



Office of Surveillance  
Commissioners

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

31<sup>st</sup>. October 2012

## INSPECTION REPORT DONCASTER METROPOLITAN BOROUGH COUNCIL

Inspection                      18<sup>th</sup>. October 2012

Inspector                      His Honour Norman Jones QC.  
Assistant Commissioner

### Doncaster Metropolitan Borough Council.

1. **Doncaster Metropolitan Borough** is a local government administrative district in South Yorkshire serving a population of about 302,000. It covers a geographical area of 219 square miles with Doncaster as its principal town and some seventy other townships and villages within its boundaries.
2. The MBC has undergone a period of difficulties in recent years leading to a critical corporate governance report by the Audit Commission in April 2010. The Council is lead by an elected mayor, one of seventeen within the country, and a cabinet appointed by him.
3. The senior corporate management structure is headed by Ms. Jo Miller, Chief Executive, who was appointed in April 2010. She is supported by five Directors each of whom is served by teams headed by Assistant Directors.
4. The last OSC inspection was conducted in April 2009 by Mr. Neil Smart, Surveillance Inspector.
5. Mr. Roger Harvey, Assistant Director for Legal and Democratic Services, is the *Senior Responsible Officer (SRO)* and Ms. Helen Potts, Principal Legal Officer, is *RIPA Co-ordinating Officer*. Ms. Tina Knight, Business Support Officer within Legal Services, undertakes the maintenance of the Central Record of Authorisations and the central collation of applications/authorisations, reviews, renewals and cancellations.
6. The Council is a moderate user of covert surveillance and *RIPA* having granted forty authorisations for *directed surveillance* and three for *Covert Human Intelligence Sources (CHIS)* since the last Inspection. The principal users are Trading Standards/Regulation Enforcement (underage test purchasing, rogue traders and counterfeit goods sales) – 19; Neighbourhood Manager (anti-Social behaviour/criminal damage, fly tipping) – 10; Children's Services (child protection) – 6; Internal Audit (investigation of suspected fraudulent claimants and one theft from a school) – 4 . None concerned the acquisition of

*confidential information* or were granted under the *urgency* provisions or were *self authorised*.. Questions arose about the justification of some authorisations (see below).

7. The Council headquarters is Copley House, Waterdale, Doncaster, DN1 3EY.  
**Inspection.**
8. Mr. Harvey extended a cordial welcome to the Council. Also attending the inspection were Ms. Potts, Mr. Dave McMurdo, Trading Standards Manager and authorising officer and Ms. Knight. Ms. Janice Jones, CCTV Manager was met during a visit to the CCTV Control Centre. Gratitude must be expressed to all officers who provided their full and enthusiastic assistance and particularly for the comprehensive folder of *RIPA* documentation and records provided by Ms. Potts.
9. The inspection was conducted by way of interview and discussion with the officers followed by an examination of the Central Record of Authorisations and the retained *RIPA* authorisations, renewals, reviews and cancellations. It culminated with a feed-back session with the officers concerning the findings of the examination.
10. Discussions covered a number of *RIPA* issues including issues arising from the examination of the *RIPA* documentation, action taken on past recommendations, *RIPA* management and unauthorised surveillance, authorising officers, training, policy and procedures, CCTV practices, Elected Members' responsibilities and the Protection of Freedoms Act 2012 and *RIP(Directed Surveillance and CHIS (Amendment))Order 2012, SI 2012/1500*.

#### **Examination of Documents**

11. The Central Record of Authorisations is maintained in electronic spreadsheet format. It is compliant with *RIPA* and the *Codes of Practice* but suffers from the deficiency of not having columns to record reviews. Since the document is an essential tool for officers exercising oversight on the process this is an important omission which should be rectified. In addition the column recording *self authorisation* was without any entry.  
  
