



St. Helens Council

TO: Audit and Governance Committee

Democratic Services

Town Hall
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Merseyside
WA10 1HP

Contact: Joanne Griffiths MBE
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Our Ref: JG/
Your Ref:

18 March 2019

Dear Sir/Madam,

AUDIT AND GOVERNANCE COMMITTEE – 20 MARCH 2019

Please find attached the undermentioned item which was marked “To Follow” on the Agenda for the above meeting.

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Yours faithfully,

Joanne L Griffiths

Joanne Griffiths MBE
Democratic Services Manager

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Audit and Governance Committee
20 March 2019

INVESTIGATORY POWERS COMMISSIONER'S OFFICE INSPECTION REPORT

WARDS AFFECTED

All

EXEMPT/CONFIDENTIAL ITEM

No

1. PROPOSED DECISION

1.1 To note the Investigatory Powers Commissioner's Office inspection report in relation to the Council's use of directed surveillance and covert human intelligence sources.

2. JUSTIFICATION FOR THE DECISION

2.1 The Terms of Reference for the Audit and Governance Committee require it to:

- consider the reports of external audit and inspection agencies and monitor management action in response to the issues raised.

3. RIPA AUTHORISATIONS/JUDICIAL APPROVALS

3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement agencies have the powers they need to conduct investigations effectively. Members will be aware from previous reports in respect of the Council's use of RIPA powers, that it must have in place a system of authorising, recording and reviewing any surveillance that it carries out that is covered by the Act.

3.2 The Council is included within the RIPA framework with regard to the authorisation of both directed surveillance and of the use of covert human intelligence sources (CHIS). The Council is only able to authorise surveillance under RIPA if it is for the purpose of preventing or detecting crime or preventing disorder subject to the "serious offence test". These are criminal offences punishable by a term of at least six months imprisonment or criminal offences relating to the under-age sale of alcohol or tobacco.

3.3 The Protection of Freedoms Act 2012 made a number of changes, amongst other things, to the RIPA process. Since 1 November 2012, local authorities have been required to obtain judicial approval from the Magistrates Court before they can use their existing RIPA powers. This applies to all local authority RIPA usage, including communications data, directed surveillance and covert human intelligence sources (CHIS). A judicial approval will also be required if authorisations are being renewed.

3.4 The Council is required to maintain a central record of internal authorisations signed by authorised officers. However, the authorisation will not take effect until judicial approval has been granted. Approval can only be given if the Magistrate is satisfied that:

- (a) there were reasonable grounds for the authorising officer approving the application to believe that the surveillance/CHIS was necessary and proportionate and that those grounds remain;
- (b) the authorising officer was of the correct seniority within the Council, i.e. a Director, Head of Service or Service Manager, as per the 2010 Order;
- (c) the granting of the authorisation was for the prescribed purpose, i.e. preventing or detecting crime and it satisfies the Serious Offence test for directed surveillance.

3.5 The Deputy Director, Legal & Governance is the Council's Senior Responsible Officer ("SRO") for the purposes of RIPA in accordance with the Home Office Codes of Practice. It is considered good practice that a senior responsible officer should be responsible for:

- the integrity of the process in place within the Council to authorize directed surveillance;
- compliance with the legislation and Codes of Practice;
- engagement with the Commissioner and inspectors when they conduct their inspections; and
- where necessary, overseeing the implementation of any post-inspection action plans recommended by IPCO.

The Council's Legal Services Manager is the RIPA Coordinator with day to day responsibility for advice and guidance to client departments on the process.

