



Investigatory Powers
Commissioner's Office

Inspection Report – Doncaster Metropolitan Borough Council

Inspection report ref: 075

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1 Introduction

- 1.1 The most recent inspection of Doncaster Metropolitan Borough Council (DMBC) was conducted by His Honour Norman Jones, Assistant Surveillance Commissioner, on the 5th January 2016. This inspection has been conducted to assess the level of compliance with the Regulation of Investigatory Powers Act 2000 (RIPA) in respect of the use and management of covert surveillance and covert human intelligence sources (CHIS).
- 1.2 This inspection took place on the 25th March 2019 and was conducted by Mr Ges Horne, Inspector.
- 1.3 This report is addressed to the Chief Executive, Jo Miller, whose address for correspondence is Civic Office, Waterdale, Doncaster, South Yorkshire DN1 3BU. Her email address is: Jo.Miller@doncaster.gov.uk

2 Inspection methodology

- 2.1 In the period since the last inspection, DMBC has granted thirteen directed surveillance authorisations and no CHIS authorisations. This figure is consistent with previous inspections.
- 2.2 The inspection is based on a dip sampling exercise of all available records and therefore does no more than provide a snapshot of the Council's compliance based on what has been reviewed.
- 2.3 Statistics relating to what was viewed are captured in table 1 below. Please see section 7 for a full list of which records were viewed during the inspection.

For the period: 5 th January 2016 to 25 th March 2019				
Doncaster Metropolitan Borough Council	Total authorisations in current reporting period	Total authorisations in previous reporting period	Total records viewed at Inspection	Of this total, number of urgent oral records viewed
Directed Surveillance	13	13	4	0
CHIS	0	0	0	0

Table 1. Key Statistics

2.4 The following officers from DMBC were met:

- Scott Fawcus, Assistant Director of Legal and Democratic Services and Senior Responsible Officer (SRO)
- Helen Potts, Principal Legal Officer and RIPA Co-ordinating Officer
- Dave McMurdo, Head of Trading Standards (RIPA Authorising Officer)
- Neil Concannon, Head of Service for Litigation (RIPA Authorising Officer)
- John Davies, Enforcement Manager (RIPA Authorising Officer)

3 Key findings

3.1 Recommendations

3.1.1 Two recommendations have been made. The first concerns a number of minor amendments required to the Policy document. These are outlined in further detail in paragraph 5.1.2. The second recommendation relates to the considerations of collateral intrusion at reviews and is covered in paragraph 5.2.3.

3.1.2 The key recommendations arising from the inspection are listed in

3.1.3 Table below.

Number	Reference	In relation to	Recommendation	Recommendation type
R1	5.1.2	Policies	Amend the RIPA Procedures document as detailed in paragraph 5.1.2	Recommendation - observed potential for improvements
R2	5.2.3	Surveillance	Proper consideration should be given to collateral intrusion at reviews	Recommendation - observed potential for improvements

Table 2. Key recommendations resulting from inspection

3.2 Observations

3.2.1 The key observations arising from the inspection are listed in Table 3 below.

Number	Reference	In relation to	Recommendation	Observation type
O1	5.2.3	Surveillance	On the review form, substitute the reference to the reviewing officer with authorising officer	Observation
O2	5.2.3	Surveillance	Cancellations should include the authorising officer's directions in respect of the management of the surveillance product	Observation

Table 3. Key observations resulting from inspection

4 Actions taken on previous inspection recommendations

4.1 R1: Amend the Central Record of Authorisations (paragraph 10).

Discharged: The relevant paragraph referred to the date of authorisation. The Central Record was inspected and found to be fully compliant with the Code.

R2: Establish a training programme to embrace regular refresher training either by the RIPA officers or by e-training and address the issues raised in the examination of RIPA documentation in this report.

Discharged: DMBC should be commended for its response to this recommendation. A number of internal and externally sourced RIPA awareness courses have been delivered, together with mandatory on-line training for over one hundred staff.

R3: Amend the RIPA Procedures document (paragraph 29).

Discharged: The suggested amendment regarding the Protection of Freedoms Act 2012 has been incorporated. Although minor changes have been recommended as a result of this inspection, this specific recommendation can be considered discharged.

5 Inspection findings

5.1 Policies and procedures

5.1.1 In addition to the Chief Executive who is the authorising officer in respect of the enhanced level authorisations specified in Annex A of the Code of Practice, there are three trained authorising officers. All the authorising officers were present and impressed the Inspector with their knowledge and understanding of the legislation.