**See recommendation**
12. The column relating to *confidential information* contained the term "unlikely" reflecting the content of the applications. The use of this term implies some likelihood of acquiring such information which could require the Chief Executive to be the authorising officer. In the event, of those authorisations examined, none appeared to have any likelihood of acquiring *confidential information* and should have said so.
13. Ms. Knight maintains the record with great efficiency and carefully collates the records submitted to her by authorising officers. She should be commended for her diligence. It was noted during the examination of the documents that numerous notes appeared on the files indicating oversight by the *RIPA Co-ordinating Officer* and contact between her and the authorising officer. These demonstrate the oversight exercised by Ms. Potts who impressed throughout the inspection with her knowledge of *RIPA* and her determination to ensure a high standard of *RIPA* compliance at the Council.
14. A representative sample of the applications/authorisations, reviews, renewals and cancellations were examined, including: (all for *directed surveillance* unless otherwise stated)
  - (a) An application for a wide scale ongoing test purchasing operation for underage sales of alcohol, tobacco, fireworks, knives and videos which stated that an intelligence basis existed for the operation but did not outline it. Although a

number of premises were to be approached there was no list identifying them and no intelligence was provided relating to each premise. A consideration of *necessity* in both the application and authorisation failed to indicate why the use of covert surveillance was necessary and within *proportionality* was a consideration of some but not all of the elements required. They are (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. The acquisition of *confidential information* was considered "highly unlikely" (see paragraph 11 above). The authorisation was granted with little limitation on its scope, authorising "for as many dates as necessary across the period of the authorisation ----". No attempt was made to define the premises or area concerned. Precise review dates were not set though an indication to review "at the end of each alliance period" was given. A review was carried out correctly after two weeks and, although the investigation had produced only compliant premises, it was allowed to continue in relation to the "planned programme of visits". No further review was undertaken and the authorisation was renewed six days before its expiry. Only two further reviews were undertaken at monthly intervals the latter indicating that the authorisation would be cancelled at the end of the renewed period. It should be noted that the most recent Home Office forms were in use to which DMBC have added further prompts which should have encouraged a better standard of application/authorisation. It is highly questionable whether this authorisation could have survived a challenge based on *proportionality*.

- (b) An application relating to the sale of counterfeit goods [REDACTED] contained scant detail of the operation and both application and authorisation were subject to the same comments as in (a) regarding *necessity* and *proportionality* and *confidential information*. The authorisation described why the operation was being undertaken but failed to describe in any adequate detail that which was being authorised. It was correctly cancelled.
- (c) A CHIS application was made for an operation involving a source attending [REDACTED] and striking up a relationship with the sellers leading to a test purchase of [REDACTED] all to be covertly video recorded. The management of the CHIS was authorised with the same officer acting as handler and controller (see *RIPA, Section 29(5)(a and b)*). The pseudonym given to the source bore a striking resemblance to her true name. Considerations of *necessity* and *proportionality* were subject to the same comments as above. A risk assessment was correctly undertaken. The authorisation set no review date but marked it as "TBA". The authorisation was said to expire in three months whilst the period for CHIS is twelve months. It was correctly cancelled within two days of authorisation.
- (d) A Child Protection application related to a [REDACTED] A detailed outline of the authority's concerns was presented which made an excellent case for "the prevention and detection of crime" ground which was relied upon. However in addition the applicant sought to rely upon the grounds of public safety and public health, neither of which are available to the Council. Under *necessity* there was a comment " it will allow the Local Authority to supply the Court with information that is necessary and will be of assistance in informing the Care Plans [REDACTED]----". No attempt was made to say why covert surveillance was appropriate as a tool in this investigation. Furthermore it indicated that it was the intention of the Authority to use the information for child care proceedings and not for criminal proceedings. *Proportionality* suffered the same defects as outlined above. The authorisation indicated the proposed employment of a private enquiry

agent but there was no detail addressing the "5Ws" or to say how the agent would be instructed and operate. *Necessity* and *proportionality* referred to the application rather than the authorising officer addressing the issues. A review date was correctly set but no expiry date or time. No review was undertaken. Three cancellation forms were found but only one signed, and that five days after the authorisation ceased to have effect. A second such application examined bore many of the same weaknesses save that it was confined to the sole ground available. The expiry date was one day late. Post-It notes attached appeared to be from Ms. Potts who was raising concerns about the authorisation. At a review it was directed to be cancelled immediately, and such occurred