4. INVESTIGATORY POWERS COMMISSIONER'S OFFICE ("IPCO") INSPECTION FINDINGS

- 4.1 The Council's use of its RIPA powers in respect of covert surveillance is subject to annual reporting and triennial inspection by the IPCO (formerly known as the Office of Surveillance Commissioners). The Council was inspected on 10 October 2018 by an Inspector from IPCO. During the inspection, authorisations and procedures were closely scrutinised and a wide group of Council officers from relevant Sections met with the Inspector.
- 4.2 The inspection report was received by the Chief Executive in November 2018. The inspection noted that the Council continues to have a robust RIPA structure with good procedures. The findings in the report have been shared with relevant officers
- 4.3 There is one recommendation in the inspection report that relates to the submission of cancellations in the context of directed surveillance and CHIS. The recommendation states authorisations for directed surveillance and CHIS should be submitted expediently after the covert activity is no longer necessary or proportionate. The cancellation should detail the use made of the covert activity, the handling of any surveillance material and be suitably endorsed by the authorizing officer.
- 4.4 This recommendation has been shared with the authorising officers in Regulatory

Services (Trading Standards) who make the most use of RIPA powers. Changes have been made to the recording and timescales for cancellations in order to improve the oversight of authorised covert activity.

- 4.5 The inspection report notes that the three recommendations from the Council's previous inspection in 2015 have been adequately addressed and are now discharged.
- 4.6 Other learning points were identified by the Inspector which have been considered and addressed since receipt of the report. The report comments on the Council's use of non-RIPA activity where the criteria for authorisation as directed surveillance or CHIS is not met. There is now oversight in place of the records maintained in relation to the Council's use of non-RIPA activity to monitor the level and type of cases. A quarterly update is provided by Internal Audit to the Council's SRO and RIPA Co-ordinator to consider any potential RIPA implications. An Authorisation for Monitoring/Impact Assessment Form used by Internal Audit and HR has been revised to take account of the issues raised in paragraph 8.13 of the report. Whilst there is very limited use of this type of activity, the authorisation form ensures the process is managed appropriately in accordance with the Employment Practices Data Protection Code issued by the Information Commissioner's Office.
- 4.7 A similar non-RIPA authorisation form has recently been issued to Team Managers in the People's Services Department as good practice in respect of the use of social networking sites (SNS) and internet research by social workers in case work. This is in conjunction with the guidance in the Council's Social Media Investigations Procedure.
- 4.8 The Council's RIPA Policy Guidelines on the use of directed surveillance and CHIS will be reviewed and reported to the next meeting of this Committee for approval.
5. RISKS ASSOCIATED WITH THE PROPOSED DECISION
- 5.1 None.
6. OTHER IMPLICATIONS
- 6.1 None.
7. PREVIOUS APPROVAL/CONSULTATION
- 7.1 None.
8. ALTERNATIVE OPTIONS AND IMPLICATIONS THEREOF
- 8.1 None.

Appendix 1: Letter to the Chief Executive from IPCO dated 5 November 2018

Appendix 2: IPCO Inspection Report received November 2018

Jan Bakewell
Deputy Director, Legal & Governance

The contact officer for this report is Mrs. Jan Bakewell, Town Hall, Victoria Square

Tel. (01744) 673209



Investigatory Powers
Commissioner's Office

PO Box 29105, London
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Mr Mike Palin
Chief Executive
St Helens Metropolitan Borough Council
St Helens Town Hall
Victoria Square
St Helens
WA10 1HP

5th November 2018

Dear Mr Palin,

Inspection Report – St Helens Metropolitan Borough Council

I enclose a copy of a report dated 12th October 2018 prepared by Mr Graham Wright, an Inspector with the Investigatory Powers Commissioner's Office, which I fully endorse. This follows an inspection visit carried out at your Council on 10th October 2018 to review your compliance with the statutory provisions of Part II of the Regulation of Investigatory Powers Act 2000, which is part of my responsibilities.

I am very pleased to note that the previous recommendations have been adequately addressed and are now discharged. Moreover, the tenor of the present report is generally very positive.

There is one recommendation that relates to the submission of cancellations in the context of directed surveillance and covert human intelligence sources (CHIS). This step is a requirement of the Act and the Code of Practice. In the event, your Council is vulnerable to challenge as regards the correct management and oversight of authorised covert activity. There are other learning points identified by Mr Wright and I hope that your staff will make full use of the inspection process.

