



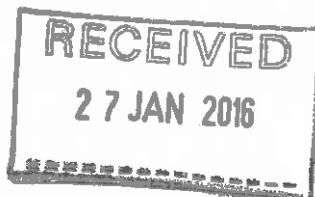
**Office of Surveillance
Commissioners**

**PO Box 29105, London, SW1V 1ZU
Direct Line: 020 7035 8206**

E-mail: Yvette.moore12@homeoffice.gsi.gov.uk

With Compliments

**Yvette Moore
Clerk to the Secretariat**







Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

Official -Sensitive

27 January 2016

Covert Surveillance

Dear *Ms Miller,*

I enclose the report dated 19 January made to me by His Honour Norman Jones QC, Assistant Surveillance Commissioner, following his inspection of the arrangements made by the Council to ensure compliance with the legislative provisions which govern the use of covert surveillance.

I have studied the report, which I endorse.

There has been a reduction in the deployment of these statutory powers, but since the last inspection in 2012, a number of authorisations both directed surveillance and CHIS, have been sought and granted. In short, therefore, it is important that the necessary structures should be in place so that any relevant deployment cannot be criticised as unlawful. After the last inspection in 2012, eight recommendations were made. These have all been addressed, and largely, but not entirely, discharged. Examination of the records revealed a number of weaknesses in the process of application/authorisation which are set out in paragraph 13, and were discussed after the inspection. Rather than make each suggestion the subject of a specific recommendation I highlight this paragraph for attention.

The remaining recommendations are, I believe, self-explanatory. The necessity for a full training programme is underlined. Effective refresher training would enable the oversight referred to in paragraph 33 to be more robust. These processes are necessary to ensure compliance. The sensitivities of CHIS deployment and management require no emphasis. The underlying problems seem to me to arise from insufficient or inadequate training of officials and in this way the recommendations are all connected.

I am, of course, aware of some of the pressures on the Council, but in the circumstances it would be sensible for a training programme, directed to the issues raised in the report, to be arranged.

I look forward to hearing from you that these recommendations will be addressed.

Ms Jo Miller
Chief Executive, Doncaster Metropolitan Borough Council
Copley House,
Waterdale
Doncaster DN1 3EY

Norman Jones

Lord Judge

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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Doncaster Metropolitan Borough Council

5th January 2016

**Assistant Surveillance Commissioner:
HH Norman Jones QC.**

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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.

19th January 2016.

INSPECTION REPORT DONCASTER METROPOLITAN BOROUGH COUNCIL

Inspection 5th January 2016

Inspector His Honour Norman Jones QC.
 Assistant Commissioner

Doncaster MBC.

1. Doncaster Metropolitan Borough Council administers an area covering 219.3 square miles with a mixed urban and rural population of about 304,000 in South Yorkshire. The principal town is Doncaster, but over 70 other settlements are included within the Metropolitan Borough.
2. The Chief Executive, as at the last visit, is Ms Jo Miller who is immediately supported by five Directors and teams led by Assistant Directors.
3. I conducted the previous inspection of the Council for the OSC in October 2012.
4. Mr Roger Harvey, Assistant Director Legal and Democratic Services, continues as the Senior Responsible Officer (SRO) as does Ms. Helen Potts, Principal Legal Officer, as RIPA Co-ordinating Officer.
5. The Council is a more limited user of RIPA than at the time of the last inspection when it had granted 40 authorisations for *directed surveillance* and three for *Covert Human Intelligence Sources (CHIS)* in a period of three years. In The three years preceding this inspection 13 authorisations have been granted for *directed surveillance* and 5 for CHIS all being for trading standards investigations. None were *urgent* or concerned *confidential information*. However Mr Dave McMurdo, Trading Standards Manager and an authorising officer, drew to my attention two authorisations for CHIS in which he had been both authorising officer and controller and thus had self authorised. This was not recorded as such in the Central Record of Authorisations.
6. The Council administrative headquarters is at Copley House, Waterdale, Doncaster, DN1 3EY.

Inspection.

7. Mr Harvey, Ms. Potts and Mr McMurdo extended a warm welcome to Doncaster. During the inspection interviews and discussions were held with those officers and, during a later visit to the CCTV Centre, with Ms. Janice Jones, Alarm Receiving Centre Manager. Ms. Geraldine Morton, Head of Revenues and Benefits, joined the inspection to discuss and consider the authorisations examined. The ready assistance and enthusiasm of all officers interviewed was much appreciated.
8. An examination was undertaken of the Central Record and a sample of the authorisations and ancillary documentation which had arisen since the last inspection. Among the *RIPA* issues discussed were those arising from the examination of records, reasons for reduction in authorisation, progress on the recommendations of the last OSC report, the management of *RIPA*, authorising officers, training, *CHIS* and social media, policy and procedures, the effects of recent legislation, councillor information and CCTV.

