



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

Official -Sensitive

22 October 2015

Covert Surveillance

Dear Mr. Barradell,

On 9 September so David Clarke, an Assistant Surveillance Commissioner, accompanied by His Honour Brian Barker QC and Mr Aftab Chaudri, from my office conducted an inspection of the arrangements to ensure compliance with RIPA provisions.

I enclose a copy of his report which I have read and endorse.

As he explains the Corporation makes very limited use of its statutory powers. Nevertheless, as is clearly understood by the Corporation, it is essential for a system to be in place which will ensure that if and when any increase in use is anticipated, the powers will be lawfully exercised in a way which is compliant with the statute.

Two formal recommendations were made in 2012. Both have been addressed and can now be discharged, in relation to the first recommendation, on the basis that the circulation of the updated OSC Guidance has taken place.

As a result of the recent inspection three specific recommendations are made. Following a detailed analysis of the Corporation's revised policy document, a number of suggestions for amendment are recommended. The second recommendation, relating to authorisations in the future, reflects some failures in procedure in relation to the specific authorisations examined in the inspection. The recommendation is unequivocal and clear. The third recommendation relates to continuing refresher training. The concerns arising from the authorisations to which I have just referred, amply demonstrate the need for continuing training. It is now some years since those responsible for the exercise of these powers received their own training. As this issue has now been outstanding for some years it should be addressed as soon as practicable.

I look forward to hearing that the recommendations are accepted.

John Barradell Esq
Town Clerk and Chief Executive
City of London Corporation
PO Box 270
Guildhall
London
EC2P 2EJ.

Yours sincerely,

John Judge

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**Office of Surveillance
Commissioners**

**OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT**

City of London Corporation

9th September 2015

**Assistant Surveillance Commissioner:
Sir David Clarke.**

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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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**Office of Surveillance
Commissioners**

**Chief Surveillance Commissioner,
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SW1V 1ZU.**

18th September 2015

CITY OF LONDON CORPORATION

INSPECTION REPORT

Inspection date	9th September 2015
Inspector	Sir David Clarke Assistant Surveillance Commissioner
accompanied by and	HH Brian Barker QC, Assistant Surveillance Commissioner Aftab Chaudri, Inspection Support Officer (observing)

INTRODUCTION

1. The City of London Corporation (CLC) is a unitary authority providing local government services for the "square mile", which has a resident population of under 10,000 but a huge daytime population of over 300,000. There is no state secondary school and only one state primary school in the square mile, though the Corporation's institutions include three independent schools, two being within the square mile, and it sponsors three free academy schools located in neighbouring boroughs.
2. The Senior Corporate Management structure is headed by the Town Clerk and Chief Executive, and comprises a number of Corporate,, Service and Institutional Departments. The Town Clerk and Chief Executive is John Barradell, whose address for correspondence is PO Box 270, Guildhall, London EC2P 2EJ.
3. The most recent OSC inspection of CLC was conducted by Kevin Davis, Surveillance Inspector, on 21st September 2012. He made two formal recommendations.
4. The Deputy Town Clerk, Susan Attard, is CLC's Senior Responsible Officer (SRO) for the purposes of RIPA. She has assumed the role of SRO since the last inspection, following the retirement of Peter Nelson.

5. CLC continues to be a very modest user of its powers under Part II of RIPA, having granted two authorisations since the last inspection, one of directed surveillance and one of a covert human intelligence source (CHIS).¹ These are discussed later in this report.

Inspection

6. We carried out the inspection on 9th September 2015 at Guildhall. We met the following officers:
 - Susan Attard, Deputy Town Clerk and SRO;
 - Neil Davies, Head of Corporate Performance and Development, RIPA Monitoring Officer/ Coordinator;
 - Paul Nagle, Head of Audit and Risk Management, a RIPA authorising officer (AO);
 - Chris Keesing, Anti-fraud Investigations Officer;
 - Ian Dobson, Trading Standards Officer, former Acting Trading Standards Manager.
7. We first discussed, with Ms Attard and Mr Davies, the revised Codes of Practice and OSC Guidance, CLC's RIPA management, policy and procedures, the designated authorising officers (AOs), training, and the actions taken on the recommendations in the last OSC report. We then inspected the Central Record of RIPA authorisations and the authorisations themselves. We had a round-table meeting with the other three officers, together with Mr Davies, to discuss the role of AO and CLC's practices in trading standards investigations. Finally we had a brief feedback discussion with Ms Attard and Mr Davies before departing Guildhall.
8. We are grateful to all concerned, particularly Mr Davies who made the arrangements and supplied materials in advance, for their welcome and for their helpful cooperation and engagement with the inspection.

