

The Rt. Hon Lord Justice Fulford
Investigatory Powers Commissioner,
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**INSPECTION REPORT
REGULATION OF INVESTIGATORY POWERS ACT PART II
FAREHAM BOROUGH COUNCIL**

Inspector: His Honour Brian Barker CBE, Q.C.
Assistant Commissioner

Date of Inspection: February 27th 2018.

Introduction:

1. Fareham Borough Council serves the semi-urban area between the Cities and unitary authorities of Portsmouth and Southampton, having a population of about 115,500. Covering an area of about 28.6 square miles, Winchester lays to the north, Portsmouth is to the east, Gosport to the south and western boundary is the River Hamble. Borough status was gained in 1974 and unusually for an authority of this size, two Members of Parliament are sent to Westminster.
2. The Borough Council consists of thirty one councillors representing fifteen wards. The authority operates on a Leader and cabinet/executive basis and the annually elected Mayor, currently Councillor Geoff Fazackarley, carries out civic and ceremonial duties and chairs full council meetings. The office holder acts as ambassador to promote the Council's name at home and elsewhere
3. The Chief Executive is Peter Grimwood who has been in post for nearly ten years. He leads a Senior Management Team consisting of the Director of Planning and Regulation Richard Jolley, the Managing Director of Fareham Housing Paul Doran, the Director of Finance and Resources, and the Head of Street Scene Mark Bowler. The address for correspondence is Civic Offices, Civic Way, Fareham, Hampshire PO16 7AZ, and e-mail address is *pgrimwood@fareham.gov.uk*.
4. The annual budget is in the region of £9 million and in addition to significant recent reductions, the Borough Council is facing the task of having to find further savings of £1m over the next two years. Among the income generating measures instituted has been the letting of three and a half floors of the Civic Centre building to other agencies such as

Hampshire Probation Trust and Public Health England which additionally adds to the ease of interaction and co-operation.

5. The last inspection was conducted by Sir David Clarke, Assistant Surveillance Commissioner, on December 11th 2014. He noted that the Borough Council continued to be a high user of *RIPA* powers and that prior to his inspection there had been twenty-two authorizations of which twenty-one were benefit fraud investigations. Overall, he found '*RIPA* structure and management remain in excellent good health'.

Past Recommendations:

6. The single recommendation was that the discussion and definition of *CHIS* in the Corporate Policy and Procedures should include a fuller explanation of the risk that a member of the public covertly providing information to the Borough Council may in reality be a *CHIS*.
7. The recommendation was quickly taken up and presented to members with a report and admirable briefing paper in February 2015. The changes were then incorporated into a revised version of the Corporate Policy and Procedures document.

Inspection:

8. I was warmly welcomed by Elaine Hammell, Head of Finance and Audit and long time *RIPA* Co-ordinator, and we were joined by:
 - Andrew Wannell, Director of Finance and Resources and Senior Responsible Officer
 - Caroline Newman, Head of Housing, Revenue and Benefits and Authorising Officer, and
 - Kevin Wright, Head of Parking and Enforcement with responsibility for the CCTV facility,

and together we were able to have a useful and wide ranging discussion.

- It quickly became apparent that the high standards of knowledge and efficiency noted by Sir David had been maintained, and that careful consideration had been given to his report and recommendations. The depth of knowledge was considerable and the co-operation and mutual support of all senior officers was clearly evident. This result was enhanced by regular meetings to share information and briefings.
- We covered the usefulness of the tool as an 'insurance policy' when finally presenting evidence in court and the changes in the last few years that have led to the increasing availability and use of effective overt methods of information gathering.

- A housing stock of about 2400 units, plus some housing association nominations, were retained; and although there had been some reduction in use since the last inspection, the procedure was still instigated when investigating suspected council tax and tenancy fraud, and the information could not be identified by other means.
- Other topics covered included the potential problems that could arise from marked increase in the habitual use of personal and social media sites and the ease with which they could be used to further investigations and follow up complaints. There is a work profile in existence for the use of Facebook, and the need for officers to be alert to the necessity of following *RIPA* procedures if coming near to crossing the line consciously or otherwise was fully understood.

Examination of Central Records and forms:

10. The Central Records are kept in standardised spreadsheet form by Elaine Hammell with controlled access, and originals are filed securely. The council's policy and other guidance are easily accessible, as are the current forms.