- (e) An application for the use of covert surveillance for the investigation of a civil claimant in an insurance claim was said to be on the grounds "for the preventing or detecting crime or of preventing disorder" and "to establish whether the legal claim brought against DMBC has been on a false premise for financial gain". This latter ground is not available to the Council (or, indeed, to any public authority). In fact there was clearly no intent to pursue a criminal investigation and the request to apply for authorisation had been raised by solicitors acting for the Council in this civil action. The same comments apply as above in relation to *necessity* and *proportionality* in the application. The authorisation was better drafted with good detail given of what was authorised. *Necessity* and *proportionality* were well considered, a review date was set together with an expiry date, though this was not timed. Although a cancellation form existed it was not signed or dated.
- (f) An application for fly tipping was excellently drafted with good detail of what was required to be authorised and why. *Necessity* and *proportionality* were well considered. The authorisation was also of a good standard though *proportionality* was not fully covered. A review date was set as was an expiry date, though the latter was a day early. The authorisation was correctly cancelled at 11 weeks.

15. The consideration of *collateral intrusion* was generally good. However reviews, renewals and cancellations could benefit from more detail being given of what had been achieved. Many authorisations were typed which could open the authorising officer to challenges alleging that the document did not reflect his/her thoughts having reached him/her already completed and/or that the document had been amended after authorisation. Whilst an authorising officer may be able to deal with these allegations by providing the date history of activity on the computer file that can be a problem in the witness box when such information is not readily available. The better practice is to handwrite the authorisation, though the application may be typed.
16. This analysis of a sample of authorisations and ancillary documents discloses a number of weaknesses which are widespread throughout those departments seeking to use covert surveillance and are not being identified by authorising officers or by the oversight procedure. A particular concern must be raised at the tendency to use *RIPA* for purposes other than the sole ground prescribed as available to local authorities and then to try to accommodate the circumstances within that ground. Ms. Potts has addressed some aspects of this problem in a note in March 2011 following a *RIPA* Group Meeting. However more care has to be exercised to ensure that any authorisation falls clearly within the prescribed ground and is not simply an attempt to avail the Council of the protection of *RIPA* for operations which in reality fall outside of that ground. A consideration of *C v The Police and the Secretary of State for the Home Department 2007(IPT.03/32/H)* could provide some assistance in this regard.

See recommendation

Past Recommendations

17. Four recommendations were made in the last OSC inspection report:

- (i) *That the Council review the training given to applicants and authorising officers and ensure that the process is accompanied with sufficient practical exercises to adequately cover the detail that should be written on the RIPA forms.*

Following the inspection a full review was undertaken followed by the provision of two training seminars conducted by a professional trainer - *ITS Training*. 23 officers attended including both authorising and applicant officers. The course culminated in an examination marked by the trainer. All officers passed, though with different degrees of merit. This had been followed by half yearly meetings of a *RIPA* Group consisting of the authorising officers and chaired by Ms. Potts during which *RIPA* issues are discussed. Minutes of these meetings were provided at the inspection. This recommendation has been discharged.

- (ii) *That the Council have a Central Record in relation to the use of CHIS as referred at paragraph 2.13 of the Code of Practice for CHIS.*

A spreadsheet has been adopted as the Central Record with different colour coded pages for *directed surveillance* and *CHIS*. This recommendation has been discharged.

- (iii) *That the Council undertake a regular and formal approach to oversight as discussed during the inspection; involving a documented process to regulate standards, identify corporate/individual training needs and ensure issues with the timely submission of reviews and cancellations are addressed. Minor amendment of the Central Record will assist this process.*

A process has been adopted whereby *RIPA* documents are submitted by authorising officers to Ms. Knight who enters the details in the Central Record and files them. She uses the Central Record to chase late returns. Periodically the forms are reviewed by both by Mr. Harvey and Ms. Potts who attaches notes and comments. (see paragraph 13 above). The qualities of some authorisations are discussed at meetings of the *RIPA* Group. This recommendation has been discharged. but see also *RIPA* Management below.

