been nominated covering the four departments actively using the powers vested in the Council, all of whom accord to the designation contained in latest Statutory Instrument. The specific responsibilities of the Chief Executive have been recognised.
5. The policy requires the Authorising Officer to forward details to the Head of Legal and Member Services for inclusion in the central record which is maintained on his behalf by Simon Goacher, a Solicitor in Legal Services. In practice, at quarterly intervals copies of all applications, authorisations, renewals and cancellations are called for and entered in the central record. The documents are in paper format and retained in folders, with an overview sheet for each department containing all the details required by paragraph 2.14 of the Covert Surveillance Code of Practice. A computerised system is under consideration. There is no corporate system for allocating the documents a Unique RIPA Reference Number. A limited amount of central monitoring is conducted by Mr Goacher. The Community Safety Solicitor meets the Anti Social Behaviour Team on a weekly basis to review their investigations and provide appropriate advice over the use of covert surveillance.

Use of RIPA

6. Since the last inspection 96 authorisations have been granted for Directed Surveillance, the majority on behalf of the Anti Social Behaviour Team who deploy covert video recorders from the homes of complainants to capture images of anti social behaviour by neighbours. A private contractor is engaged to provide and deploy the equipment. Three other departments have obtained a small number of Directed Surveillance authorisations; Trading Standards, Planning Enforcement and the Insurance Section. The latter employs Private Investigators to conduct covert surveillance on its behalf.
7. Covert Human Intelligence Sources have not been used and no other Services have sought authorisations. None of the authorisations involved the possible acquisition of 'confidential information/material' or had been 'self authorised'.

Previous Recommendations

8. The 2003 OSC inspection report contained nine recommendations.
 - (i) A corporate policy on RIPA applicable to all Departments should be introduced as soon as possible.
 - (ii) In that policy care must be taken to remedy the defects in the existing separate policy statements used by the Departments.

Action: Suitable policy has now been published and adopted by all Departments.

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- (iii) Future training must ensure that the concepts of *necessity* and *proportionality* are fully understood by all staff likely to become involved in covert surveillance.
- (iv) It is not advisable for Authorising Officers to grant authorisations without themselves receiving relevant training.

Action: When RIPA was first introduced the then Authorising Officers undertook training on the subject and since then a number have received guidance from attending courses and seminars held by their own professional bodies or the Home Office. In 2006 the entire Anti Social Behaviour Team undertook a five day surveillance training course provided by the Merseyside Police which included RIPA as a component within it. The Applicant from Planning Enforcement has attended no less than three training courses on RIPA and the Trading Standards Manager attended a RIPA Review Stakeholder Forum organised by the Home Office in April of this year. As a result, he is currently working on developing a three day training course for all Enforcement Officers, an element of which will be RIPA. It is hoped that the course will be repeated regularly and will be modular in nature so that the RIPA element could be used as initial training for new Enforcement Officers and also refresher training for existing Officers.

Whilst various initiatives have been introduced, the Council has not adopted a corporate response to these two recommendations. In those applications examined, proportionality is still not described adequately and action plans to minimise collateral intrusion are not protecting innocent members of the public sufficiently. From interviews with Applicants and Authorising Officers, it is apparent that there are still gaps in the training provision and refresher courses are needed. A training needs analysis is long overdue to identify those members of staff requiring either initial or refresher RIPA training. Thereafter the Council should provide this training at a corporate level.

- (v) Care must be taken in all future applications for authorisation to ensure that any proposed course of action is fully described in order to avoid the possibility of errors made in *R v Sutherland & Others*.

Action: Applicants are now more fully describing the surveillance activity they wish to carry out but Authorising Officers are not providing a comprehensive statement outlining the activity they are prepared to sanction. Instead they are relying on a pre-printed statement in the now outdated Home Office form which refers to the application for detail. It was pointed out to all Authorising Officers that the latest Home Office model authorisation form requires a number of points to be covered and they were strongly advised to use the form in any future authorisations. This is particularly relevant when outside agencies such as Private Investigators are employed to carry out the surveillance. A comprehensive authorisation statement should be provided to them to ensure their activity is within the parameters set.

- (vi) A system of regular reviews of authorisations should be introduced in order to ensure prompt cancellations.

Action: The Council policy requires regular reviews of authorisations to be conducted but none of the authorisations inspected appeared to have been formally

RESTRICTED

reviewed. In most cases the Authorising Officer failed to record a review date. It is accepted that informal reviews are being conducted, particularly within the Anti Social Behaviour Team which meets with a Solicitor on a weekly basis but the requirements of paragraph 4.21 of the Covert Surveillance Code of Practice are being overlooked, particularly the need to record the results of the review on the central record of authorisations. The Home Office RIPA review form should be taken into use as a matter of urgency. All but one case inspected had been properly cancelled.

(vii) A central record of authorisations should be created in order to comply with the Code of Practice.

