



Office of Surveillance  
Commissioners



Chief  
Surveillance  
Commissioner

18<sup>th</sup> December 2013

**Restricted**

*Dear Mr. Neudegg,*

**Covert Surveillance**

On 26 November 2013, an Assistant Surveillance Commissioner, HH Norman Jones QC, again 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 note that you have largely discharged the recommendations made following Mr Jones's last inspection 3 years ago and that the remaining elements will be discharged shortly. The officers seen by Mr Jones, particularly M/s Patel, head of legal and property services, showed enthusiasm to ensure compliance and a high standard of relevant knowledge. You have a good management structure and excellent documentary guidance. Although your Council has not engaged in covert activity in recent years it is well equipped to do so properly.

The recommendations are that the Central Record be amended to comply with the Code of Practice and your Procedures and Guidance be amended as indicated in para 18 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.

Mr David Neudegg  
Chief Executive  
Cotswold District Council  
Trinity Road  
Cirencester  
Gloucestershire  
GL7 1PX

PO Box 29105 London SW1V 1ZU

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

2<sup>nd</sup> December 2013.

## **INSPECTION REPORT COTSWOLD DISTRICT COUNCIL**

Inspection                    26<sup>th</sup> November 2013.  
  
Inspector                    His Honour Norman Jones, QC.  
   Assistant Commissioner

### **Cotswold District Council.**

1. Cotswold District Council (CDC) is a local government authority administering an area of 450 square miles of Gloucestershire covering some of the most picturesque areas of England. It serves a population of about 84,000 with the principal township being Cirencester and others include Tetbury, Moreton-in the Marsh, Bourne-on-the Water and Stow-on the Wold.
2. The Senior Corporate Management structure is jointly shared with West Oxfordshire District Council (WODC) and is headed by the Chief Executive, Mr. David Neudegg. In that structure Mr. Neudegg is supported by Head of Legal and Democratic Services ( WODC) and Head of Democratic Services (CDC) and three shared Strategic Directors whilst a fourth is confined to Cotswold DC. WODC was inspected on the 27<sup>th</sup>. November and much of this report is common to both authorities.
3. The *Senior Responsible Officer (SRO)* is Mr. Andrew Fotherby, Strategic Director, and the day to day role of *RIPA Co-ordinating Officer* is undertaken by Ms. Bhavna Patel, Head of Legal and Property Services..
4. I conducted the last inspection of the Cotswold DC for the OSC in April 2010.
5. The Council is a minimal user of covert surveillance having granted no authorisations since the last inspection and only one in a similar period between the previous two inspections.

6. The Council Offices are situated at Trinity Road, Cirencester, Gloucestershire, GL7 1PX.

### **Inspection.**

7. Ms. Patel extended a warm welcome to Cotswold DC. She remained throughout the inspection which was joined for a time by Mr. Fotherby and later by the following officers:

Lucy Cater	Senior auditor;
Rob Milford	Head of Internal Audit and Audit Partnership Manager;
Emma Cathcart	Benefit Fraud Investigator;
Amanda Hollister-Short	Joint Operations Lead Officer and Fraud Manager (Authorising Officer);
Kate Bishop	Head of Public Protection (Authorising Officer);
Hilary Beach	Environmental Quality Manager;
Gupti Gosine	Principal Environmental Health Officer.

The inspection was conducted by means of interviews and discussions with the officers and an examination of the Central Record of Authorisations.

8. Among *RIPA* issues considered were actions taken on past recommendations, reasons for no authorisations, the management of *RIPA*, Authorising Officers, training, *Covert Human Intelligence Sources (CHIS)*, reporting to Councillors, policy and procedures, the Protection of Freedoms Act and CCTV.

### **Examination of Central Record.**

9. The **Central Record of Authorisations** is maintained in a database format. In its present form it is not fully compliant with the requirements of the *Code of Practice for Covert Surveillance and Property Interference* (8.1) but has been amended to accommodate attendances before a JP. When amended to accommodate the requirements of the *Codes of Practice* it will be an invaluable tool for oversight purposes by the *SRO* and the *RIPA Co-ordinating Officer* especially in the event of the Council again becoming more active in its resort to *RIPA*.

### **See recommendation**

### **Actions Taken on Past Recommendations**

10. I made three recommendations in my 2010 report:

- i. Fully discharge the recommendations from the previous OSC report.*

Required amendments have now been made to the *Procedural Guide*; the Central Record still requires to be set out in a spreadsheet format and amended to accommodate the *Code of Practice for Covert Surveillance and Property Interference*, 8.1; training has been undertaken to

accommodate the recommendations made. This recommendation has been partly discharged.

- II. *Create a structured training programme to ensure regular refresher training of all those involved in the RIPA process.*

A structured training programme still does not exist at Cotswold DC. However substantial training has taken place of involved officers since the last inspection. This consisted of a course conducted by an external trainer which was made available to local authorities within Gloucestershire in January 2013. Authorising officers and applicants together with Ms. Patel attended from Cotswold DC. Additionally Ms Patel has attended a course conducted by another external trainer. She conducts internal training when new issues arise. It is the intention that further similar training should take place and this will be written into a training programme. In addition she produces briefing notes relating to RIPA issues This recommendation has been largely discharged.