Reduction in authorisations

9. Reasons given for the decline in authorisations by over 50% include the following:
 - the effect of the *Protection of Freedoms Act 2012* legislation has reduced the capacity of departments to undertake covert investigations in less serious cases;
 - the Children's Department has now been placed in a trust which is dissociated from the Council;
 - Environmental Health has ceased using covert techniques and deploy signed CCTV cameras at fly tipping sites;
 - The Trading Standards Department has reduced its reliance on the use of children for underage test purchasing and now only targets retailers in relation to whom it has intelligence. However this has only led to a marginal decrease in Trading Standards usage of *RIPA* (18 authorisations against 19 at the last inspection) with all authorisations undertaken since the last inspection emanating from this Department.

Examination of Records

10. The **Central Record** is well maintained on a computerised spreadsheet. It is now almost fully compliant with the requirements of the *Code of Practice for Covert Surveillance and Property Interference* 8.1 but the removal of the date of authorisation is an error requiring rectification.

See recommendation

11. Two *directed surveillance* and two *CHIS* authorisations were examined in detail and other authorisations were reviewed. In each case Mr McMurdo was the authorising officer.
12. It was encouraging to note that the Home Office forms in use had been further improved by additional prompts designed to encourage applicants and authorising officers to pay specific attention to individual issues. Notable amongst these was the inclusion of the three basic elements of *proportionality*.
13. General weaknesses continue to appear in the applications/authorisations and in the ancillary documentation. These were discussed with the officers at some length during the inspection and they include:
 - inadequate consideration of the elements of *proportionality*. Such a consideration should encompass the three fundamental elements: (a) that the proposed covert surveillance is proportionate to the mischief under investigation; (b) that it is proportionate to the degree of anticipated intrusion on the target and others; (c) it

is the only option, other overt means having been tried or considered and discounted. All too frequently only one of these elements is considered and that in spite of the three elements being a specific prompt.

- *Necessity* should embrace a consideration of **why** the use of covert surveillance is *necessary* in the investigation. This was not always included.
- The documents available for inspection did not include, where the investigation was concerned with sales from retail premises, any indication of the intelligence being acted upon. This was a criticism at the time of the last inspection but in discussion with Mr McMurdo he indicated that lists of premises with some indication of intelligence was provided at the time of submission of the authorisation to the *RIPA Co-ordinating Officer*. Ms. Potts accepted that was likely and that she may not have attached that information to the forms when filed although it did go to the magistrates and form part of the documentation considered for approval. This error must be addressed since in such cases the nature of the intelligence forms an integral part of the consideration of both *necessity* and *proportionality*. Ms. Potts was able to recover one such form from her files relating to the test purchase of alcohol being sold for juvenile consumption, and when examined it provided a list of premises to be visited but in terms of intelligence did no more than indicate that the 15 premises concerned had at some stage in the past failed an alcohol test purchase. Four such test purchases had taken place four months before the authorisation and seven between a year and two years before. Three were three years before and one did not provide such information. None appeared to rely upon information that underage sales were currently taking place or that there had been any recent incidence of drink affected behaviour in the vicinity of the premises. The appearance of this authorisation was that it was a fishing exercise largely relying upon stale "intelligence".
- In other cases it should be noted that it is important to articulate the nature of the intelligence relied upon, which should be related to specific premises, and not just to rely upon general terminology such as "police intelligence".
- Authorisations do not pay sufficient attention to the "5W's" prompts provided in the form. Consequently descriptions of how and when operations are to be undertaken are rarely found.
- In one *CHIS* applications/authorisation individuals believed to be selling illicit goods had been identified from Facebook investigation. There was little description of how the computer technology was used to obtain that information and it was clear from the authorisation, but not the application, that a covert Facebook account was in use. The application gave little detail of how the technology was to be used. A number of targets were supplied with the comment that the officer would "manage them". There was no description of any other means considered. A later *CHIS* application utilising similar technology for a similar purpose gave better detail of what was to be undertaken but was still deficient in outlining how the operation was to be conducted. In this case the use of computer technology was not referred to save in the risk assessment. It would appear that more consideration was given to the picking up of goods from an address than of the procedures used to reach that point.
- The forms contained within the Central Record suffered from the weakness that a number were copies of originals. In addition some did not bear signatures either of the applicant or authorising officer. All forms filed with the Central Record should be originals.
- All authorisations were typed and we discussed the best practice of authorisations being handwritten in terms of establishing that authorising officers had put their minds to the authorisation and that the authorisation had not been subsequently amended.
- The fact that the authorising officer acted on occasion as controller has been mentioned above. This practice should cease forthwith.

