

Appendix B

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8th February 2012.

LANCASTER CITY COUNCIL

INSPECTION REPORT

Inspection date 1st February 2012

Inspector Sir David Clarke
 Assistant Surveillance Commissioner

LANCASTER CITY COUNCIL

1. The Council (LCC) serves a population of some 143,500 in a mixed urban and rural area in North Lancashire, including the City of Lancaster and the former Borough of Morecambe.
2. The most recent OSC inspection of LBH was conducted by Clare Ringshaw-Dowle, Surveillance Inspector, on 18th February 2009.
3. Since that inspection some corporate restructuring has taken place. The thirteen Service Areas described by the Inspector have been reduced to seven, with a likely further reduction to six in the near future. The Chief Executive is now supported by a Deputy and by seven Service Heads, who are members of the Corporate Management Team. In effect the intervening tier of three Corporate Directors has been removed, one of them becoming Deputy Chief Executive.
4. Discussions are taking place with Lancashire County Council for shared Property Services. If such an arrangement is implemented, LCC will no longer have a Head of Property Services.
5. The Chief Executive is still Mark Cullinan, whose address is Town Hall, Dalton Square, Lancaster LA1 1PJ.
6. The Council is now a very infrequent user of RIPA, having granted only three authorisations since the last inspection.
7. None of these applications had used the urgency provisions, none was concerned with the likely acquisition of confidential information, and none concerned Covert Human Intelligence Sources (CHIS).

Inspection.

8. I carried out the inspection on 1 February 2012 at the Town Hall. I met the following council officers:

- Mrs Sarah Taylor, Head of Governance and Monitoring Officer;
- Mark Davies, Head of Environmental Services;
- Graham Cox, Head of Property Services;
- Derek Whiteway, Internal Audit Manager.

All four were among those who participated in the last inspection three years ago.

9. The inspection started with a discussion, with Mrs Taylor, of the revised Codes of Practice and OSC Guidance, LCC's RIPA management, policy and procedures, the designated authorising officers (AOs), training, and the actions taken on the recommendations in the last OSC report. Mr Whiteway joined us to explain the form in which he keeps the central record, which was commended by the Inspector in 2009¹. I then inspected the RIPA authorisations themselves, before meeting Mr Davies and Mr Cox who, as Heads of Service, are designated Authorising Officers (AOs). Finally I met Mrs Taylor again for a final discussion before departing the Town Hall.

10. I am grateful to all concerned, particularly Mrs Taylor who had made the arrangements, for their helpful cooperation which greatly eased my task.

RIPA Structure

11. LCC's Policy document, entitled "RIPA – A WORKING POLICY" was described in the 2009 report as one of the best which the Inspector had seen. The minor alterations which she suggested were promptly made. It is kept updated, and I was impressed to find that it already refers to the December 2011 revised version of the OSC Procedures and Guidance. I agree that it is a model of clarity, though I have two reservations about it.²

12. The Working Policy has since been supplemented by five clear and comprehensive "Mini Guides" prepared by Mr Whiteway, both as training tools and as step-by-step guides for applicants and AOs to use whenever the use of covert tactics is considered. These are respectively "The Basics", "Guidance for Applicants", "Guidance for Authorising Officers", "Covert Human Intelligence Sources" and "Practices, Tools and Techniques". They contain helpful links to sources of further information, including the Working Policy, the Home Office Codes of Practice and OSC's Procedures and Guidance, with paragraph references. These are particularly clear and useful documents, providing somewhat more information than can conveniently be included in the flowcharts used by some public authorities.

¹ Paragraph 4.3 of the 2009 report.

² Paragraphs 13-18 below

13. The Working Policy annexes the current RIPA authorisation, review, renewal and cancellation forms. I was, however, surprised to find, both in the Working Policy and the Mini Guides, references to a standard "Change of Circumstances" form, to be completed when unexpected collateral intrusion occurs, or when the original authorisation is found to be insufficient, in which latter event consideration should be given to whether the authorisation needs to be amended or a new authorisation is required. Such a form is annexed with the other forms. It includes a box for specifying persons who have been added to the scope of the RIPA authorisation (*my emphasis*).
14. I pointed out that no such form is prescribed amongst the Home Office RIPA forms, and that its use may cause unwanted problems. The policy document contains no guidance as to what change of circumstances would require a new authorisation, and the concept of amending an existing authorisation, other than by formally documented review, is problematical.
15. I drew attention to the recent changes to OSC's Procedures and Guidance, the recent revision of which gives (in paragraphs 125-134) clearer guidance on widening the scope of authorisations. But even the earlier 2010 edition gave advice (in paragraphs 125-126) as to the limited circumstances in which additional subjects could properly be included on review or renewal of existing authorisations.
16. Mrs Taylor was unable to tell me the origin or history of the Change of Circumstances form. In my view it, and the references to it in the Working Policy and Mini Guides, should be dispensed with.