- III. *Amend the Procedural Guide.*

The recommended amendments have all been made. This recommendation has been discharged.

#### **Reasons for No Authorisation.**

11. The lack of resort to covert surveillance resulting in no authorisation was discussed. The Council prefers to avoid using covert surveillance as a tool of investigation. Consequently authorisation for RIPA has been rare in the past. Its use in benefit fraud investigations has diminished with the incidence of joint operations with the DWP which would provide authorisation were it to be required. The use of RIPA authorisation for the investigation of noise nuisance has ceased since such investigation is now carried out overtly following notification of the Council's intent to do so to perpetrators by letter. Overt means are encouraged by the Council in relation to other investigations.

#### **Management of RIPA**

12. A degree of change in the management of RIPA is in the process of taking place. This follows the institution of a joint legal service for both the Cotswold DC and WODC. It is anticipated that RIPA at both Councils will be managed on a day by day basis by Ms Patel as RIPA Co-ordinating Officer. Mr Fotherby, who is newly appointed as SRO, will remain as such for Cotswold DC. He sees his role primarily as overseeing the policy, ensuring that Council committees are familiar with and approve the Council's RIPA policy, ensuring that authorising officers have attended appropriate training and ensuring that, in spite of low usage of RIPA, the Council is equipped to undertake covert surveillance. In the event of authorisation being granted he would review the documents and would challenge officers if he considered other means could have been adopted. He impressed as an officer with good knowledge of RIPA and its essential elements.

13. As at the time of the last inspection Ms Patel impresses as an extremely well informed officer in relation to *RIPA*. She has attended a number of courses outside of the Council on the subject and takes a close interest in the subject matter. She is the port of first call by all officers of the Council who may wish to undertake covert surveillance; she provides both legal and general guidance to applicant and authorising officers alike. She is clearly highly respected by all officers interviewed. In the event of authorisation being proposed she would be approached by the applicant and probably the authorising officer to seek her views. With the introduction of JP approval she would anticipate reviewing any authorisation before submitting it for approval to the magistrates. In the event of the documentation not reaching the standard which she requires she would refer the matter back to the authorising officer with her comments. Mr Fotherby and Ms Patel regularly meet and will discuss *RIPA* issues when they arise.
14. Ms Patel undertakes all of the responsibilities of a *RIPA Co-ordinating Officer*. The question of unauthorised surveillance was discussed in the context of the level of awareness of *RIPA* throughout the Council. She was of the view that it was highly unlikely that any officer would undertake covert surveillance without first referring the matter to his/her line manager. A policy is adopted of cascading information down from management meetings to staff. This applies to *RIPA* information as well as other matters. In addition a monthly "Team Brief" is produced on the Council's intranet for all staff and this has in the past included *RIPA* advice. Regular meetings of senior management take place both on a Cotswold DC only basis and on a joint basis with both councils. From time to time *RIPA* issues have been discussed at this level. It is the intention of Ms Patel that the induction training of all new staff will incorporate information concerning *RIPA*.

### **Authorising Officers**

15. The CEO, the *SRO* and the *RIPA Co-ordinating Officer* are all nominated as authorising officers within the Council's policy. It is understood that the CEO is only likely to authorise in the event that the Council seeks the acquisition of *confidential information* or the employment of juvenile or vulnerable *CHIS*. Mr Fotherby will likely deputise for the CEO in his absence but again would only authorise in exceptional circumstances. Ms Patel is unlikely to ever authorise and would only do so in the most exceptional circumstances. Both Mr Fotherby and Ms Patel are aware of potential conflict with their oversight responsibilities for *RIPA*. There are four further authorising officers and it is anticipated that they will undertake any authorisations required. The Council's *Procedural Guide* permits other officers of appropriate rank who have undergone authorising officer training to be nominated to deputise in the absence of authorising officers. They are not named or otherwise identified within Appendix A to the guide. Their position was discussed and it was appreciated that they introduce a degree of uncertainty to the system. Considering the low level of authorisation at the Council the number of authorising officers nominated within Appendix A is quite sufficient for the Council's needs and it was felt that this additional facility was not required. It would be the practice at the Council for authorisations to be

undertaken by authorising officers not attached to the Department making application.

## **Training**

16. Cotswold DC does not have a *RIPA* training programme as such but has recently engaged the services of external trainers. Additionally Ms Patel undertakes training internally when required (see paragraph 10.11 above). It is the intention of the Council to provide regular training for those likely to be engaged in *RIPA* activity and this will continue to embrace training from external providers. Ms Patel will continue to provide training especially when required by the introduction of new procedures or legislation. Although one officer exhibited a lack of knowledge of *intrusive surveillance*, all officers who were interviewed impressed generally with their overall knowledge of *RIPA* and gave confidence that in the event of authorisation being required they would be able to perform their duties satisfactorily.

