



Chief
Surveillance
Commissioner

OFFICIAL - SENSITIVE

7th January 2015

Dear Mr. Grimwood,

Covert Surveillance

On 11th December 2014, an Assistant Surveillance Commissioner, Sir David Clarke, 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 Sir David's report which I endorse. I am pleased to see that the single recommendation made following the last inspection, 3 years ago, has been discharged. Your RIPA structure and management are in continuing good health and you have made sensible use of your covert powers. In general, high standards are maintained. For the reasons explained in paragraph 19 of the report your Council is likely to engage in a good deal less covert activity in the future.

The single recommendation is that your RIPA Policy be amended as indicated in paragraph 14 of the report.

I shall be glad to learn that your Council accepts the recommendation and will see that it is implemented. One of the main functions of review is to enable public authorities to improve their understanding and conduct of covert activities. I hope your Council finds this process constructive. Please let this office know if it can help at any time.

*Yours sincerely,
Christopher Rose*

Mr Peter Grimwood
Chief Executive Office
Fareham Borough Council
Civil Offices
Civil Way
Fareham
PO16 7AZ

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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Fareham Borough Council

11th December 2014

**Assistant Surveillance Commissioner:
Sir David Clarke.**

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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.

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

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

15th December 2014

FAREHAM BOROUGH COUNCIL

INSPECTION REPORT

Inspection date 11th December 2014

Inspector Sir David Clarke
Assistant Surveillance Commissioner

Introduction

1. Fareham Borough Council (FBC) is a second tier local authority serving a mostly affluent and growing population of some 111,000 in Hampshire.
2. The last OSC inspection of FBC was conducted by Clare Ringshaw-Dowle, Surveillance Inspector,¹ on 18th August 2011. She reported in favourable terms on FBC's RIPA oversight and management systems, making a single formal recommendation.
3. The Chief Executive is still Peter Grimwood. The address for correspondence is Civic Offices, Civic Way, Fareham, Hampshire PO16 7AZ.
4. There has been some restructuring of senior management posts since the 2011 inspection. The Chief Executive is supported by four Corporate Directors, but the post of Director of Democratic and Regulatory Services has been discontinued. Legal services are provided by the Southampton-Fareham Legal Services Partnership, headed by Richard Ivory who is solicitor to both FBC and Southampton City Council.
5. Previous OSC reports show that FBC has been a more frequent user of its RIPA powers than many comparable second-tier authorities. In the three years before Mrs Ringshaw-Dowle's 2011 visit there were over 100 directed surveillance authorisations. Usage has dropped sharply since then, but remains higher than in most other borough and district councils in England. In the three years since the 2011 inspection there have been 22 directed surveillance authorisations. No CHIS authorisations have been made.

¹ Mrs Ringshaw-Dowle was appointed Chief Surveillance Inspector in 2013.

Inspection

6. I carried out the inspection on 11th December 2014 at the Civic Offices. In the course of the inspection I met the following council officers:
 - Andrew Wannell, Director of Finance and Resources;
 - Elaine Hammell, Head of Audit and Assurance;
 - Caroline Holmes, Head of Housing, Revenues and Benefits.²
7. The inspection started with a discussion of FBC's RIPA management and procedures, the roles of Senior Responsible Officer (SRO), RIPA Coordinator, designated authorising officers (AOs), RIPA usage and training. I then examined the Central Record and a sample of the RIPA authorisations themselves, before providing some feedback of my provisional findings.
8. I am grateful to the officers whom I met, particularly Mrs Hammell who had made the arrangements and provided material in advance, for their friendly welcome and engagement with my inspection. I was provided on arrival with a compendious and immaculate file of documents specially prepared for me.

Progress against recommendations

9. Mrs Ringshaw-Dowle made one formal recommendation, arising from errors and some inconsistency in the quality of authorisations which she examined. Though I detected some minor errors in those which I examined this time, it is clear that the main lessons of her report had been learned and her recommendation is discharged.

RIPA Structure

10. In March 2014, following the retirement of Mr White and the re-ordering of his post, Mr Wannell was formally designated to succeed him as SRO, to exercise the responsibilities set out in Codes of Practice.³
11. Eight officers, including the Chief Executive, are presently designated as AOs. These include Mr Wannell, but I drew attention to the Commissioners' Guidance that it is undesirable for the SRO to be himself an AO.⁴ They also include Mrs Hammell, who acts also as RIPA Coordinator and keeper of the Central Record, and is knowledgeable and competent in RIPA matters, though she has not in fact acted as an AO during the period under review.
12. All but one of the authorisations in the relevant period have been made by Miss Holmes, being made in benefit fraud investigation. FBC may wish to consider reducing the number of designated AOs, bearing in mind the need to maintain

² Mrs Hammell was in post at the time of the 2011 inspection but was on leave on the day of that inspection. Miss Holmes, however, took part in that inspection as Head of Revenues and Benefits.

³ I drew attention to the fact that revised Home Office Codes of Practice for Covert Surveillance and CHIS came into force on 10th December 2014, the day before my inspection.

⁴ This guidance presently appears in paragraph 307 of OSC Procedures & Guidance, December 2011. An updated version of this guidance is very soon to be promulgated to public authorities.

refresher training for those so designated, but I do not make this as a formal recommendation. It is not necessary to have a designated AO in each relevant department; it can be good practice to place an application before an AO working in another area of the council, to enhance the independence of the authorisation process. The list of AOs should, of course, continue to include the Chief Executive, since only the Head of Paid Service (or his Deputy in his absence) may authorise in the high-level cases referred to in Appendix A of each Code of Practice.