I trust that you found this inspection a constructive experience and I look forward to receiving your action plan in relation to the one recommendation that has been made.

Yours sincerely,

A handwritten signature in black ink that reads 'Adrian Fulford'.

The Rt. Hon. Lord Justice Fulford
The Investigatory Powers Commissioner

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IPCO

Investigatory Powers Commissioner's Office

Inspection – St Helens Metropolitan Borough Council

1. Date of inspection

10th October 2018

2. Inspector

Graham Wright

3. Introduction

3.1 St Helens Metropolitan Borough Council is one of five unitary authorities in Merseyside serving a population of approximately 178,000. It is led by a Chief Executive and three Strategic Directors with responsibility for People's Services, Place Services and Corporate Services.

3.2 The Council was last inspected by the Office of Surveillance Commissioners in September 2015 by Sir David Clarke, Assistance Surveillance Commissioner. Since that date there have been three authorisations for directed surveillance granted and one authorisation for a covert human intelligence source (CHIS). None of the authorisations involved the acquisition of confidential information, the CHIS authorisation was not for a juvenile or vulnerable person and I was not informed of any 'relevant error'.

3.3 The Chief Executive is Mr Mike Palin and the address for correspondence is St Helens Town Hall, Victoria Square, St Helens, Merseyside, WA10 1HP (email: mikepalin@sthelens.gov.uk).

4. Inspection approach

4.1 The purpose of the inspection was to examine policies, procedures and operations in relation to Part II of the Regulation of Investigatory Powers Act 2000 (RIPA). The methodology for the inspection was agreed with Jan Bakewell (Deputy Director Legal and Governance) in advance of my visit.

4.2 I had an initial meeting with Jan Bakewell, who is the 'senior responsible officer', and Mark Fisher, Legal Services Manager, who is the RIPA Co-ordinator. We discussed the response to the recommendations of the previous inspection, the provision of training for staff, the authorisation

procedures, oversight arrangements and I gave feedback on the pre-read material that I had been provided with prior to my visit.

- 4.3 I then examined the Central Record of authorisations, the authorisations granted since the last inspection and two Non RIPA approvals.
- 4.4 There was a meeting with the following members of staff who represented those departments that may use covert activity, who were authorising officers, or had oversight responsibilities:
- Jan Bakewell – Deputy Director, Legal and Governance
 - Mark Fisher – Legal Services Manager
 - Adam Cartwright – Legal Officer
 - Mick Cornall – Head of Security
 - Gordon Lee – Assistant Director, Service Delivery
 - Rachael Farrelly – Fraud and Error Reduction Manager
 - Anthony Smith – Service Manager, Regulatory Services
 - Caroline Barlow – Deputy Director, Finance and Human Resources
 - Vicky Velasco – Service Manager, People’s Services
 - Robert Crookes – Assistant Director, Adult Social Work
 - Darrell Wilson – Chief Trading Standards Officer
 - Camilla Ventre – Team Manager, Children’s Services
 - Nicola Hamilton – Enforcement Team Leader

We discussed the roles of those present and their use of covert activity, including the use of social networking sites (SNS) and the internet in support of those roles. I also provided feedback on the authorisations that I had earlier examined.

- 4.5 At the conclusion of my visit I provided feedback to Jan Bakewell and Mark Fisher regarding my findings. (The Chief Executive was on annual leave on the day of my visit.)

5. Review of progress on recommendations

- 5.1 The 2015 inspection made three recommendations, all of which were accepted by the Council.
- 5.2 *That a RIPA training needs analysis be conducted and that RIPA update/refresher training be provided to all relevant officers, including the Chief Executive;*

Discharged: An assessment of the training needs was conducted and provided to the officers identified as requiring it (for more details see the relevant section of this report below). Notwithstanding this, it transpired during the course of this inspection that some further awareness training in relation to SNS and the internet may be advisable.

