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Chief
Surveillance
Commissioner



Office of Surveillance
Commissioners

CHIEF EXECUTIVES OFFICE

05 AUG 2010

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3rd August 2010

Dear Mr. Hales,

Covert Surveillance

On 15th July 2010, an Assistant Surveillance Commissioner, HH Norman Jones QC, 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 Jones's report which I endorse. I am pleased to see that the recommendations made following the last inspection in 2007 have been discharged and that your Council continues to maintain a good standard of performance: you have a well - structured policy and dedicated officers. The present recommendations can be readily addressed.

They are that authorising officers be reduced in number and identified by rank and name, that a structured training programme be established and that your Surveillance Policy document be amended as indicated in para 31 of the report.

I shall be glad to learn that your Council accepts the recommendations and will see that they are 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
Chris Rose

Mr Robin Hales
Chief Executive
Sevenoaks District Council
Council Offices
Argyle Road
Sevenoaks
Kent TN13 1HG

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OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT

SEVENOAKS DISTRICT COUNCIL
15 July 2010

Assistant Surveillance Commissioner:
His Honour Norman Jones

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This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

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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Chief Surveillance Commissioner
Office of Surveillance Commissioners
PO Box 29105,
London,
SW1V 1ZU.



22nd. July 2010.

INSPECTION REPORT SEVENOAKS DISTRICT COUNCIL

Inspection 15th July 2010.

Inspector His Honour Norman Jones, QC.
Assistant Commissioner

Sevenoaks District Council.

1. Sevenoaks is the most western administrative district in the Kent. The District Council serves a population of approximately 114,000. The District comprises the principal towns of Sevenoaks, Swanley and Edenbridge, together with a number of smaller villages. The Audit Commission in 2009 considered it to be one of the four best run District Councils in England and Wales.
2. The Corporate Management structure is headed by the Chief Executive, Mr. Robin Hales. He is supported by two Deputy Chief Executives who are also Directors of Services. In turn they are supported by seven Heads of Departments. The *RIPA* Monitoring Officer is Mr. Adrian Stanfield, who is the Manager of Legal Services Partnership within the Department of legal and Democratic Services.
3. The Council engages in very limited covert surveillance having granted only one *RIPA* authorisation since the last OSC inspection. This was for the employment of *directed surveillance* in a benefits fraud case, and did not involve the use of the *urgency* provisions, or the gathering of *confidential information*. It was not *self authorised*.
4. The last inspection for the OSC was carried out by Mrs. Clare Ringshaw-Dowle, Surveillance Inspector, on the 31st. October 2007.
5. The Council offices are situated at The Council Offices, Argyle Road, Sevenoaks, Kent, TN13 1HG.

Inspection

6. The Inspection was conducted by way of discussion and interview with Mr. Stanfield, and by an examination of the Central File of Authorisations and the

single authorisation. A discussion with Mr. Stanfield and Mr. Moore followed concerning the authorisation. Finally a visit was paid to the CCTV Centre.

7. Among the *RIPA* issues discussed with Mr. Stanfield were the actions taken by the Council on the recommendations of the last report, the revised *Codes of Practice*, the *RIPA* management structure, the numbers of authorising officers, training, noise pollution and the Council's *RIPA* policy and procedures. Both Mr. Stanfield and Mr. Moore impressed with their knowledge of *RIPA*, and their determination that covert surveillance should only be used as a last resort.
8. Mr. Moore remarked on the fact that the Benefit Fraud department carried out between 120 and 130 investigations each year and last resorted to covert surveillance some two years ago.

Records.

9. The Central Record is a manually maintained matrix document. It is wholly compliant with the requirements of the *Codes of Practice* and is meticulously updated. The sole authorisation occurred shortly after the last inspection, and no further resort has been made to *RIPA* in the last two years. This is undoubtedly due to the determination of the Council to use covert surveillance only as a very last resort.
10. The process of authorisation and recording was outlined comprehensively in the last inspection report and continues to be adopted.
11. The sole authorisation resulted from a joint investigation by the Council and the Department of Works and Pensions. The application suffered from the usual problems of poor consideration of *necessity* and *consideration*. *Necessity* should embrace a consideration of *why the use of covert surveillance is necessary in the investigation*. *Proportionality* should contain a consideration of the three elements (a) *that the proposed covert surveillance is proportional to the mischief under investigation*; (b) *that it is proportional to the degree of anticipated intrusion on the target and others*, and (c) *it is the only option, other overt means having been considered and discounted*.
12. In other regards the application was of a good quality, detailing that which was required to be authorised and determining the likelihood of collateral interference. The only issue to be raised was whether it may have been advisable in the circumstances to have awaited further documentary investigation by the DWP before resorting to covert surveillance.
13. The authorisation provided good detail of what was authorised, though *proportionality* suffered omissions. A review date was set together with a correct expiry date. A review was correctly carried out with good detail being provided, and the authorisation was cancelled well within time, the DWP investigations having proved fruitful.
14. It was particularly comforting to note emails between the *RIPA Monitoring Officer* and the authorising officer demonstrating the *RIPA Monitoring Officer* chasing the authorisation and exercising oversight over its quality.