- (iv) *The Council review the process for CHIS operation / the use of CHIS to ensure that statutory roles and responsibilities are suitably addressed and documented. Code of Practice for CHIS paragraphs 4.33 – 4.38 refers.*

This has been undertaken. However the examination of documents still demonstrates weaknesses in this field. (see paragraph 14(c) above). This recommendation has been discharged.

### ***RIPA Management***

18. Mr. Harvey (*SRO*), as Assistant Director of Legal and Democratic Services, regularly attends Cabinet Meetings and has full access to the council leadership team and is appropriately placed within the hierarchy of the Council to satisfy the recommendations made in the *Codes of Practice*. He accepts responsibility for *RIPA* in accordance with the *Code of Practice for Covert Surveillance and Property Interference* (3.28). The role of *RIPA Co-ordinating Officer* was discussed. The usual functions of such an officer may be regarded as (a) maintaining the Central Record of Authorisations and collating the original applications/authorisations, reviews, renewals and cancellations; (b) oversight of submitted *RIPA* documentation; (c) organising a *RIPA* training programme; and (d) raising

*RIPA* awareness within the Council. Ms. Potts undertakes (b), (c) and (d) whilst Ms. Knight is responsible for (a). The system appears to be well organized and should work well. However the examination of the records indicates that a good management system is still not producing the quality of authorisation required. Some improvement may be achieved if oversight is exercised by the *RIPA Co-ordinating Officer* on each application/authorisation, review, renewal and cancellation as it is received within her office from the authorising officers. This would enable an immediate follow-up contact to be made with the responsible officers if a document falls below standard. At present Ms. Potts is an authorising officer but she should relinquish that role since it conflicts with her oversight responsibilities.

**See recommendation**

19. Unauthorised covert surveillance is always a concern. However Ms. Potts has organised an admirable system for addressing it. She undertakes basic training of a wide range of officers to make them aware of the risks of unauthorised surveillance. In addition she provides *RIPA* information to staff via the Council intranet. Officers are therefore aware that if they are considering surveillance they should always consider first if it is of a nature that requires authorisation and, if they are in doubt, to contact Ms. Potts. More senior officers will be requested to cascade *RIPA* information down to staff from management meetings.
20. No record is currently kept centrally identifying technical equipment in use by the Council for covert surveillance and no record is kept of its usage. An Equipment Record should be maintained which records each such item and when it is attributed to a particular operation. This may be maintained alongside the Central Record by Ms. Knight who should be notified by authorising officers when they authorise such usage.

**See recommendation**

**Authorising Officers**

21. There are presently ten officers, including the Chief Executive, who are designated by name and office as authorising officers and who are appointed to authorise within specific Services. They were considered during the inspection and a number were found to undertake little or no authorisation. It follows that they should not be included in the list of approved authorising officers. Additionally the Chief Executive as Head of paid Service, or whoever deputises for her in her absence, is only likely to be called upon to authorise in the event of a need to authorise the employment of juvenile or vulnerable *CHIS* or the acquisition of *confidential information*. Although the Council engages in a moderate level of covert surveillance, nevertheless there is an average of only about one authorisation per month and this concentrated in a limited number of departments. It is evident that such a volume could easily be undertaken by fewer authorising officers who would achieve the benefit of each gaining more experience and fewer needing to be trained. Any authorising officer should be able to authorise for any department. In discussion it was considered that the Council requires no more than four or five such officers which would cover the contingencies of holidays and sickness. The *SRO* appears to be required to be an authorising officer (see *Code of Practice for Covert Surveillance and Property Interference, note 29*) but should not authorise save in exceptional circumstances since to do so would conflict with his oversight responsibilities. All designated officers, including the Chief Executive, and whoever might deputise for her in her absence, should receive *RIPA* training and none should authorise unless appropriately trained.