See recommendation

17. My other, more minor, reservation, concerns the passage on recognising a CHIS. Paragraph 93 of the Working Policy correctly states that members of the public who volunteer information to the authorities as part of their civic duties would not generally be regarded as sources (*my emphasis*). But paragraph 94 then reads "It appears clear therefore that if a member of the public volunteers information he is not a CHIS".
18. I advised that this is too broadly stated. When an informant gives repeat information about a suspect or about a family, and it becomes apparent that the informant may be obtaining that information in the course of a family or neighbourhood relationship, alarm bells should begin to ring. It probably means that the informant is in reality a CHIS, to whom a duty of care is owed if the information is then used, even though he or she has not been tasked by the authority to obtain information on its behalf. This needs to be made clear in the Policy document.

See recommendation

19. Mrs Taylor is LCC's Senior Responsible Officer (SRO), exercising the responsibilities described in paragraphs 3.28 and 3.29 of the Covert Surveillance Code of Practice. She is assisted by Angela Parkinson, a senior solicitor in her department, and by Mr Whiteway who maintains the central record and acts de

facto as RIPA coordinator, albeit not formally so designated. The Central Record remains as described in paragraph 4.3 of the 2009 report.

20. LCC has taken note of paragraph 3.30 of the Code of Practice, and is implementing a practice of periodic reports to elected members as recommended in that paragraph.
21. It remains the case that all Heads of Service are designated AOs, but their number has been reduced to seven, in addition to the Chief Executive and his Deputy. All are appropriately qualified as required by SI 2010/521.
22. LCC's usage of RIPA has been much reduced since the 2009 inspection. In the three years before that visit, there were 27 directed surveillance authorisations; in the three years since her visit there have been three, all in 2009. No RIPA authorisations have been sought or granted since August 2009.
23. The principal reason for this is that, since and as a result of the Inspector's advice and her report (which you endorsed), LCC no longer authorise in noise nuisance investigations where written warning has been given that surveillance will be undertaken with a DAT recorder, nor in other cases in which the surveillance is truly overt. The advice given was that each case should be considered on its merits, and that if in a particular case authorisation is sought, the necessity for it can be simply explained in the application form.³ This advice was warmly welcomed and much appreciated by LCC

Training

24. A day's training session took place in January 2012, attended by all LCC's investigators who may need to have recourse to RIPA usage. It was attended also by the Chief Executive. The training was again delivered by Mrs Parkinson and Mr Whiteway, and I was impressed by the training materials which I was shown, though the references to "change of circumstances" will need to be removed before they are used again. I am satisfied that with the benefit of this training there is no real risk of unauthorised covert surveillance taking place.
25. This session was, however, not attended by the Heads of Service who are now the designated AOs, as recommended in 2009. It was decided, in the light of the greatly reduced usage of RIPA since the 2009 inspection, that the better course was to prepare the Mini Guides, which the Heads of Service whom I saw (Mr Davies and Mr Cox) regarded as good on-line training materials, to be consulted in the event that they are called upon to authorise. In practice they would not perform this duty without discussion with Mrs Taylor and/or Mrs Parkinson, and with Mr Whiteway. Because there have been no recent authorisations, I have been unable to assess whether this is sufficient in practice, but the quality of the Working Policy and Mini Guides is such that it should be.
26. Though the first recommendation of the 2009 report has not been implemented to the letter, I am happy to regard it as *discharged*.

³ Paragraphs 4.7 - 4.9

Examination of Records.