Past Recommendations.

15. The last OSC Inspection Report recommended:

- i. *The Central Record should be subtly revised so as to include the recording of any case falling under paragraph 4.14 of the Covert Surveillance Code of Practice and its CHIS equivalent.*

This recommendation has been discharged.

- ii. *Sevenoaks District Council should make good use of its CCTV Manager's position as Chair of the Kent County CCTV Users Group to liaise with Kent Constabulary to ensure that where the police force wishes to make use of this, and other, Council CCTV systems for authorised directed or intrusive surveillance, the Council's officers are provided with suitably concise copies of the relevant authorisation wording, suitably redacted as necessary.*

An initial "Memorandum of Understanding" required the police to provide the number and date of an authorisation and to give details of what is authorised, though without identifying the authorising officer. It further indicated that the police were thereby "entitled" to use the Council CCTV. This has now been superseded by a more satisfactory protocol between the police and the Council requiring a copy of the authorisation, suitably redacted, in such circumstances. This recommendation has been discharged.

Revised Codes Of Practice.

16. The Council is aware of the new provisions set out in the revised *Codes of Practice* and has given consideration to them.
17. A final decision has yet to be reached concerning the officer to be the Senior Responsible Officer for *RIPA*, but the Inspection was informed that it is almost certainly to be Ms. Christine Nuttall, Head of legal and Democratic Services. Unfortunately she was unable to attend the inspection due to being on leave. However she is said to be well aware of the responsibilities of such a role and that they include responsibility for the integrity of the *RIPA* process within the Council; for ensuring compliance with *RIPA* and its regulatory framework; for engagement with the Commissioners and Inspectors when they conduct inspections, and overseeing the implementation of any recommendations made by the OSC.
18. Consideration is being given to the structure of reporting to Councillors. This will require a regular report at about 3 monthly intervals and a fuller annual report. The likelihood is that the former will be directed to the most relevant Council Committee, and the latter either to that Committee or to the full Council. The reports must contain such information as allows the elected members to make valid judgements on whether there is adherence to the Council's *RIPA* policy and that it is adequate for purpose. It was emphasised that elected members should

not be involved with the authorisation process in individual cases, and that care must be exercised to ensure that identities of persons concerned in individual authorisations are not disclosed to elected members.

19. The Council is aware of the amendments to the rules concerning *directed surveillance* which involves premises in which legal consultations may occur, and that such surveillance is now governed by the rules relating to *intrusive surveillance*. This appears to preclude the Council from undertaking such surveillance. In any event it was considered that the Council was extremely unlikely ever to be concerned in such surveillance or where the acquisition of legally privileged material was likely, or, indeed, any *confidential information*. It is already precluded from engaging in *property interference*.

RIPA Management Structure.

20. The *RIPA* management team will consist of the SRO and the *RIPA Monitoring Officer*. The former will have overall responsibility for *RIPA* as outlined above (paragraph 16), and the latter will have day to day responsibility.
21. As *RIPA* Monitoring Officer Mr. Stanfield is responsible for the maintenance of the Central Record of Authorisations and the collation of *RIPA* applications/authorisations, reviews, renewals and cancellations. In addition he has responsibility for providing oversight of the *RIPA* process within the Council and for *RIPA* training. Therefore he already has responsibility for three of the four functions of a *RIPA* Monitoring Officer and the efficient undertaking of those duties is well reflected in the quality of the Central Record and the authorisation reviewed.
22. The fourth responsibility is the raising of *RIPA* awareness within the Council. This latter is of particular importance in Councils such as Sevenoaks DC where there is a very low usage of covert surveillance. In such circumstances there is an increased risk of unauthorised surveillance being undertaken, and it is important that this risk is addressed. Placing alerts on the Council intranet inviting consideration of authorisation if surveillance is contemplated; placing *RIPA* articles in internal Council publications and producing a *RIPA* leaflet are all possible means by which this may be achieved. Furthermore, if officers are in doubt they should be advised to contact the *RIPA* Monitoring Officer for advice.

Authorising Officers.

23. As already remarked Sevenoaks DC engages in very limited covert surveillance. This means that individual authorising officers have little experience of undertaking *RIPA* authorisations, and some have either never authorised, or do so only every two years or so. It is in such circumstances that errors are likely to be made.
24. The present authorising officers are five Heads of Departments "together with all more senior officers within the Council". The Chief Executive, and whoever deputises for him in his absence, are the only officers who may authorise the employment of juvenile or vulnerable Covert Human Intelligence Sources (*CHIS*) or where the acquisition of *confidential information* is likely (see *Codes of*

Practice, Annexes A) , and they must be fully *RIPA* trained. In addition the revised *Codes of Practice* require the SRO to be an authorising officer, though, as principal oversight officer she should only authorise in exceptional circumstances.