- Further attention should be paid to ensuring that expiry dates are set and are accurate.
 - Reviews were generally set and conducted. One directed surveillance operation suffered delays, not caused by the officers, and was subject to two reviews before being renewed. The reviews were of a reasonable quality and the first review undertaken following the renewal was also of a reasonable quality. However by the time of the second review following renewal five months had elapsed and there was still no progress being made. It should have been clear that the authorisation should be cancelled but it was allowed to run for another month before being cancelled at the end of the renewal period. A second authorisation was similarly reviewed at times when it was clear that little activity had taken place but was still permitted to continue. Mr McMurdo indicated that the lack of activity was often caused by police officers failing to turn up for operations after arranging to do so and the operation could not be undertaken since only the police had the power to issue the requisite fixed penalty notices.
 - It was noted that cancellations were sometimes being undertaken late, in some cases some months after expiry, and contained little detail of what been achieved.
14. On the positive side it was also noted that a number of the applications gave good detail of what they sought to achieve. Collateral intrusion was always well addressed and regular reviews were undertaken. It should further be remarked that not all applications contained all of the weaknesses described above.
15. It is of some disappointment that issues raised at the time of the last inspection have not been fully addressed. Particularly it is disappointing to see some 15 years after the commencement of RIPA that fundamental issues are not being addressed even where there are clearest prompts within the forms for assistance.

See recommendation

Progress on previous recommendations

16. Eight recommendations were made in the last OSC report:
- i. Insert a column in the Central Record to reflect reviews and ensure that all columns are completed when recording authorisations.*
- This recommendation has been discharged but note the comment in paragraph 10 above.
- ii. Ensure that authorisations are confined to the sole statutory ground available to the Council.*
- Current authorisations are so confined and this recommendation has been discharged.
- iii. Establish a system of robust and immediate oversight of the authorisation process.*

The RIPA Co-ordinating Officer, or occasionally the SRO or another lawyer, will review and check each application/authorisation prior to the authorising officer signing, a process which is recorded in the Central Record. This process should serve as a challenge to some of the weaknesses raised in the examination of the documents at this inspection. At present it does not appear to be doing so and emphasis

should be laid on making the process more robust. This recommendation has been partly discharged.

- 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.*

Since the last inspection corporate training was provided by a professional external trainer in June 2013 and secured a large attendance of both authorising officers and likely applicants. However this has not been followed up by refresher training on a corporate basis although there is regular contact between the Training Standards Department and the *RIPA Co-ordinating Officer* in which she provides updating information and guidance. This recommendation has been partially discharged.

- v. *Establish an equipment record.*

An equipment record has been set up centrally to identify equipment owned by the Council which may be used for covert investigations. Individual records are kept in each Department relating to the use by that Department of such equipment. This recommendation has been discharged.

- 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.*

The 10 authorising officers designated at the time of the last inspection have been reduced to 5. They undertook training outlined above in June 2013 but not since. Authorisation is currently confined to Trading Standards and unless other departments of the Council become more active the number of authorising officers could, if the Council wished, be reduced further to a number which would satisfy the requirement for resilience. This recommendation has been discharged.

- vii. *Amend the Doncaster MBC Procedure for Authorisation for Covert Surveillance or the Use of CHIS document.*

The proposed amendments outlined in the last report have all been adopted. This recommendation has been discharged.

- viii. *Establish a CCTV protocol with the police for the use of the Council's CCTV system for covert surveillance.*

Such a protocol has been established. This recommendation has been discharged.

Management of RIPA.

17. Mr Hartley is an experienced *SRO* having been in the role for several years. He retains close oversight of the operation of the system and maintains regular contact with the *RIPA Co-ordinating Officer*, both being in the same Department. He attends meetings with the *RIPA Co-ordinating Officer* and officers from other departments who may have an

involvement with *RIPA*, in particular with the Trading Standards Department. If complex issues arose he would be informed and would anticipate taking action. If those issues involved a particular officer he would take a robust stance in relation to that officer, although he was at pains to emphasise that he had never been required to do so. He occasionally dip samples authorisations and periodically undertakes a review of the files. He recognises his responsibility for ensuring that authorising officers are appropriately trained.