- 5.3 *That further consideration be given to the issue of juvenile test purchase operations, particularly in relation to under-age sales of alcohol;*

Discharged: The previous practice of carrying out under-age test purchase operations in a covert manner but without a RIPA authorisation has ceased. Now a letter is sent to relevant licensed premises giving notice that a test purchase operation will be conducted in the following few weeks, no covert recording equipment will be utilised by the under-age volunteer and Trading Standards staff will not enter the premises to covertly observe any transaction.

- 5.4 *That care be taken to ensure each RIPA application is referred to a designated authorising officer who is not, and cannot be perceived to be, a person involved in the investigation.*

Discharged: The cadre of authorising officers is sufficient to avoid 'self-authorisation' and applications are allocated to officers that have no line management responsibilities for the section/unit undertaking the covert activity.

6. Policies and procedures

- 6.1 As mentioned above, I had examined the main policy and guidance document prior to attending at the Council. The documents that I examined and my comments in relation to them are as follows:

- i. *RIPA Policy Guidelines on the Use of Directed Surveillance and Covert Human Intelligence Sources.* Revised in October 2018, this is the main guidance document and provides accurate and useful information for practitioners in a concise manner.
- ii. *Social Media Investigations Procedure.* Revised in October 2018. Gives advice based on the OSC Procedures and Guidance. Refers to a procedure whereby individuals wishing to carry out research on persons need management approval.
- iii. *CCTV Code of Practice.* Along with several appendices sets out the framework for the management, use and access to the CCTV system. There is only passing reference to RIPA in the Code of Practice but the main guidance document (above) contains advice regarding when CCTV usage might meet the criteria for authorisation and the process for ensuring that a copy of an authorisation is seen if the system is being used in such circumstances.

- 6.2 The core application and authorisation process is that applicants complete the requisite forms, which are available on the intranet site, and then forward them to an authorising officer for their input. There is often discussion with Legal Services and/or the authorising officer before the application is submitted. The completed forms are sent to Legal Services for quality assurance before an appointment is made at Liverpool City Magistrates

Courts for judicial approval. This hearing will be attended by a legal officer and the applicant. The Central Record of authorisations is completed - this is in the form of a computerised spreadsheet and contains all the required data. A copy of the authorisation is sent to Legal Services and securely retained, the original forms are held by the investigating team.

- 6.3 There are five appointed authorising officers – not including the Chief Executive and the ‘senior responsible officer’. All except one have received training at the most recent session. I would say that this number appears somewhat excessive given the current rate of authorisations granted. There needs to be sufficient resilience to cater for absences but not too many whereby officers are never called upon to act in this capacity. The expectation of IPCO is that all appointed authorising officers will be trained and kept up to date with changes to allow them to properly carry out this function. This can create an unnecessary burden if there are more authorising officers appointed than needed.
- 6.4 The ‘senior responsible officer’ (SRO) is the Deputy Director, Legal and Governance. This officer was until recently the RIPA Co-ordinator and is experienced and conscientious. The Legal Services Manager has been appointed as the RIPA Co-ordinator. These two persons work closely to ensure oversight of RIPA activity.
- 6.5 Elected members on the Audit and Governance Committee receive quarterly reports on the use being made of RIPA. This same committee also approves the policy on an annual basis. I advised that, given the current level of usage, less frequent reporting would be considered as acceptable.
- 6.6 In addition to the RIPA procedures the Council also has a Non RIPA approval process. This is very much akin to the RIPA process, in that template forms are completed by an applicant justifying the use of covert surveillance and addressing the necessity and proportionality of the activity. A senior manager will sign the form giving approval and setting a date for a review of the activity. It is intended to extend this process to incorporate SNS or internet research that does not meet the criteria for authorisation under RIPA but is more than just an initial check on open source sites. (For more details of this process and my findings, see the relevant section of this report below.)