Response to recommendations

9. In 2012 Mr Davis made two formal recommendations.

That the OSC Procedures & Guidance document is made available to all relevant personnel, in particular the notes that refer to the use of social networking sites for investigative purposes;

✓ The Procedures & Guidance document was placed on CLC's intranet and covered in RIPA training. The recommendation is therefore discharged, but it was a little disappointing to learn that the updated OSC Guidance (December 2014) had not yet been circulated. This is now being done.

That paragraph 3.30 of the revised Codes of Practice for Covert Surveillance and Property Interference is complied with as a matter of urgency;

¹ In addition, one authorisation for the acquisition of communications data was made under Part I Chapter II of RIPA, which is outside the remit of my inspection.

✓ Regular reports to elected members were introduced in response to this recommendation. Because of very low RIPA usage these reports are not made quarterly, but at least annually. Discharged

RIPA Structure

10. Ms Attard and Mr Davies have both assumed their roles in relation to RIPA since the last inspection. (Mr Davies is formally designated as RIPA Monitoring Officer, abbreviated in the *Policy* to RMO, but the term RIPA Coordinator also appears there; I consider it a better one). Together these two officers attended a training course by Bond Solon to equip them for these roles, which is much to CLC's credit. The previous RIPA Monitoring Officer, Lorraine Brook, remains within the Town Clerk's Department and her advice is available if necessary.
11. At the time of the last inspection CLC had a revised *RIPA Policy and Procedure* document in draft, replacing a very much longer version previously in use. The revised document ("the *Policy*"), which was later formally approved, was prepared with the assistance of ITS Training, and is generally clear and comprehensive, but some changes are revisions are required for accuracy and added clarity. The revisions included the legislative changes which came into effect in November 2012.
12. The following points should be reflected in the *Policy*:
 - At page 10 it is stated that test purchase operations for sale of alcohol to under 18s are not normally directed surveillance. This statement conflicts with OSC Procedures & Guidance, paragraphs 243-4, and with the current Better Regulation Delivery Office Guidance on Under-age Sales (in which the OSC guidance is quoted with some emphasis). The fact that such sales of alcohol and tobacco are exempted from the enhanced threshold requirement for directed surveillance suggests that the Government also now takes this view.
 - At page 13, in relation to "*Who is a CHIS?*" it is stated that RIPA does not apply in circumstances where members of the public volunteer information to the authority. This begs the question of how the informant acquired the information which he volunteers; if he acquired it in the course of, or as a result of the existence of², a personal or other relationship, he is likely to be within the definition of a CHIS. If the authority then makes use of the information, and the informant is thereby put at risk, it may be in breach of its duty of care owed to him. It is important that this principle is understood by those who carry out investigation and enforcement work. It would be better to state that "RIPA does not normally apply . . .", with some suitable words of explanation.

² RIPA section 26(8)(c)

- At page 17, the enhanced seriousness threshold applies only to directed surveillance, not to CHIS. Accordingly, in relation to directed surveillance, “or of preventing disorder” is no longer a free-standing criterion for authorisation.
- On page 18 the *Policy* lists the main advantages of following RIPA procedures, but omits what is perhaps the most important one, namely that section 27 renders the authorised activity lawful for all purposes. The converse, of course, does not apply. I was happy to see passages on non-RIPA surveillance on pages 4 and 41 of the *Policy*, but it might be better to emphasise that this would be undertaken at CLC’s own risk and without the protection afforded by section 27.
- On page 19, the last bullet point on proportionality is misplaced; it would be wise to reproduce the essential elements of proportionality set out in paragraph 74 of OSC Procedures & Guidance.
- On pages 20-21 and elsewhere, the *Policy* contains references to urgent oral authorisations valid for 72 hours. These references should be removed, since local authorities no longer have the power to make such authorisations.³
- On page 21, authorisations cannot be renewed after expiry; the renewal must be applied for and authorised before the expiration date, and the renewal also requires judicial approval.

See recommendation

13. The *Policy* sensibly contains a passage on internet and social networking site investigations. This has now been revised to reflect the expanded guidance contained in OSC Procedures & Guidance 2014, paragraph 288.
14. We discussed the procedure for applying for judicial approval. I drew attention to the contrast between the Home Office Guidance to Local Authorities, paragraph 43, and OSC Procedures & Guidance paragraphs 291-2. CLC’s approach, which I commend, is that the AO will attend if practicable. Of course, if the application and authorisation are fully articulated, no questions should arise; but this may be a counsel of perfection not reflecting reality.
15. Three officers are designated as AOs, being listed by names and posts in an *Appendix* to the *Policy*. All are qualified in accordance with SI 2010/521. No reference is made, however, to the fact that the Town Clerk and Chief Executive, as Head of Paid Service, or his Deputy in his absence, is the sole authorised AO for any authorisation falling within Appendix A to the Codes of Practice⁴.

