



Office of Surveillance  
Commissioners

APPENDIX B



Chief  
Surveillance  
Commissioner

17<sup>th</sup> October 2013

**Restricted**

*Dear Mrs. Kelly,*

**Covert Surveillance**

On 20 September 2013, one of my inspectors, Mr Andrew Mackian, 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 Mackian's report which I endorse. Your Council have made no use of RIPA since 2012. You have used covert powers effectively as described in paragraphs 29 and 30 of the report. It is however important that you have robust oversight procedures if covert activity is necessary. The recommendations are directed to this end.

They are that formal oversight procedures be introduced with reporting to the SRO to ensure compliance standards, that refresher training be provided with particular emphasis on the compliance issues identified in paras 18 and 21 to 24 of the report and that obsolete RIPA forms be immediately withdrawn.

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.

*Yours sincerely,  
Christopher Rose*

Mrs Eleanor Kelly  
Chief Executive  
London Borough of Southwark Council  
160 Tooley Street  
London  
SE1 2TZ

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Office of Surveillance  
Commissioners

**OFFICE OF SURVEILLANCE COMMISSIONERS**  
**INSPECTION REPORT**

**London Borough of Southwark Council**

**20<sup>th</sup> September 2013**

**Assistant Surveillance Inspector:**  
**Mr Andrew Mackian.**

**RESTRICTED**

## **RESTRICTED covering CONFIDENTIAL**

### **DISCLAIMER**

This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

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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File ref: OSC/INSP/075

Office of Surveillance  
Commissioners

The Rt. Hon Sir Christopher Rose  
Chief Surveillance Commissioner  
PO Box 29105  
London SW1V 1ZU

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23<sup>rd</sup> September 2013

## OSC INSPECTION REPORT – LONDON BOROUGH OF SOUTHWARK COUNCIL

### INSPECTION DETAILS

#### 1. Date of Inspection

The inspection was undertaken on the 20<sup>th</sup> of September 2013.

#### 2. Inspector

Andrew Mackian

### INTRODUCTION

- Southwark council is made up of twenty-one wards, with each ward electing three councillors. The council is comprised of five departments: Chief Executive's Department, Children's and Adults' Services, Environment and Leisure, Finance and Corporate Services and Housing and Community Services.
- For the purposes of the Regulation of Investigatory Powers Act 2000 (RIPA) the Council Monitoring Officer, Ms Doreen Forrester-Brown, holds the position of Senior Responsible Officer (SRO). The day-to-day discharge of these responsibilities is undertaken by the Head of Corporate Team within Legal Services.
- There are four nominated Authorising Officer (AO) posts, including the SRO who would only discharge this function in exceptional circumstances. In the main authorisations have been undertaken by Jonathon Toy, Head of Community Safety and Enforcement.
- Since the last inspection visit undertaken in September 2010, there have been seven authorisations granted to conduct Directed Surveillance as defined by section 26(2) of the 2000 Act. No application has been made to make use of a Covert Human Intelligence Source (CHIS) as defined by section 26(8) of the 2000 Act. There were no reported matters of confidential information gathering.

7. The Chief Executive for Southwark Council is Mrs Eleanor Kelly. All correspondence should be forwarded to the London Borough of Southwark Council, 160 Tooley Street, London SE1 2TZ.

## **INSPECTION APPROACH**

8. Pre-inspection planning had been efficiently undertaken by Norman Coombe, Head of Corporate Team, Legal Services, with the inspection day being facilitated by Ian Mark, Senior Lawyer, Legal Services.
9. An initial overview briefing on the use of legislative powers by the Council and oversight procedures was provided by the SRO and Ian Mark. An examination was made of RIPA policies, training material and the Central Record of Authorisations. Each of the seven authorisation records was made subject of inspection.
10. An open forum meeting was held with available Authorising Officers and practitioners comprising of Mike Pinder, Head of Anti-Fraud (AO), Jonathon Toy, Head of Community Safety (AO) and Bill Masini, Trading Standards Officer. Ian Mark was also in attendance. Feedback was provided on the compliance standards of the records inspected and general discussion held on the practical application of powers under the 2000 Act.
11. At the conclusion of the inspection visit the findings were discussed with Ms Doreen Forrester-Brown (SRO) and Ian Mark

## **REVIEW OF PROGRESS**

12. The 2010 OSC inspection of the council produced the following single recommendation:

### *Recommendation 1*

*More care should be taken in the preparation of authorisations including recording correct effective authorisation period, Authorising Officers setting out in full what is being authorised and their consideration of necessity and proportionality.*

### Action

Whilst the description of the activity to be undertaken is now more precise, defective authorisation periods continue to be evident, along with poor narrative setting out why an authorising officer considers the proposed activity is both necessary and proportionate.

## **POLICIES AND PROCEDURES**

13. The content of the corporate RIPA Policies and Procedures Document was favourably commented upon in both the 2008 and 2010 OSC inspection reports and the content of the latest publication dated June 2013 continues to evidence an example of good practice.