13. The Central Record is a spreadsheet which complies with paragraph 8.1 of the Covert Surveillance etc. Code of Practice 2010. It also contains useful additional information, as described in paragraph 4.4 of the 2011 report, and is a model of its kind. A “comments” column is used to record notes made by the Coordinator when checking the forms to provide quality assurance.
14. FBC’s RIPA *Policy* document was praised in the 2011 report, and now includes the necessary revisions made in the light of the legislative changes of 2012. I have, however, one further improvement to recommend.
 - The discussion and definition of a CHIS in 6.1 states that a member of the public providing information to the authority would **not generally** (*my emphasis*) be regarded as a CHIS. This is correct, but the text does not provide further explanation. Thus, it does not sufficiently highlight the risk that a member of the public covertly providing information to the council may in reality be a CHIS if he is obtaining it in the course of, or as a result of the existence of⁵, a personal or other relationship. If the information is acted on, a duty of care would be owed to such a person, who may be at risk of reprisals. What matters is not whether the informant has been tasked to obtain information for the council, which I am sure would never arise, but the manner in which he has obtained the information which he covertly passes on.

See recommendation

15. The authorisation forms in use in FBC are of particularly good quality, enhanced by prompts within the boxes to ensure that the applicant and AO completes all the necessary elements, including full reasoning on the essential elements of necessity, proportionality and collateral intrusion. Since 2011, cancellations have been effected on the improved forms provided by Mrs Ringshaw-Dowle, in which the AO adds relevant comments as to the outcome of the authorised activity and gives directions for the handling of the product.
16. We discussed the requirement for judicial approval and the procedure for obtaining it. I explained the Commissioners’ view, which is soon to be expressed in the reissued OSC Procedures & Guidance, that in principle it should be the AO who attends court to answer any questions the magistrate might wish to ask; this conflicts with the Home Office Guidance to Local Authorities, paragraph 43, which suggests that the investigator is the best person to do this. FBC follows the Home Office guidance and I cannot be critical of

⁵ RIPA, section 26(8)(c)

them for doing so, but in any unusual or complex future case they will wish to consider this issue afresh. In theory, of course, if the application and authorisation are fully articulated and reasoned in writing, no further questions ought to arise.

17. We also had a brief discussion of the topic of non-RIPA surveillance, which may exceptionally be considered necessary in cases which do not pass the new threshold or are outside the core functions of a local authority. Such surveillance is not necessarily unlawful, but there is all the more need to consider its necessity and proportionality and to articulate the reasoning fully, albeit not in the context of RIPA authorisation, so as to resist any challenge or argument of unfairness.

RIPA usage

18. 21 of the 22 authorisations during the period under review were made in benefit fraud investigations. As reported in paragraphs 4.2 of the 2011 report, FBC commonly takes the lead in such investigations which – in other parts of the country, including other councils in Hampshire – are more commonly led by the DWP. As stated earlier in this report, however, the number of authorisations is much smaller than in earlier years, due to reduced staffing and the increased use of less resource-intensive desk-based investigative powers.
19. From October 2014 the picture has changed again. As part of the phased roll-out of the national transfer of housing benefit fraud investigation to the DWP, officers of FBC no longer do this work, and will only be involved in fraud investigation in relation to council tax benefit. Such fraud investigation, not linked to housing or other benefits, is likely to be rare.
20. One authorisation was made in relation to theft from a council building. No authorisations were made in antisocial behaviour investigation. I was told that close partnership working with the police is effective, and that if directed surveillance were necessary it would be undertaken by the police. Licensing and environmental health enforcement is carried out entirely overtly, but the relevant officers all attend periodic RIPA training.

Training

21. Mrs Ringshaw-Dowle described FBC's RIPA training and guidance as extremely good, adding that she had rarely seen councils providing it so regularly. I was provided with a detailed schedule of training activity, including future events now being planned, and it is clear that this provision has been maintained and that FBC has not rested on its laurels.

Examination of documents

22. It was apparent from examining a sample of the benefit fraud authorisations that the power is only used when really necessary for obtaining sufficient evidence to justify taking the next step of interviewing the benefit claimant under caution. Those which I examined were all made in "living together" cases, where the alleged person was self-employed or his employment status was not known, so

that there was no scope for establishing the case through evidence from an employer.

23. I found, however, some minor discrepancies between the dates of authorisation and those recorded on the central record, apparently arising from delays of some days between authorisations and judicial approval thereof. Such discrepancies will best be avoided by not setting the expiry date until the date when judicial approval has been given. In one case (04-13/14), the AO appeared to widen the authorised surveillance times without specifying those times. I noted that the first application for judicial approval of an authorisation was rejected by a magistrate, but I was told that this was on procedural grounds; the application was re-authorised under a different URN and was then accorded judicial approval.
24. One authorisation was made for placing a covert CCTV camera overlooking a rear entrance to a public building in which repeated thefts had taken place. In this case Mrs Hammell was the applicant, and another AO authorised the surveillance but set an erroneous expiry date. The proper method of authorising a short-term surveillance operation is to set not an early expiry date but an early review date.

CCTV

25. The shared CCTV system with Gosport Borough Council, based in a control room at Gosport, remains in place.

Conclusions

26. FBC's RIPA structure and management remain in excellent good health. It is reassuring to find that in a second-tier local authority which does continue to use its RIPA powers, high standards are generally maintained, confirming the adage that practice makes perfect. But for reasons explained in paragraph 19 above, usage is now likely to decrease further.
27. I am happy to endorse, without repeating them, the words of praise contained in the last two reports of Mrs Ringshaw-Dowle in 2008 and 2011. I make the following single

Recommendation

That FBC's RIPA Policy document be amended in accordance with paragraph 14 of this report.

David Clarke
Assistant Surveillance Commissioner