³ RIPA section 43(1A), introduced by Schedule 9 of the Protection of Freedoms Act 2012.

⁴ Authorisations of a juvenile or vulnerable CHIS, and authorisations where confidential information, including legally privileged information, is likely to be obtained.

16. The Central Record is now maintained by Mr Davies. With it should be the authorisations and associated forms themselves, i.e. reviews, renewals (if any) and cancellations. No practice is in place for these to be sent to the Coordinator so as to be centrally retrievable, as recommended in OSC Procedures & Guidance, paragraph 130. The two authorisations had to be produced to me from departmental files, where the papers were incomplete.⁵ Furthermore, no reviews or cancellations were completed.

See recommendation

Training

17. It was reported in 2012 that a training course by an external trainer was scheduled to be held on 13th December 2012. This duly took place and was attended by the AOs and a cross-section of potential applicants, 14 staff in all. In addition, as reported in paragraph 10 above, Ms Attard and Mr Davies attended a training course on assuming their present RIPA roles.
18. In February 2013, Mr Dobson and other trading standards staff attended a training course focusing on the legislative changes to RIPA which had taken effect in November 2012.
19. However, I consider that periodic refresher training should take place. The less use is made of RIPA powers, the greater the need to maintain awareness of its essential provisions, so as to minimise the risk of unauthorised covert activity taking place. My findings on examination of the two (linked) authorisations suggest that there is a continuing training need.
20. The Town Clerk was previously Chief Executive of a major unitary local authority where he no doubt had relevant RIPA experience.

See recommendation

Examination of authorisations

21. The two authorisations, of CHIS and directed surveillance respectively, were made in a single investigation known as Operation Virago. This was an investigation into the fraudulent selling of worthless investments such as voluntary carbon credits. The authorisations were made on 13th March 2013 and were approved by the magistrate on the following day.
22. The lead investigator, an officer seconded to CLC from the Regional Scambusters Unit, was authorised as a CHIS to communicate by telephone with brokers marketing such schemes, posing as a potential investor to gain evidence. It was believed that such brokers routinely made misleading and fraudulent statements, using high-pressure tactics and intimidation. However, no named targets appeared in the authorisation, though it was apparent from the notes of the magistrate that a number of such brokerages had been identified. Such information should have been included in the application and

⁵ Only one of the two signed judicial approval forms was produced to me; the other was located after my departure.

authorisation, and these brokers names as the targets, to deflect any criticism that this was a fishing expedition.

23. The concurrent directed surveillance authorisation was made solely to cover the recording of those telephone calls. I consider that this separate authorisation was not necessary, the recording of the information acquired by the CHIS being covered by section 48(3) of RIPA.
24. The correct expiry date was specified in the CHIS authorisation, being 2359 hrs on 12th March 2014. However, the directed surveillance authorisation, having been authorised on 13th March at 9.17 a.m., was set to expire on 13th June at 9.17 a.m., an error known within the OSC as the "three months and a day howler".⁶
25. More importantly, though the authorised activity never took place, no cancellations were ever effected and the authorisations were simply allowed to lapse. Closer supervision by the RIPA Coordinator, coupled with the use of the central record as a management tool, should ensure a tighter process in future.

CCTV

26. CLC does not operate a public space CCTV system in the square mile. The system is owned and operated by the City of London Police, as has been confirmed to me following the inspection visit.

Conclusion

27. CLC is a particularly high-profile local authority and is keen to set and maintain high standards in this as in all other areas of activity. It has a sound RIPA structure, with good policies and procedures, but very low usage. This is a pattern now commonly seen in local authority inspections.
28. There are some changes to be made and lessons to be learned from this inspection. I have no doubt that with the commitment and enthusiasm of Ms Attard and Mr Davies, my recommendations, if you endorse them, will be readily implemented.

29. I make the following

Recommendations

- I. That CLC's RIPA Policy and Procedure document be amended in accordance with paragraph 12 above;*
- II. That any future authorisations and associated forms be sent to the RIPA Coordinator to be kept with the central record, to enable him*

⁶ See OSC Procedures & Guidance, paragraph 87. The law counts in days, not in hours and minutes. An authorisation which purports to include both 13 March and 13 June therefore exceeds the statutory maximum duration.

to maintain day-to-day oversight and ensure procedural compliance (including reviews and cancellations);

III. That periodic RIPA refresher training be maintained.

David Clarke
Assistant Surveillance Commissioner