Action: A central record is now being maintained but not in full accordance with the Code of Practice. The details contained in paragraph 2.14 are recorded but only on a quarterly basis, thus at any one time it could be significantly outdated. In discussions with Simon Goacher, the Solicitor responsible for its upkeep, the Inspector pointed out the requirement for the record to be regularly updated, whenever an authorisation is granted, renewed or cancelled. Reviews are not being recorded and there is no provision to highlight 'self authorised' cases as required by paragraph 4.14 of the Code.

(viii) An appropriate officer of the Council should be designated as Monitoring Officer for RIPA and be responsible for the maintenance and safe custody of the central record.

Action: The Head of Legal and Member Services has been delegated to carry out this role and a Solicitor in his department conducts the day to day work on his behalf. It is evident that insufficient central monitoring is being conducted, the record should be used more pro-actively to identify critical dates and ensure all the relevant documents are submitted and recorded. At present there is no reporting mechanism to members on the use of RIPA. It is proposed that there be an annual report to the Chief Officers Management Team and Cabinet on the use of RIPA.

(ix) It is good practice to make copies of the Home Office Codes of Practice available at the Council's offices for consultation by members of the public on request.

Action: The Council does not believe that it is likely that members of the public will need to access a paper copy of the Codes of Practice and has not adopted this practice. It has however ensured that all officers who deal with investigations do have copies and this was confirmed during the inspection. It is worthy of note that whilst the interim Codes of Practice advocated this approach, the substantive Codes have not thought it necessary to re-iterate this advice.

9. Whilst the actions taken by the Council have addressed many of the significant issues raised in the previous inspection report, more work needs to be done to fully rectify the previous deficiencies.

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SIGNIFICANT ISSUES

10. Central record

The record needs to be regularly updated on a day by day basis rather than the present quarterly arrangement and contain the record of reviews and any self authorised cases. It should be used more pro-actively as a central management tool to ensure full compliance across all departments. There is no corporate system for the issuing of a Unique RIPA Reference Number (URN) to the various documents.

11. Training

A training needs analysis is long overdue to help identify knowledge gaps and a corporate approach to the provision of appropriate training is needed.

12. Directed Surveillance

- Applications are being drafted to a reasonable standard but Applicants are still unaware of the need to properly explain the proportionality of their intended surveillance activity and to provide an action plan to minimise collateral intrusion.
- Applicants within the Anti Social Behaviour Team are mistakenly submitting multiple applications covering a single operation. Typically, if they wish to place a covert video camera watching the front of a particular property and another covering the rear, they are submitting two separate applications and obtaining two authorisations for the same operation. It was pointed out to them that a comprehensive application could cover a multitude of appropriate tactics which the Authorising Officer could then consider within a single authorisation statement. However, they were cautioned against using fresh tactics at a later date which had not been initially authorised.
- Authorising Officers are not providing a comprehensive authorisation statement, relying on the pre printed statement on the now outdated Home Office forms. Effective start and end times are not being recorded.
- Reviews of authorisations are not being called for or documented.
- Ordinary authorisations are being granted for less than the prescribed three months, in some cases one month.
- In one case an authorisation was renewed after it had time expired in contravention of paragraph 4.24 of the Code of Practice.

13. Forms

The Council has recently acquired the latest version of the Home Office forms but has not yet introduced them. The Inspector is satisfied that many of the imperfections found in the earlier applications and authorisations inspected will be corrected by the

RESTRICTED

use of the new forms because they prompt the author to provide the relevant information.

14. At the commencement of the inspection, the Inspector was courteously welcomed to the Council by Mr Mark Reaney (Head of Legal and Member Services). At the conclusion, it was pleasing that the Chief Executive Mr Stephen Maddox found time in his busy schedule to receive feedback. The Chief Executive was extremely knowledgeable and showed considerable interest in all matters affecting RIPA. The Inspector is grateful for all the facilities made available to him both before and during the inspection by Mr Simon Goacher and for the co-operation and openness of all the staff he met.

RECOMMENDATIONS

15. The Head of Legal and Member Service, in his RIPA monitoring role should ensure that the latest version of the Home Office model forms are used for authorising all future Directed Surveillance applications and that through the use of such forms, the imperfections found in the earlier applications and authorisations are not repeated (paragraphs 3 and 13).

16. The central record should be regularly updated and capture all the information required by the Codes of Practice. It should be used more effectively in order to provide central oversight and monitoring of all authorisations (paragraphs 8(vii), 8(viii) and 10).

17. A training needs analysis should be undertaken to identify knowledge gaps and thereafter a corporate RIPA training event held to educate and inform all potential Applicants and Authorising Officers (paragraphs 8(iv) and 11).

18. The issues and imperfections discovered during this inspection should be included in the curriculum of any future corporate RIPA training event (paragraphs 8(v), 8(vi) and 12).



Richard Allsopp
Surveillance Inspector