27. The three RIPA authorisations were made very soon after the 2009 inspection and report, and before the main themes of that report had been absorbed. Before I examined them, Mrs Taylor acknowledged that I would find deficiencies within some of them. The AOs who granted them are no longer in LCC's employment.
28. The earliest (URN 66) was made in March 2009 in an investigation into breaches of corporate procedures, and possibly corrupt practice, by LCC employees concerned with awarding contracts and paying subcontractors. The authorised "surveillance" was to examine emails sent and received by and two these employees during the last twelve months; it did not involve any continuing monitoring of emails.
29. I advised that this was investigation rather than surveillance and did not need RIPA authorisation. Furthermore, all employees had signed up to conditions under which they had no expectation of privacy in relation to emails sent and received on LCC's IT system.
30. The next (URN 67) was made in June 2009 in a noise nuisance investigation in which a DAT recorder was installed in a neighbour's flat. If this was done after written warning, it required no authorisation.
31. The paperwork did not state that such warning had been given, but implied that it had not. On formal review a month later, though no review date had been specifically set, it was stated that "*Other tenants within the block are fearful that the alleged perpetrator may harm them and therefore at this stage, in order to protect other tenants, the surveillance is covert*".
32. If covert noise monitoring was authorised for this reason, that should have been made clear in the initial application, and its necessity and proportionality specifically addressed by the AO when authorising. In fact the AO signed the form without articulating any reasons of his own. This echoes the findings of the Inspector in 2009.⁴ I was told that this AO had recently returned from sick leave and I was assured that this would not happen today
33. The third authorisation (URN 68) was made in August 2009 in a benefits fraud investigation conducted jointly with the Department of Work and Pensions. This was well articulated, with necessity, collateral intrusion and proportionality properly addressed. However, like the Inspector in 2009⁵, I found references to the DWP Decision Maker needing up-to-date evidence from covert surveillance. The AO, to his credit, closely questioned the applicant as to whether it was needed, in the light of the substantial amount of evidence already gathered by other means. In the light of the answers given, I consider that the authorisation was in fact justified.

⁴ Paragraph 4.10 of the 2009 report.

⁵ Paragraph 4.15

CCTV

34. I did not visit the CCTV Control room on this occasion, the Supervisor being away from work on that day. I have since been provided further information about the practice in place to ensure that no unauthorised covert use of the CCTV system takes place.
35. The bespoke form described in paragraph 6.3-4 of the 2009 report remains in use. It names the operation but does not contain a statement of precisely what surveillance activity has been authorised. Thus the third recommendation of that report has not been implemented to the letter.
36. I was, however, assured by Mr Cox that the CCTV supervisor, a former officer of HM Customs & Excise, is strict in refusing to allow any covert use of the CCTV system without proper RIPA authorisation, for which purpose he ensures that he is made aware of the terms of any authorisation. I asked for specific examples, and have since been provided with details of three such refusals, as follows:
- The Police had a warrant for the arrest of a male at a particular address. On arrival the male was not found to be in the property. CCTV was then asked to monitor the property until further notice and advise PCSOs waiting round the corner, when the male in question arrived. This was refused.
 - A RIPA authorisation was in place for premises with a designated camera, and another camera was designated to observe a particular male should he be seen to leave the premises. Information was received that the male in question had possibly been seen at a property other than that covered by the RIPA authorisation. CCTV was asked to view the new location not covered by the RIPA authorisation, and this was refused.
 - The DWP asked operators to continue monitoring one of their targets and stated that there was a RIPA authorisation "in the pipeline". This was refused.
37. In these circumstances I consider that there is no continuing risk of unauthorised surveillance taking place, and that the recommendation can be regarded as *discharged*.

Conclusion

38. LCC continues to have a sound RIPA structure, with good policies and procedures and good training of investigators.
39. Because there has been no RIPA usage in the last 2½ years, I can form no view on whether this good structure and training translates into high standards of authorisations being achieved in practice. But from the work which has been done in updating the Working Policy and (particularly) in preparing the excellent Mini Guides, there is now every reason to expect that future authorisations will be granted and managed properly. The less often an AO is faced with an application, the more likely he is to consult the Policy and Mini Guides and to discuss the

matter with Mrs Taylor and Mr Whiteway, so that a measure of quality control will be incorporated in the process.

40. The dramatic reduction in RIPA usage has arisen largely, though perhaps not wholly, from the fact that many of the earlier authorisations were not necessary, as the Inspector pointed out in 2009. I trust that LCC did not take her report as a general discouragement from using RIPA at all; it is no part of the OSC's function to discourage public authorities from using its statutory powers in the public interest, when it is necessary and proportionate to do so.

41. I make the following

Recommendations

- I. That the "change of circumstances" form, and all references to it in the Policy, Mini Guides and training materials, be dispensed with;*
- II. That the Working Policy be amended in accordance with paragraph 18 above.*

David Clarke
Assistant Surveillance Commissioner