

IPCO/INSP/075

The Rt. Hon. Sir Adrian Fulford
Investigatory Powers Commissioner
Investigatory Powers Commissioner's Office
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IPCO

Investigatory Powers Commissioner's Office

IPCO Inspection – Durham County Council

1 Date of Inspection

20th February 2018

2 Inspector

Paul Gratton

3 Introduction

- 3.1 Durham County Council is the local authority for County Durham in North East England. Originally a two tier council, it became a unitary authority on April 1 2009 when the seven districts across the county were abolished. It is one of the largest local authorities in England serves a population of 522,100 and employs around 16,500 people with a budget of approximately £1.4 Billion. The county covers an area 862 square miles with 12 major centres including Durham City, Chester-le-Street, Newton Aycliffe, Consett and Peterlee.
- 3.2 The Council has a Labour majority and is made up of 126 Councillors. The Chief Executive is Terry Collins who is supported by five Corporate Directors who head up the five service areas of Adult and Health, Children and Young People, Regeneration and Local, Resources and Transformation, and Partnerships. The RIPA Senior Responsible Officer (SRO) is the current Head of Legal and Democratic Services Helen Lynch. Technically, Helen Lynch is not a member of the Corporate Leadership Team as outlined in paragraph 3.34 of the Codes of Practice (Covert Surveillance and Property Interference). Having said that, her experience, knowledge and background make her ideal for this role. As part of the extended Senior Management Team and with regular one to one meetings with the Chief Executive and Leader of the Council she has ready access to the Corporate Leadership Team. I do not see this as an issue; in fact, as you will see, she has performed the role excellently.
- 3.3 The last inspection was conducted by His Honour David Hodson and since then Durham County Council has authorised 56 directed surveillance authorisations and 26 Covert Human Intelligence Sources (CHIS).

- 3.4 Any correspondence should be sent either to Helen Lynch at helen.lynch@durham.gov.uk or to the Chief Executive, Mr Terry Collins, Durham County Council, County Hall, Durham, Co Durham, DH1 5UL.

4 Inspection approach

- 4.1 The purpose of the inspection was to examine policies and procedures relating to the Regulation of Investigatory Powers Act 2000 (RIPA), in respect of directed surveillance and covert human intelligence sources (CHIS). All relevant policy documents were examined prior to the inspection and all application and authorisation paperwork was made available during my visit. In the allotted time I was able to examine a cross section of CHIS and directed surveillance applications and authorisations.
- 4.2 I was hosted during my inspection by the Senior Responsible Officer Helen Lynch with whom I discussed the Corporate Leadership structure, RIPA processes and progress against previous recommendations. I held a brief professional discussion with the Chief Executive Mr Terry Collins, a focus group with the Council's Authorising Officers and a wider group discussion involving investigators and applicants.

5 Progress against recommendations

- 5.1 The last inspection was conducted by His Honour David Hodson in May 2014 and he made two recommendations.
- 5.2 *Ensure that future training covers the need to set the duration of each and every authorisation.*

A full training regime now exists which incorporates this issue and I saw no evidence that the problem still exists. I will report further on training under that section and this recommendation can be **discharged**.

- 5.3 *Establish a robust system to review all RIPA forms.*

Since the arrival of the new SRO there has existed a much more robust oversight regime. All applications will receive a quality review from the SRO and her team at some point in its journey, this on top of the quality assurance carried out by the Authorising Officer. A quarterly review of all applications is now conducted by the SRO and the regular Authorising Officer. Following each quarterly review a report on any findings is completed and circulated to all those involved in the RIPA process. This is good practice and should continue. This recommendation can also be **discharged**.