7. Related training

- 7.1 Since the previous inspection the following training has been undertaken by council staff:
- i. The Chief Executive received a personal awareness briefing from the RIPA Co-ordinator;
 - ii. Staff from Children’s and Adult Services have received training in relation to use of SNS and the internet in April 2017;

- iii. Trading Standards staff have received training in conducting online investigations;
 - iv. Authorising officers and applicants received RIPA training in October 2018.
- 7.2 Further refresher training will be carried out and the SRO recognised the need for staff from Children's and Adult Services to be given training relating to use of the internet and SNS as a result of discussion during this inspection.

8. Inspection Findings

Directed Surveillance

- 8.1 It has only been Trading Standards that have continued to use covert surveillance and sought authorisations. This is due to a variety of reasons: benefit fraud investigations are now undertaken by the DWP; staff reductions leaving inadequate resources to conduct conventional surveillance; more overt methods being preferred (even if less effective than covert surveillance); and some technical surveillance equipment becoming rather outdated.
- 8.2 In my conversations with staff I was reassured that there was a clear understanding as to when an authorisation should be sought (notwithstanding my comments below at paragraph 8.13 regarding the use of the Non RIPA process by Internal Audit) and no unauthorised surveillance was taking place. Those authorisations that had been granted in the past three years tended to be in support of online investigations relating to counterfeit goods.
- 8.3 I examined the authorisations and the one recurring failure was that cancellations were submitted in a rather tardy manner and failed to properly describe the activity that had been conducted under the authorisation, detail the outcome of the surveillance and how any surveillance material was handled. The authorising officer also failed to make any comments at cancellation. **I make a recommendation in this regard.**
- 8.4 Other more minor and exceptional failings were noted as follows:
- i. In one authorisation (URN: TS/01/17/DS) there was authorisation for online monitoring of social media accounts of a subject suspected to be selling counterfeit goods. This aspect of the authorisation was unnecessary as there was a CHIS authorisation covering this activity.
 - ii. The authorising officer's consideration of necessity and proportionality was rather perfunctory in the same authorisation.
 - iii. Reviews of authorisations had been completed but not submitted to the Legal Services for retention with the Central Record.

Covert Human Intelligence Sources (CHIS)

- 8.5 Whilst very rarely used, it is noteworthy that the Council is prepared to engage in this particular form of covert activity when necessary. This case involved a Trading Standards officer engaging online with a subject suspected of selling a variety of counterfeit goods. This interaction was more than a mere purchase(s) from a commercial site, it was envisaged that several purchases would be made but this would entail social media interaction and was thus properly assessed as meeting the criteria for authorisation as a CHIS.
- 8.6 The application and authorisation were of a good standard and clearly set out the relevant facts and considerations. The use and conduct was relevant and set clear parameters for the officer. The management of the CHIS was compliant and the record of the activity undertaken was recorded in the officer's diary and checked by the handler.
- 8.7 The only failing was in relation to the cancellation, which, as with those for directed surveillance, was submitted in a rather tardy manner, lacked a fuller description of the activity and failed to attract any comments from the authorising officer.

Use of the Internet and Social Networking Sites

- 8.8 This is a complex and challenging issue for public authorities, particularly those for which covert activity is not core business activity. To the credit of St Helens MBC, it has recognised the need to have specific guidance in this regard - I refer to this above at paragraph 6.1(ii). There has also been an awareness presentation to staff in Children's and Adult Services.
- 8.9 In discussions with staff I was told that there is very limited use made of these media to carry out research or investigation into persons. Trading Standards do make more invasive use and staff have had more detailed training and had online activity authorised under RIPA. Other usage made has been only initial checks on what would be termed open source sites.
- 8.10 My only reservation is that I sensed that staff were somewhat over-cautious regarding the extent that they were making use of information on the internet or SNS. The revised Covert Surveillance and CHIS Codes of Practice have quite extensive guidance and this might usefully be drawn upon to extend the current council policy and training.