RIPA Policy and Management Structure:

11. The Borough Council's current *RIPA 'Corporate Policy and Procedures'* was revised in April 2016. It runs to eighteen pages plus four appendices, the last of which provides direct links to all necessary forms.
12. The *Corporate Policy* is of a high standard and gives a good overview in a readable format. Previous versions received deserved praise in earlier inspections. It includes information on data protection, and on the use and requirements of a *CHIS* (although there has never been any such use by the authority), and should a *CHIS* situation arise then assistance would be sought from the local Hampshire Police
13. The addition of several points may add value to the start of what is a well above average document. I suggest that on page 4 in 1.1 'Summary' after the second paragraph, a paragraph should be introduced setting out the higher (2012) threshold, and second it could be made clear at this stage that covert procedures would only be considered as a last resort. Further, in para 1.1, in addition to the reference to the Home Office Codes of Practice, officers should also be pointed to the useful Office of Surveillance Commissioners Procedures and Guidance 2016 (with added hyperlink).

14. To round off Part 1 'Introduction', a concluding 1.5 could be added directing that 'Any officer considering the use of RIPA should first consult the Head of Finance and Audit, Elaine Hammell.'
15. The Part 4 the topic of 'Identifying Directed Surveillance' (to be read with the flow chart at Appendix 2) is done well in a question and answer format, and sets the scene for the consideration of the more detailed requirements which are set out in subsequent sections. 'Internet/Social Media Site Monitoring' follows at Part 5 and deals with a topic that has been a particular concern to the Commissioner in recent years.
16. Reference to the scope and remit of Authorising Officers is to be found in 8.2 and reference made to the detail of the post holder at Appendix 1. This appendix not only sets out the posts and the office holders but also gives a clear and helpful outline of their roles and responsibilities.
17. The remaining point of consideration is to be found in part 8.5 dealing with the judicial approval mechanism introduced by the 2012 legislation. The procedure is clearly set out accompanied by the direction that it is for the case investigation officer to present the case. Although this course has the approval of the Home Office Guide, the preferred view is that it should be the Authorising Officer to present the application if possible on the basis that he/she will have brought an independent mind to the request and will be able to assist the Bench on reasoning for justification should that be necessary (see para 292 of the OSC Procedures and Guidance 2016.)

RIPA Usage and Examination of Authorisations:

18. Although usage has dropped a little, it is seen as a valid and useful tool to be used from time when necessary. The quality, and ease of use, of the provided forms received favorable comment in the last report; and upon the examination of the files the standard of information recorded in the initial applications and the scrutiny both before and during authorisation were uniformly good.
19. The Borough Council has an effective anti-fraud and corruption policy using a variety of techniques. *RIPA* investigations were deemed necessary in six cases in the reporting period April 2016 to March 2017. Four were for investigating undeclared living together and two were non residency. Five provided positive evidence for consideration for progressing matters. The most recent investigation, an allegation of claiming for a second

property while living with his wife, was successfully concluded in January 2018.

Training and Awareness:

20. The two previous Inspectors commented on the high quality of training given, Mrs Ringshaw-Dowle in 2011 saying that 'she had rarely seen councils providing it so regularly'. This approach has continued with an email feedback on Sir David's report featuring the change in policy given to twelve recipients consisting of both investigative and authorizing officers.
21. There has been little turnover within the experienced team. Elaine Hammell has information and best practice input from the Hampshire Fraud Group which is shared, and there have been subsequent updates given both in the care needed with the use of social media as well as on the Investigatory Powers Act. A refresher course in the near future is proposed.

Councillors

22. Communication with the elected members is particularly good. Mrs. Hammell provides the annual report to the Audit and Governance Committee covering all counter fraud progress, the last being presented on September 25th 2017. It is clear and comprehensive and also provides the Councillors with details of some of the more unusual cases. Tables show details of not only authorizations for *RIPA* use, but also of uses of Authorised Officer powers during investigations in order to obtain information from banks, utilities and employers.

CCTV

23. I was able to attend the facility with Kevin Wright and met the manager Jill Patterson. The operation is shared with Gosport Borough Council and the management is subcontracted to Enigma Services. It is clearly efficient and well run. There is generally one operator in addition to the manager, with two on duty on Friday and Saturday evenings. All operators are SIA trained. The service provides considerable public assurance and they keep a proactive monitoring log which has resulted in a number of arrests.
24. There are the usual facilities for police observation and for evidence recording. The last police authorised *RIPA* request was in 2011. Required record keeping facilities are appropriate.

Conclusions:

25. Although not a large authority, the determination of the Borough Council to use *RIPA* powers where necessary and to maintain excellent standards of operation, training and awareness is impressive.
26. Mrs. Hammell at the centre has considerable experience and expertise, and the team operate efficiently together, with effective supervision, checks and balances. I am pleased to be able, as have previous Inspectors, to report that standards and skills remain commendably high and that there can be confidence that any future use will be robust and compliant.
27. In the circumstances there is no necessity for any recommendations.
28. Finally I would like to thank Elaine Hammell for organizing my visit, and to thank both her and all the officers for their constructive assistance during my time with the Borough Council.

Brian Barker,
Assistant Surveillance Commissioner.

March 15th 2018.