## **CHIS**

17. The Council has not employed *CHIS* and has no intention of doing so if it can possibly be avoided. However there is appreciation of the fact that *CHIS* may suddenly appear and have to be dealt with. Whilst the Council runs a "hot line" for the gathering of information, generally given anonymously, about benefit fraud perpetrators care is taken to avoid situations arising whereby either the informant or the Council officer taking any call can inadvertently drift into the status of being a *CHIS*. Calls during the daytime are routed to Ms Cathcart who limits her conversations to specific questions. Informants are discouraged from making further inquiries or providing further information. Repeated informants are actively discouraged. The use of social networking sites was also discussed. The Council does not permit its staff to use such sites. However it was appreciated that in the event of the Council permitting such activity great care would have to be taken to ensure that appropriate authorisation was obtained. Whilst the obtaining of "open source" information would not require authorisation once an officer using a pseudonym breached the privacy controls on an account, e.g. becoming a "friend", then *directed surveillance* authorisation would be required and, in the event of the establishment of any relationship with the account holder or operator, *CHIS* authorisation would be required (see *OSC Procedures and Guidance*, 308). In the event of *CHIS* authorisation a controller and handler would have to be appointed. It was noted that such requirement had been covered by the external trainer.

## **Policy and Procedures.**

18. The Council's *RIPA Procedures and Guidance* has been recently revised by Ms Patel. It is a detailed and comprehensive document which will be of great value to those within the Council who may be engaged in the *RIPA* process. Indeed it, together with a number of Appendixes, provides all the information that officers should require for the production of applications and authorisations. It has been brought fully up-to-date with recent legislative changes. A few minor amendments were discussed with Ms Patel including:

- Use *RIPA* titles throughout for *RIPA* officers rather than official Council titles.
- Indicate that in the absence of the CEO whoever deputises for him may authorise the acquisition of *confidential information* or the employment of juvenile or vulnerable *CHIS*.
- Include in the list of relevant legislation the *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500*.
- Indicate that a risk assessment is required in all cases of *CHIS* authorisation.
- Delete “covert” from the term “covert relationship” in 3.3.1.
- Include under “*Confidential Information*” medical information, religious communications, communications with an MP and journalistic materials.
- Delete the provisions relating to the delegation of the power to authorise.
- Delete references to verbal urgent authorisation.
- Include a reference to the immediate response provisions of *RIPA* (Section 26(2)(c))
- Require reviews to be conducted at least monthly.
- Require originals of all forms to be submitted to the *RIPA Co-ordinating Officer*.
- Require cancellations to include information of what had or had not been achieved.
- Include within the responsibilities of the *RIPA Co-ordinating Officer* the organisation of training and the raising of *RIPA* awareness.
- Remove Appendix H (Non-*RIPA* Surveillance Application Form) .

### **See recommendation**

### **Councillors**

19. The elected members have a responsibility to oversee the Council’s *RIPA* policy and to ensure it accords with Council requirements. An annual report is prepared and submitted to the Audit and Scrutiny Committee which has the responsibility of overseeing the adequacy of the Council’s *RIPA* policy. At present no further report is submitted to the members. This is because of the lack of covert surveillance activity by the Council. However the importance of ensuring that councillors are aware of such lack of activity was considered together with the requirement of the *Code of Practice for Covert Surveillance and Property Interference*, 3.30 that at least quarterly reports should be submitted to councillors. Councillors are aware that they may not be concerned with individual authorisations.

### **CCTV**

20. As at previous inspections the CCTV operating within the district is financially supported by the Council but is wholly operated by the police.

## **Protection of Freedoms Act 2012**

### ***RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500***

21. The provisions of this legislation, in so far as it relates to *RIPA*, were discussed. The provisions for acquiring the approval of Magistrates following an authorisation were considered. The appropriate officers to attend were discussed. At present the Council is minded to send a solicitor, the authorising officer and the investigating officer. This would be reviewed with the progress of time.

#### **Conclusions.**

22. It was encouraging to note that Cotswold DC had largely discharged the recommendations in my previous report and propose to discharge the remaining elements shortly.

23. It was further encouraging noting that the officers interviewed at Cotswold DC displayed both enthusiasm to ensure compliance with the legislation and an overall high standard of knowledge of the subject. Specific observation must be made of Ms Patel and particularly impresses with her knowledge of *RIPA* and her robust approach to ensuring a high standard of authorisation. A good management structure exists together with excellent documentary guidance.

24. Since the Council has not undertaken authorisation in recent years it is not possible to assess its performance "in the field" by a review of its applications/authorisations, reviews, renewals and cancellations. However if officers follow the procedures approved by the Council there is no reason to believe that its performance would fall below the required standard.

#### **Recommendations**

25.

- (i) Amend the Central Record of Authorisations. (*Paragraph 9*)
- (ii) Amend the Council's *RIPA Procedures and Guidance* document. (*Paragraph 18*)

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