25. The number of authorising officers was discussed and it was felt they may be substantially reduced. It is unlikely that the Council will ever require the services of more than three authorising officers in addition to those who are specifically required by the regulations to authorise. All authorising officers must be fully *RIPA* trained and none should authorise until they have been trained. Each authorising officer should be identified in the Council policy and guidelines document both by name and office.

See recommendation

Training.

26. There is presently no structured training programme for *RIPA* within the Council. The most recent training sessions were in 2006 and 2007, both being conducted by external trainers. The material produced for the last training session was made available to the Inspection and was of a high quality. However it is to be noted that whilst the Chief Executive and most applicant officers attended, only three of the authorising officers did so.
27. Mr. Stanfield intends to ensure that training is conducted at 18 month to 2 yearly intervals. He has recently joined a job sharing arrangement with Tunbridge and Malling DC and it may be convenient and economical to arrange joint training.

See recommendation

Noise Pollution

28. The Council adopts the common process of notifying alleged offenders of its intention to carry out surveillance by recording machines before installing any such machine on a complainant's property. As such *RIPA* authorisation is generally not required.
29. There was discussion concerning the example of *noise pollution* set out in bullet 3 on page 23 of the revised *Code of Practice for Covert Surveillance and Property Interference*. It was advised that, whilst correct on its facts, care should be taken in cases where the recording equipment was capable of recording actual conversation. In such circumstances there was always a risk that *intrusive surveillance* may inadvertently be undertaken if the recorder was able to record ordinary level conversations. In addition care had to be taken if MATRON machines were deployed to ensure that any pre-recording or post-recording facility was either disabled, or that the operator was informed of it to again avoid the risk of *intrusive surveillance*.

Policy and Procedures

30. Council *RIPA* policy and procedures are to be found in its *Surveillance Policy* document. It is a well structured document and provides clear and succinct guidance to any officer undertaking covert surveillance.
31. Some possible amendments were raised during the inspection which could add further improvement. They include:
 - Applications/authorisations, reviews, renewals and cancellations should be submitted to the *RIPA Monitoring Officer* in their original form and not as copies. Copies should be retained within departments.
 - A section should be introduced describing the *RIPA* Management Structure and outlining the duties and responsibilities of the *SRO* and the *RIPA Monitoring Officer*.
 - A requirement that all authorising officers should be *RIPA* trained before being permitted to authorise, and that a list of authorising officers identifying them by name and rank should be included in the document.

(See recommendation)

CCTV

32. The Inspection was met by Ms. Sharon Wright, CCTV Manager, who provided a helpful and illustrative account of the system operated by Sevenoaks DC, for which the Inspection wishes to express its gratitude.
33. The Council owns and operates a digital CCTV system which covers a total of five areas including the Centre of Sevenoaks and a number of car parks. It consists of 96 cameras operated from the Central Control room. All are static though capable of rotation. None are situated in residential areas, and the operators are all trained to SIA standard and are well aware of the risks of *intrusive surveillance*.
34. Ms. Wright expressed her satisfaction with the Police/Council protocol now covering police usage of the equipment. She considered that the provisions requiring a copy of a *RIPA* authorisation before the police used the cameras for covert surveillance had been of great assistance.
35. The system is operated on a 24/7 basis by six operators working in shifts, but it is not now fully manned at all times. This is due to economic circumstances leading to cut backs. It means that between 9.00am and 1.00pm on Tuesdays to Fridays the cameras are unmanned, but record constantly.
36. The system is clearly well managed with attention paid to the requirements of *RIPA*.

Conclusions

37. Sevenoaks DC is an authority which has little resort to covert surveillance. Its policy of only doing so as a last resort is well reflected in its very low level of *RIPA* authorisation. In some Councils that would cause a reduction in application

to the required standards, but not so at Sevenoaks. The Council has a well structured Policy, dedicated officers, a good degree of training and a good level of performance. The minor matters raised may be easily addressed within the present system of training.

38. This is an authority which had achieved a good standard of performance at the time of the last inspection and continues to do so. This may be a further reflection of the standards found at the Council at the time of its overall assessment in 2009.
39. A great deal of the credit for the present *RIPA* performance is undoubtedly due to the dedication, competence and organisation of Mr. Stanfield.

Recommendations

- 40.
- I. Reduce the number of authorising officers and identify them by rank and name. (paragraph 25).
 - II. Establish a structured training programme. (paragraph 27)
 - III. Amend the *Surveillance Policy* document. (paragraph 31)

A handwritten signature in black ink, appearing to read 'Norman Jones', with a large, stylized initial 'N' and 'J'.

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