5.1.2 The RIPA policy was updated after the last inspection in 2016. It is a comprehensive and well written document supplemented by a Policy Statement – RIPA 2000. Although largely accurate, a number of recommendations were made in relation to the Policy document which are summarised below:

- The table on page 8 should reflect the fact that test purchases are covert even if the officer behaves no differently from a member of the public. This is because the council officer is not declaring himself as such nor the true purpose of the purchase.
- Sections 8.8 and 14.8 currently state: *Authorisations can be renewed in writing when the maximum period has expired*. This should be amended to read: shortly before the maximum period has expired.
- Section 13.9 prescribes monthly reviews for CHIS authorisations. To comply with the Code, this should be amended to stipulate that reviews should be undertaken as frequently as is considered necessary and proportionate by the authorising officer.

5.1.3 Recommendation 1: The Policy Guidance document should be revised in accordance with paragraph 5.1.2 of this report.

5.1.4 The most recent RIPA training was delivered in March 2019 and there is mandatory on-line training for staff in specific roles who require an enhanced awareness of RIPA. Since 2017, an impressive figure of 110 staff have successfully completed this on-line course.

5.1.5 A report on the Council's RIPA use is submitted to the Audit Committee every six months in compliance with Section 4.47 of the Code of Practice.

5.2 Surveillance

5.2.1 Two directed surveillance authorisations were inspected in support of Operation Taco. The first authorisation involved a group of five residential addresses from where it was believed illicit tobacco was being sold. The second focused on five retail premises which were again suspected of selling counterfeit and illegal tobacco. The surveillance

activity included test purchase operations. Although none of the subjects were linked, the intelligence cases were sufficiently strong to counter any allegations that these were “fishing expeditions”. The construction of one authorisation to combine each set of addresses appeared a sensible and less bureaucratic approach than authorising each individual subject and address separately. However, the authorising officers’ attention was drawn to the fact that the statutory considerations, particularly collateral intrusion, needed to be carefully addressed in relation to each premise which was subject to surveillance.

5.2.2 The statutory considerations of necessity, proportionality and collateral intrusion were articulated well in the applications and authorisations. In the earlier authorisations the applicant and authorising officer incorrectly cited the “economic well-being of the UK” and “public safety” as grounds for the authorisation. However, this error had been rectified in the more recent authorisations, evidence (if any was needed) of the value of refresher training.

5.2.3 Reviews and cancellations were completed timeously but there were a number of predominantly “fine tuning” rather than strictly compliance issues that were highlighted to the authorising officers:

- Firstly, attention was drawn to the assessment of collateral intrusion at reviews. Invariably the applicant would state that no collateral intrusion had occurred although the review itself contained details of legitimate shoppers and innocent members of the public visiting the suspect addresses. This level of collateral intrusion was anticipated at the time of authorisation and is unavoidable. An acknowledgement of this at the review does not vitiate the grounds of the authorisation provided this intrusion is considered proportionate to what is sought to be achieved.

Recommendation 2: Proper consideration to collateral intrusion should be given at reviews including what measures have been taken to minimise unnecessary intrusion in to the privacy of those who are not the intended subjects of surveillance.

- Secondly, the review form contains a section named “reviewing officer’s” comments. In reality, it is the authorising officer who completes this section and this ambiguity needs to be removed as this section contains the justification for the continued deployment which is the prerogative of the authorising officer.
- Finally, the cancellations recorded the reason for cancellation and the value of the surveillance. In accordance with note 110 of the OSC (as was) Procedures & Guidance document, it is suggested that the authorising officer includes directions for the management of the surveillance product.

5.2.4 *Social media*

Trading standards and enforcement officers use the internet for research. There was a good understanding amongst the group interviewed as to what activity would require the protection of a directed surveillance authorisation. All staff employed in these teams have received the relevant training. Although the IT system used by Trading Standards (M3) will provide an audit trail of activity, a more effective process for recording ongoing use was being considered by the Enforcement Manager.

6 Conclusion

6.1 The Council deserves considerable credit for attaining high standards of compliance. The recommendations from the 2016 inspection have been discharged and the extensive training programme has certainly reaped dividends in terms of the overall quality of the applications and authorisations. The Council enjoys a good relationship with the Magistrates' Court and no significant delays in securing the magistrates' approval were identified. There is one recommendation from this inspection relating to minor revisions of the RIPA policy document and another relating to considerations of collateral intrusion at reviews. Both can be easily addressed. Particular thanks should be passed to Helen Potts who made all the arrangements for the inspection and provided comprehensive background reading material in advance of the inspection.

7 List of records reviewed

7.1 For completeness, a full list of all records viewed during the inspection is captured below in Table 2.

7.2 Records listed here may have been viewed fully or only in part depending on the inspection methodology and approach taken.

Total records viewed	Operation URN	Operation name
Directed Surveillance (4)	98	Taco
	99	Taco
	100	N/A
	101	N/A

Table 2. List of records viewed

Ges Horne

IPCO Inspector