**See recommendation**

**Training**

22. Training since the last inspection has been outlined above (see paragraphs 17(i) and 19). Additionally authorising officers are required to spread knowledge of *RIPA* within their Directorates. With this training coupled to the assiduous attention given by Ms. Potts to the system it would be hoped that the standards of authorisation and performance would be higher than they are in actuality. This problem may partly be dealt with through further training. With the provisions of *Section 38 of the Protection of Freedoms Act 2012* and of the *RIP(Directed Surveillance and CHIS(Amendment))Order 2012, SI 2012/1500* taking effect on 1<sup>st</sup> November 2012 this would be a propitious moment to engage in such further training to address both the new legislation and the weaknesses disclosed in this report. It would best be conducted by an experienced professional external trainer who could deal both with *directed surveillance* and *CHIS*. It would be essential that all who may authorise attend and thereafter put into practice that which they have learnt. It is worth noting that some improvement would be immediately achieved if applicants and authorising officers followed the prompts in the forms.
23. This training should be perceived as the first stage in establishing a defined *RIPA* training programme for all who may be called upon to authorise and regular applicant officers. Under such a programme refresher training should be provided at 12/18 monthly intervals and could be conducted "in house" by the *SRO* and/or the *RIPA Co-ordinating Officer* or other member of the legal staff with appropriate experience. This would be in addition to the *RIPA* Group meetings. The initial professional training could be shared with other close local authorities in the interests of economy.

**See recommendation**

#### **Protection of Freedoms Act 2012**

24. The provisions of this legislation were discussed with the officers. The requirement that local authorities would have to seek the approval of a Magistrate before an authorisation for *directed surveillance* or *CHIS* could be activated was considered together with the procedures to be followed as outlined in the Home Office Guidance to Local Authorities. The appropriate officer(s) to attend on the Magistrate was considered. The removal of the power to grant oral *urgency* authorisations is to be noted. (see *Protection of Freedoms Act 2012, Schedule 9(9)(1 and 2)*)
25. The *RIP(Directed Surveillance and CHIS) (Amendment)Order 2012 (2012/1500)* will limit the range of offending for which local authorities may grant *directed surveillance* authorisation. Specific criminal offences will have to be identified which have penal provisions of a maximum sentence of 6 months imprisonment or more. In addition are certain regulatory offences. This will require close scrutiny by the Council since a number of covert surveillance situations in which Councils have previously used the provisions of *RIPA* will cease to be capable of being authorised.

#### **Policy and Procedures.**

26. The *Doncaster, Policy Statement – RIPA* establishes the policy to be followed by Council Officers in their engagement in Covert Surveillance. It has been amended to accommodate the recent changes in legislation. As such it is a succinct and clear guide to the general approach to be taken by officers.
27. A more detailed document, the *Doncaster MBC Procedure for Authorisation for Covert Surveillance or the Use of CHIS* provides a procedural guide to be followed by officers in applying for and authorising such surveillance. It was last revised in September 2009 although a draft containing amendments reflecting the provisions of the recent legislative changes made by *Section 38 of the Protection of Freedoms Act 2012* and of the

*RIP(Directed Surveillance and CHIS(Amendment))Order 2012, SI 2012/1500* was made available at the inspections. Overall the document is comprehensive and should serve well the officers engaged in covert surveillance. Certain amendments are required which include:

- Revising the provisions relating to the grant of authorisation for *urgency* to reflect the *Protection of Freedoms Act 2012, Schedule 9(9)(1 and 2)* which removes the power of local authorities to grant oral *urgent* authorisation for authorisations which fall under *Sections 28 and 29 of RIPA* to which the newly inserted section 32A of *RIPA* applies. Indicate that in circumstances which the applicant may consider there is some urgency s/he should first consider whether the *immediate response* provisions of *Section 26(2)(c) of RIPA* apply.
- Introduce sections outlining the responsibilities of the SRO and the *RIPA Co-ordinating Officer* and amend officers' titles throughout the document to reflect the responsibilities of these officers.
- Outline under *Proportionality* the three elements requiring consideration, namely (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.*
- Include a statement at the head of the *CHIS* section requiring an applicant to first seek legal advice from the SRO or *RIPA Co-ordinating Officer* before applying for the authorisation of a *CHIS*.
- Outline the requirements for management of *CHIS* including for the appointment of a controller, handler and record keeper in each case.
- Indicate that only the Head of Paid Service or whoever, in her absence, deputises for her may authorise the employment of juvenile or vulnerable *CHIS* or the acquisition of *confidential information*.
- Include a paragraph for the provision, operation and maintenance of an Equipment Register.