Non RIPA Surveillance

- 8.11 There is a process whereby covert surveillance, considered not able to be authorised under RIPA, is approved and conducted. In the past this has primarily only been undertaken by the Internal Audit Department in relation to investigations regarding employee conduct. The process is explained in the Council's Procedure Manual and entails the completion of a form setting out

the nature of the investigation, what activity is sought to be conducted, the necessity and proportionality of that activity and this form is then signed by a senior manager as approved and a date to review the investigation is stipulated.

8.12 There is also a Central Record of such approvals maintained by Internal Audit and this showed that there have been five such investigations since the previous inspection. I noted from the detail on the Central Record that two of the investigations concerned staff suspected of [REDACTED]. I was provided with two approval forms for closer examination. One related to an investigation into [REDACTED] and the other related to a member of staff suspected of not carrying out their duties as expected, not attending premises and meeting people as required.

8.13 I have the following comments to make in relation to the process:

- i. The process is simple, in a standardised format and addresses many of the human rights considerations that would allow a defence of the interference with the rights on the subject; however, I feel it would be better for there to be some level of 'external' oversight by having the SRO and RIPA Co-ordinator involved in this respect to some extent, rather than it being within Internal Audit.
- ii. The applicants showed good consideration of the required aspects of the investigation but there was a failure by the approving officer to show any thoughts/considerations.
- iii. There was no other record of the activity other than the initial application. The audit trail would be much enhanced if a cancellation form/submission was required and this gave details of the activity conducted, the value to the investigation and any outcomes known at the time. It would also bring a formal closure to the activity.
- iv. Of main concern was that this process was used for two investigations concerning [REDACTED]. When I questioned why an authorisation for directed surveillance was not sought it was explained that: no criminal proceedings were to be sought; there was doubt whether a Magistrate would approve any such application; and there was an element of uncertainty that the full protection of RIPA could be relied on. I gave my view that in the circumstances as known to me, a RIPA authorisation was appropriate and should be sought in the future where criminal conduct is being investigated¹, irrespective of whether it is intended to proceed to a criminal prosecution².

8.14 Consideration is being given to extending the use of this procedure to incorporate requests to carry out limited investigations on the internet and SNS, where the criteria for authorisation as directed surveillance or CHIS is not met. I would see this as good practice.

¹ The Covert Surveillance Code of Practice paragraph 3.35 refers to this

² OSC Procedures and Guidance Note 111 makes reference to enforcement powers of public authorities

9. Conclusion

- 9.1 Despite the size and status of St Helens Metropolitan Borough Council, its usage of the powers vested under the Regulation of Investigatory Powers Act 2000 has reduced to a trickle in recent years and this limited usage has very much been focused on the work undertaken by Trading Standards. Notwithstanding this, the regime of training, policy and guidance is of a good standard and those charged with oversight responsibilities are knowledgeable and conscientious.
- 9.2 I am pleased to report that the recommendations from the previous inspection have been discharged and I have only one recommendation to make, in relation to the submission of cancellations. There are, as usual, other learning points regarding: authorisations for directed surveillance; training in relation to use of the internet and SNS; and the use of the Non RIPA process. In a more general sense I would advise that the content of training and the main policy and guidance document is reviewed in the light of the revised Codes of Practice in relation to Covert Surveillance and Covert Human Intelligence Sources which contain quite substantial changes and a greater exposition of factors to be considered.
- 9.3 I would like to thank all the staff that I met for their courtesy, co-operation and positive response to the inspection. In particular thanks should be passed to Jan Bakewell who made all the arrangements for my visit, provided me with comprehensive pre-read material and hosted me on the day.

10. Recommendation

- 10.1 Authorisations for directed surveillance and CHIS should be submitted expediently after the covert activity is no longer necessary or proportionate. The cancellation should detail the use made of the covert activity, the handling of any surveillance material and be suitably endorsed by the authorising officer – paragraphs 7.3 and 7.7

**IPCO Inspector**