18. Ms. Potts, as *RIPA Co-ordinating Officer*, is responsible for day-to-day *RIPA* activities. She is recognised as the principal officer in the Council to be approached with regard to surveillance issues. She has recently been approached to advise as to whether there were any *RIPA* implications involved in the use of drones to survey the condition of school roofs. An online page on the Council intranet directs staff to her for such information. With the assistance of Mr Harvey's PA she maintains the Central Record. She reviews each application/authorisation prior to the authorising officer signing it and it is then submitted for approval by the magistrates. (See paragraph 16 (iii) above). In addition she is responsible for the organisation of corporate *RIPA* training. She is responsible for maintaining a good state of *RIPA* awareness throughout the Council and does so with a good degree of success considering the regular approaches made to her by departments concerning *RIPA* issues. The establishment of *RIPA* awareness online e-training for all staff in December 2015 was most encouraging.
19. It is to be noted that the elected members demonstrate an active interest in the subject through the Audit Committee which is regularly briefed and has particularly raised issues concerning the overall awareness by officers of the *RIPA* provisions.

Authorising officers

20. There are now five designated authorising officers although virtually all authorisation is undertaken by Mr McMurdo who acts as authorising officer for the Trading Standards Department. (See paragraph 16(vi) above). Whilst all have been trained the last such training was in 2013 and examination of the authorisations indicates the need for further training. (See **Training** below). In addition the Chief Executive and (in her absence) whoever deputises for her, may authorise for the employment of *juvenile* or *vulnerable CHIS* and for the acquisition of *confidential information*. These officers also must be trained to undertake those authorisation responsibilities.

See recommendation

Training

21. The absence of a corporate *RIPA* training programme, which would ensure regular refresher training, causes some concern. This was part of a recommendation from the previous inspection and it is somewhat disappointing that it has not been followed through. Such refresher training could be delivered internally by Ms. Potts or another officer of the Legal Department with *RIPA* experience. Its purpose would be to ensure that officers are regularly reminded of the principles to be considered when undertaking either applications or authorisations and in particular to remind officers of the importance of articulating their full considerations within the documents and drawing attention to the prompts added to the forms, both by the drafters and by Doncaster MBC, for their assistance. This would address a number of the problems arising from the completed forms examined at this time.
22. A further approach to refresher training was discussed with the officers and embraced the concept of expansion of the new *RIPA* awareness e-training to embrace a more comprehensive system of refresher training. This would have the advantage of ensuring

that all authorising officers and likely applicants would be obliged to undertake the training and to satisfactorily complete exercises attached to the training.

23. It is to be noted that the regular six monthly meetings of authorising officers in a "*RIPA Group*" ceased in 2013. This served as a useful forum for debating covert surveillance issues and furthermore provided a degree of refresher training.

See recommendation.

CHIS and Social Media

24. *CHIS* are only deployed by the Trading Standards Department and then only in relation to the use of social media and the collection of illicitly sold items from addresses in and about Doncaster. The *CHIS* is always an officer of the Council. Resource implications alone preclude any extensive use of *CHIS* although the deployment of officers acting as such would be considered if it was felt necessary to establish a relationship with a subject believed to be selling items illegally.
25. The importance of ensuring that there are officers able to act as controllers and managers of *CHIS* in these situations was emphasised. Further emphasis was laid on the importance of ensuring the independence of the authorising officer by him/her not engaging in any activity related to an investigation, which included not being a controller or handler. Training should be provided to officers undertaking these roles although it does not require to be to the level undertaken by the police.

See recommendation.