6 RIPA Structure and policy

- 6.1 There are three Authorising Officers across the organisation and while they are all trained it is clear that only one is used. This does help create a consistent approach but means the other two remain untested. During my discussions with the Authorising Officers, while they appear confident that they could carry out the role, they would welcome any form of extra training or exposure and a table top exercise would seem an appropriate consideration.
- 6.2 Applicants are generally investigators and have been exposed to recent training and regular inputs during team meetings and training days.
- 6.3 The organisation's RIPA Corporate Guidance document dated September 2017 is an excellently written and comprehensive document which captures all relevant legislative requirements. It also covers well local procedures and identifies clearly the relevant roles and responsibilities. It should be updated with regard to the organisation's central record of authorisations. This is now an electronic spreadsheet which contains all the required information and is managed and maintained by a nominated Legal Assistant.
- 6.4 All applications for both directed surveillance and CHIS are submitted following the allocation of a reference number from the central record. They are sent to the Authorising Officer with a wet signature from the applicant. Once authorised, again with a wet signature from the Authorising Officer, arrangements are made to attend the local magistrates' court in line with the requirements of the Protection of Freedoms Act 2012. It is the policy of Durham County Council that applicants will attend court to present the application and not the Authorising Officer or a member of the legal team. Officers who attend court must be authorised to do so and will be nominated in a Designation Order signed by the Senior Responsible Officer.
- 6.5 During the most recent audit by the SRO it was noted that a number of applications were either not signed or dated. An instruction has been issued to applicants and therefore I have not raised this as a recommendation. I was asked on numerous occasions whether wet signatures were necessary and I have made it clear that unless the integrity of the document can be captured in any other way then a wet signature would be necessary.

7 Directed Surveillance

- 7.1 I reviewed five directed surveillance applications during my inspection, primarily from the past 12 months. I was impressed by the quality of applications but would like to have seen intelligence accompanied by a recognised grading which would allow the Authorising Officer to make an informed assessment.

- 7.2 Applications were generally accompanied by a general risk assessment and if appropriate a Surveillance feasibility assessment. It was not clear whether these had been seen by the Authorising Officer when considering the application. Authorising Officers stated they had seen the documents but agreed that some form of confirmation would be appropriate. Whether that is in the form of a signature or is noted within their authorisation is a matter for the SRO to agree.
- 7.3 Authorisations have improved over the three years since the last inspection but some fundamental issues remain. Authorising Officers' statutory considerations in relation to Proportionality and Collateral Intrusion are generally poor and authorisations 265, 283 and 284 provide examples. Proportionality considerations are brief and not related to the points raised in paragraph 3.6 of the Code of Practice. Collateral intrusion is generally not referred to by the Authorising Officers. There is however often direct reference by the Authorising Officer to "Confidential Information" which tends to indicate some confusion. I have discussed this with the Authorising Officers who have now acknowledged what needs to be considered in any authorisation. I have asked the SRO to review the current authorisation form which I suspect has been incorrectly adapted and could well explain any confusion. I make my first formal recommendation in relation to the Authorising Officers' statutory considerations.

Recommendation: *Authorising Officers should articulate clearly in authorisations their considerations in relation to Proportionality and Collateral Intrusion. The key points to consider are outlined clearly at Paragraphs 3.6 and 3.8 in the Codes of Practice (Covert Surveillance and Property Interference).*

- 7.4 Reviews are again well written but the repetition of previous reviews is unnecessary and becomes unwieldy as they build up. Cancellations appear prompt and contain the appropriate information but there is no reference to when the activity concluded, which would be useful.

8 CHIS

- 8.1 CHIS applications generally relate to test purchase deployments or activity on line and primarily to support investigation and enforcement activity in relation to under age sales of alcohol and tobacco and the sale of counterfeit goods and illicit tobacco.
- 8.2 Applications are again well constructed and provide the appropriate level of intelligence in relation to the deployments requested. Risk assessments were not attached to the CHIS paperwork and further investigation showed that more general risk assessments were kept with the associated directed surveillance paperwork. While I acknowledge that these are generally not high risk deployments, individual risk assessments for each CHIS should be completed. At present there is no reference to training, experience and knowledge of the individual and therefore I question how the Authorising Officer can assess the risk of deploying a CHIS.

Recommendation: *The SRO should satisfy herself that any CHIS application is accompanied by an appropriate risk assessment. The assessment should allow the Authorising Officer to assess the risk in relation to deploying that particular individual as a CHIS.*

- 8.3 The same issues in relation to Authorising Officers' statutory considerations exist with CHIS authorisations as in those for directed surveillance. I refer to my previous recommendation which applies to all authorisations.
- 8.4 It became clear during my inspection and following a very informative focus group with applicants and investigators, that the management of confidential sources of intelligence required clarity. I held a closed meeting with those individuals likely to be involved with the management of information provided to the organisation. As a result of that meeting I was satisfied that a clear plan existed to protect the identities of those that provide information. Equally that process would also monitor the status of those who provide intelligence ensuring the identification and management of likely CHIS. I have suggested the SRO and Authorising Officer Owen Clewgh include this in the next quarterly audit.
- 8.5 Care should be taken when authorising multiple CHIS during test purchase and similar operations. Should an Authorising Officer be satisfied that an individual CHIS is no longer required then they should be cancelled at that point and not at the conclusion of the operation as was the case in Operation Coastal Glow.