**See recommendation**

## **CCTV**

28. A visit was paid to the CCTV Control Room where the Inspection was met by Ms. Janice Jones, CCTV Manager who outlined the system of camera deployment in the Borough. All operators are trained to industry standards. Coverage is much as seen at the last inspection. The system is owned by the Council but operated both by Council operators from within the Control Room and by police officers from a remote console at the police station.
29. An unusual arrangement appears to exist whereby when the police wish to take control of certain cameras they notify the Control Room which then disables its control of and access to those cameras. Asked if the police produced authorisations for their usage Ms. Jones responded that "most of the time" the police tell the Control Room operatives that an authorisation exists. There does not appear to be any system by which the Council can be assured that its cameras are not being used for unauthorised covert surveillance on these occasions or, where an authorisation exists, that they are being used for the purposes and in the manner authorised.
30. The Council should at least establish, in common with most other Councils, a clear protocol that requires the production of an authorisation, suitably redacted of sensitive material, before the police are permitted to use its equipment for covert surveillance.



**See recommendation**

### **Elected Members**

31. The requirements of the *Code of Practice for Covert Surveillance and Property Interference (3.30)* and *Code of Practice for CHIS (3.26)* were considered. The Council already produces a quarterly report by way of information to Councillors which is placed before the Audit Committee. It is an outline of each surveillance undertaken providing a summary of the Central record but without disclosure of any details which could lead to the identification of persons. An annual report is prepared to enable Councillors to determine that the policy is appropriate for Council purposes. It is clearly understood that Councillors may not involve themselves in individual authorisations.

### **Conclusions**

32. Doncaster MBC is to be commended for its well structured *RIPA* management. Mr. Harvey and Ms. Potts are a diligent and enthusiastic team as *SRO* and *RIPA Co-ordinating Officer*. Ms. Knight maintains the Central Record and the applications/authorisations, reviews, renewals and cancellations diligently. With such able persons managing *RIPA* the Council should be able to rest assured that compliance with the legislation will be achieved.
33. In the light of this it is surprising that the authorisations and ancillary documents are not of the highest quality. Improvements are likely to be achieved by providing the officers who are actively using *RIPA* with up to date professional training and thereafter regular refresher training and for the *SRO* and *RIPA Co-ordinating Officer* to engage in robust and immediate oversight with feedback in relation to each document submitted by authorising officers. By such a pro-active process applicants and authorising officers alike may be persuaded to apply knowledge gained to the tasks of application and authorisation.
34. It was encouraging to note that each of the recommendations of the last inspection report had been discharged.
35. The Council's *RIPA* draft procedural document is in need of some revision to further reflect the changes in legislation. Those changes are bound to have an impact on the level of Council authorisation which at present includes the use of covert surveillance in investigations of criminal activities where the penal limit is below that set by the new provisions. In turn that reduction will reduce the requirement for authorising officers and enable a reduction to be made to their numbers.

### **Recommendations**

- 36.
- I. Insert a column in the Central Record to reflect reviews and ensure that all columns are completed when recording authorisations. (*Paragraph 11*)
  - II. Ensure that authorisations are confined to the sole statutory ground available to the Council. (*Paragraph 16*)
  - III. Establish a system of robust and immediate oversight of the authorisation process. (*Paragraph 18*)
  - IV. Establish a defined training programme commencing with a professionally delivered session for all who may authorise and likely applicant officers. This should be followed by regular refresher training. Ensure that the weaknesses identified in this report are addressed. (*Paragraphs 14 – 16, 22 and 23*)
  - V. Establish an Equipment Record. (*Paragraph 20*)
  - VI. Reduce the number of approved authorising officers and indicate that all authorising officers are enabled to authorise for all departments of the Council.

- Ensure that all those who may authorise are appropriately trained. (*Paragraph 21*)
- VII. Amend the *Doncaster MBC Procedure for Authorisation for Covert Surveillance or the Use of CH/S* document. (*Paragraph 27*)
- VIII. Establish a CCTV protocol with the police for the use of the Council's CCTV system for covert surveillance. (*Paragraph 30*)

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