26. The exploration by Trading Standards of social networking sites to identify those selling counterfeit and other illegal goods was discussed. This practice is employed by the Department and is likely to increase. Whilst there are many technological and legal stumbling blocks in such usage it was encouraging noting that the trading standards officers were aware of the covert surveillance significance attached to such practices and had authorised accordingly. The general practice had been to identify from open sources likely criminal activity and then to obtain appropriate authorisation to become a Facebook "friend" with the use of a covert identity. A relationship would be established with the seller and arrangements would be made for the officer to collect goods from an address. The need to more fully identify within applications and authorisations precisely what was authorised, including the use of computer technology, has previously been discussed. (See paragraph 13 above). A "rule of thumb" guide to the practice was considered during the inspection and may be summarised thus:

Reviewing open source sites does not require authorisation unless the review is carried out with some regularity, usually when creating a profile, in which case *directed surveillance* authorisation will be required. If it becomes necessary to breach the privacy controls and become, for example, a "friend" on the Facebook site, with the investigating officer utilising a false account concealing his/her identity as a Council officer for the purposes of gleaning intelligence, this is a covert operation intended to obtain private information and should be authorised, at the minimum, as *directed surveillance*. If the investigator engages in any form of relationship with the account operator then s/he becomes a *CHIS* requiring authorisation as such and management by a Controller and Handler with a record being kept and a risk assessment created.

Protection of Freedoms Act 2012 and RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500 .

27. This legislation commenced in November 2012. Since that time the Council has granted 17 authorisations all of which have achieved the approval of a Magistrate. The Council has set up a good relationship with the Magistrates' Court and discussed with the court officers the procedures to be adopted. These ensure that applications for approval are submitted in good time by email and considered by the Magistrate, usually a District Judge, prior to appearance. The authorising officer and applicant will normally attend the hearing on behalf Council.

Policy and Procedures

28. The Council's *RIPA* policy is set out in its *Policy Statement - RIPA 2000*. It is a brief document appropriately outlining the approach of the Council to covert surveillance.
29. The procedures to be adopted by Council officers applying for or granting authorisation are outlined in the document, *Procedures for Authorisation of Directed Covert Surveillance or a CHIS* which was last revised in December 2014. It is an informative document covering all of the issues likely to be met by applicant and authorising officers. A few minor amendments were considered with the officers during the inspection and which were noted to be undertaken. A section is included relating to the researching of social media sites for the purposes of obtaining intelligence and evidence. It would be improved by the addition of the guideline outlined in paragraph 27 above.

See recommendation.

Councillors.

30. Regular reports are provided to the Council's Audit Committee relating to *RIPA* activity and an annual report would be delivered to enable Councillors to satisfy themselves that the policy remains fit for purpose.

CCTV

31. A visit was paid to the CCTV Centre where valuable assistance was provided by Ms. Janice Jones, the Alarm Receiving Centre Manager. The Centre has been rebased since the last OSC inspection. It is now an entirely new digital system which covers with 400 cameras the Doncaster town centre, Mexborough, Thorne and Moorends and Council buildings and alarms. In addition it monitors 600 cameras on properties owned by the Council Buildings Service, an arm's-length company. The system operates on a 24/7 basis by three or four operators being on duty at a time. All are appropriately trained.
32. Although the police have not used the system for covert surveillance purposes in recent years a protocol now exists requiring officers to submit a suitably redacted police *RIPA* authorisation to the Centre which would be considered by the Manager and the *RIPA Co-ordinating Officer* before access would be granted to the system. A copy of the authorisation is provided to the *RIPA Co-ordinating Officer* and the original retained on a file at the Centre. This is a distinct improvement on the ad hoc system existing at the time of the last inspection.

Conclusions

33. Most of the conclusions found in the last report are pertinent to this report. The Council has a good management structure for *RIPA* with able and experienced officers within the Legal Department as *SRO* and *RIPA Co-ordinating Officer*. Oversight is exercised on all authorisations prior to their being signed by the authorising officer. It was therefore disappointing to yet again find weaknesses in the actual applications and authorisations. This is indicative of the need for that oversight to be exercised more robustly with

particular attention paid to the articulation of the consideration given to the essential elements and of that which has been authorised.

34. The adoption of an effective system of refresher training would undoubtedly lead to an improvement in the quality of authorisations. In particular it would draw the attention of applicant and authorising officers to the requirement to articulate in detail what is required to be authorised and what is authorised giving full consideration to the "5Ws". It is of particular interest to note that the Council will give active consideration to the use of e-training as a means of establishing refresher training. The principal recommendation in this report relates to the issue of training.
35. It was again encouraging to note that all of the previous recommendations had either fully or partially been discharged.

Recommendations

- 36.
- I. Amend the Central Record of Authorisations.(paragraph 10).
 - II. 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. Ensure that officers are trained to manage *CHIS*. (paragraphs 13-15, 16(iv), 20, 21-23 and 25).
 - III. Amend the *RIPA Procedures* document. (paragraph 29).

His Honour Norman Jones, QC.
Assistant Surveillance Commissioner.