9 Training

- 9.1 The current SRO has inherited an excellent training regime and intends to maintain it. Training is provided by an outside contractor to all key individuals involved in the RIPA process and refreshed at meaningful intervals.

10 Internet and Social Media Investigation

- 10.1 The Durham County Council RIPA Corporate guidance document covers the investigative use of the internet and social media well. This is also cross referenced in the Corporate Social Media policy. It is not clear however, what activity is currently being undertaken by staff across the organisation and which individuals are best placed to gate keep such activity. Ordinarily I would issue a recommendation asking the SRO to reassure herself that no unauthorised activity is being conducted and that the appropriate measures are in place. The SRO has already identified this vulnerability and has commissioned an audit across the organisation in relation to the "Use of social media in Covert Investigations". The overall objective of the audit is to evaluate the current control environment and report on how adequate, appropriate and effective they are. I would not have asked for any more, hence no formal recommendation.

11 Reports to Members

- 11.1 All RIPA activity is reviewed on behalf of Members by the Council's Corporate Issues, Overview and Scrutiny Committee. They will review this on a quarterly basis and ensure it is being conducted in line with the Council's policy and that the policy remains fit for purpose.

12 The Protection of Freedoms Act 2012

- 12.1 All authorisations including those for CHIS are put before the magistrates' court in line with the above Act. This procedure is clearly outlined in the organisation's RIPA Corporate guidance document.

13 Breach

- 13.1 One breach has been reported by Durham County Council and I have reviewed this and the associated paperwork. The reported breach relates to an application for directed surveillance which sought approval from the magistrates' court to carry out further surveillance in relation to the illicit sale of tobacco. The application detailed that during a feasibility study, a young girl was observed exchanging items for cigarettes at the premises in question. As a result of this a test purchase without judicial approval was carried out, further evidence was gathered and the application was submitted.
- 13.2 This has been quite rightly reported as a breach as the activity carried out should have gained the approval of the magistrate in line with the Protection of Freedoms Act 2012. Following its discovery, the breach was reported appropriately and investigated. It transpired that this action had been taken following a previous refusal by a District Judge. The District Judge, when refusing the application, suggested the council should obtain further evidence before presenting an application to the court, including a test purchase.
- 13.3 I have reviewed the related case and the District Judge was quite right to refuse the application. He has, however, issued misleading advice following his refusal which has led to this breach. The breach has not occurred through any attempt to deceive, has been dealt with by the organisation and is supported by the appropriate advice to operational staff. There is an issue in relation to the misleading advice given by the District Judge. I have suggested that this should have been discussed with the court to prevent any further problems, however that moment has probably passed but this should be borne in mind should the same issue occur again. I consider this matter an error of judgement that has been appropriately reported and investigated.

14 Conclusions

- 14.1 Durham County Council carries out a reasonable amount of RIPA activity and has achieved significant success as a result. In targeting illegal sales to young people and the sale of illicit and counterfeit goods the Council uses its powers well.

- 14.2 The Council has an excellent policy supported by a clear structure and a positive training regime - all key elements for a good level of compliance. The recommendations detailed, while important parts of the RIPA process, should be easily completed.
- 14.3 I make particular mention of the Senior Responsible Officer, Helen Lynch. She has been with the organisation for six months and has an impressive background prior to Durham County Council. Helen Lynch has recognised the importance of RIPA compliance, driven change where it was needed and continues to review current practices. She and her team are a significant reason that Durham County Council is currently well placed in its management of RIPA.
- 14.4 I would like to thank the Chief Executive, Terry Collins and his staff for their courtesy, cooperation and honesty during my inspection.

15 Recommendations

- 15.1 *Authorising Officers should articulate clearly in authorisations their considerations in relation to Proportionality and Collateral Intrusion. The key points to consider are outlined clearly at Paragraphs 3.6 and 3.8 in the Codes of Practice (Covert Surveillance and Property Interference). (paragraph 7.3)*
- 15.2 *The SRO should satisfy herself that any CHIS application is accompanied by an appropriate risk assessment. The assessment should allow the Authorising Officer to assess the risk in relation to deploying that particular individual as a CHIS.*

Paul Gratton
Surveillance Inspector