14. Paragraph B on page 1 includes the use of test purchase tactics for the investigation of illegal knife sales, following the Protection of Freedoms Act 2012, such activity has been confined to the sales of alcohol and tobacco only.
15. In overall terms, policy guidance for both applicant and Authorising Officer is extremely comprehensive, providing references to specific relevant paragraphs within the Code(s) of Practice, as well as providing practical examples of activity which may well be considered covert.
16. The role and responsibilities of SRO, Authorising Officer and applicant are clearly set out, as well as the procedures to be undertaken under the Protection of Freedoms Act 2012 to obtain magisterial concurrence. Consideration may wish to be given to establishing an operating protocol with the local Justices when such situations take place.
17. However what is missing is a procedure for independent compliance standard testing and overall monitoring of the content of applications and authorisations. The effective introduction of such oversight would have done much to address the compliance issues identified by this latest inspection visit.

#### **RELATED TRAINING**

18. External training was provided following the last OSC inspection conducted in 2010. There has been no subsequent corporate training. It is a recommendation that internal refresher training take place at the earliest opportunity and that this requirement forms part of the overall council training strategy. The introduction of a central training record for key practitioners should be considered as RIPA training may have been given during the course of personal development training for their individual roles.

#### **SIGNIFICANT ISSUES**

19. Central Record of Authorisations  
The electronic (spreadsheet) version of the record was inspected. To be fully compliant with the Covert Surveillance and Property Interference Code of Practice (CSPI)<sup>1</sup>, additional columns should be introduced to record confidential information gathering and self-authorisation by an Authorising Officer.
20. Directed Surveillance  
With the exception of one authorisation linked to the illegal sale of meat, all of the authorisations related to the use of test purchase tactics. No application has been made to use RIPA powers thus far for 2013.
21. An initial assessment of the content of applications was extremely favourable, with good evidence of the consideration of all pertinent issues by the applicant. However when completing the inspection of all the authorisations granted since 2010, it was evident that a template approach involving 'cut and paste' had

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<sup>1</sup> See CSPI paragraph 8.1

developed.<sup>2</sup> Whilst it is recognised that identical covert activity often results in the same considerations being repeated, each application must be constructed independently for consideration by an Authorising Officer.

22. In terms of authorisation statements, clear instruction is being given by Authorising Officers as to the activity that is authorised,<sup>3</sup> however the recording why they consider the activity is necessary and proportionate remains poor. This latter responsibility rests ultimately with the Authorising Officer and not the applicant.<sup>4</sup>
23. The effective authorisation period i.e. three months, was defective in many of the authorisations inspected, an observation that was made within the 2010 inspection report. The fact that obsolete forms (pre 2010 and the revised Codes of Practice) have been in use may have exacerbated the situation. Had effective oversight been in place this omission should have been quickly identified as the obsolete forms provided reference guidance for applicants and Authorising Officers relating to paragraphs within the obsolete Home Office Codes of Practice.
24. It was noted that within the records presented for inspection, some cancellation forms were missing, although the Central Record of Authorisations recorded that cancellation had taken place. Advice was given that the cancellation records should be traced, or identified duplications be put in place. Cancellation statements should also follow OSC guidance.<sup>5</sup>
25. CCTV  
The extensive CCTV coverage within the Borough is subject to policy and procedural guidance for both council employees and the Metropolitan Police. Very limited use of the facility has been made for covert purposes.
26. Technical Equipment  
Some technical equipment is held by Trading Standards, but as for CCTV assets, very limited use has been made of technical equipment for covert purposes. Advice was given that a review should be undertaken of all technical equipment held by the Council with a potential covert use and consideration given to the introduction of central management of administration.<sup>6</sup>

#### Good Practice

27. Comprehensive and regularly revised RIPA Procedures and Guidance.

### **CONCLUSIONS**

28. Southwark council has made no use of RIPA powers since 2012. It is a large Borough council and continues to be one of the largest social landlords in the UK. These challenges, along with a high, but now reducing level of knife related

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<sup>2</sup> See OSC Procedures and Guidance note 169

<sup>3</sup> See OSC Procedures and Guidance note 117

<sup>4</sup> See OSC Procedures and Guidance notes 104 and 107 and CSPI Code of Practice paragraph 3.6

<sup>5</sup> See OSC Procedures and Guidance note 145

<sup>6</sup> See OSC Procedures and Guidance note 300

crime, prompted debate during the course of the inspection as to what factors were influencing the significant reduction in the use of powers under the 2000 Act.

29. The council has received Home Office recognition for the development of a Safer Southwark Partnership linked to ending gang and youth violence through early overt intervention methods in partnership with the police. The overt use of the Challenge 25 Drink awareness campaign for both tobacco and alcohol age restricted products has also seen a reduction in the use of traditional under-age sales covert operations.
30. In terms of benefit fraud, discussion during the open forum with Authorising Officers revealed that such investigations are conducted overtly through effective investigation techniques making covert tactics now almost redundant.
31. Whilst the reduction in the use of powers under the 2000 Act appears to be consistent at present, there remains a requirement, as a public authority, for the council to have in place robust oversight procedures to ensure that the expected level of compliance is being achieved, should covert activity be considered necessary in the discharge of statutory responsibilities.
32. The arrangements made for the inspection visit and positive engagement of all involved in the process was very much appreciated.

## **RECOMMENDATIONS**

### **33. Recommendation 1**

Formal oversight procedures to be brought into force with compliance standards reporting to the SRO.  
(Paragraphs 17 and 31)

### **Recommendation 2**

Refresher training to be provided with particular emphasis on the compliance issues set out in this report.  
(Paragraphs 18, 21-24)

### **Recommendation 3**

Obsolete RIPA forms to be immediately withdrawn.  
(Paragraph 23)



Surveillance Inspector