

IPCO/INSP/075

The Rt. Hon. Sir Adrian Fulford
Investigatory Powers Commissioner
Investigatory Powers Commissioner's Office
PO Box 29105
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25 June 2018

OSC INSPECTION – MAIDSTONE BOROUGH COUNCIL

1 Date of Inspection

A desktop review of Maidstone Borough Council was undertaken on Monday 25th June 2018.

2 Inspector

Mrs Gráinne Athorn.

3 Introduction

3.1 Maidstone Borough Council (MBC) employs more than 500 staff and serves the residents of the county town, which is situated halfway between the City of London and the Channel Ports, and an area covering 40,000 hectares. The Council shares core services with other local councils under the Mid Kent partnership including Legal Services who oversee the application and use of the Regulation of Investigatory Powers Act 2000 (RIPA).

3.2 The senior leadership team is comprised of the Chief Executive Alison Broom, Director of Regeneration and Place, William Cornell and Director of Finance and Business Improvement, Mark Green. Stephen McGinness is the Director of Shared Services within the Mid Kent Partnership including the Legal Partnership which is overseen by the Monitoring Officer Patricia Narbor who also acts as Senior Responsible Officer (SRO) for RIPA matters.

3.3 Maidstone BC was last inspected during June 2012 by Surveillance Inspector Clare Ringshaw-Dowle. A shortfall in available Inspectorate resources has meant the Council could not be inspected until now.

3.4 The address for correspondence is Maidstone House, King Street, Maidstone, Kent, ME15 6JQ. The Chief Executive of the Council may be contacted by e mail: alisonbroom@maidstone.gov.uk

4 Inspection Approach

- 4.1 The purpose of the inspection was to examine policies, procedures, operations and administration in respect of directed surveillance and covert human intelligence sources (CHIS) under the Regulation of Investigatory Powers Act 2000 (RIPA). In the period since the 2012 Inspection Maidstone Borough Council has not utilised directed surveillance or CHIS powers.
- 4.2 This report has been prepared without visiting Maidstone Borough Council, however to assess the ongoing compliance of the Council, information provided by the SRO has been reviewed which included a copy of the Covert Surveillance and Access to Communications Data Policy and Guidance Notes and a copy of the Central Record.

5 Actions Taken on Past Recommendations

- 5.1 In her report of 2012 Surveillance Inspector Clare Ringshaw-Dowle made four recommendations:
- 5.2 Recommendation 1 - *The RIPA policy document should be reviewed to ensure that it remains fully up to date with legislative and procedural developments.*

A draft amended policy has been produced to address the matters identified within the Inspection Report. This has been reviewed as part of the Inspection and further discussed in section 6 below. Recommendation **discharged**.

- 5.3 Recommendation 2 - *The Central Record should be updated to ensure it contains all the matters highlighted at paragraph 8.1 of the Covert Surveillance and Property Interference Revised Code of Practice.*

The Central Record of authorisations continues to make reference to urgent oral authorisations, a legal provision that has not been available to local authorities since 2012. Furthermore there is no reference to the need to record when authorisation was granted at court, also a requirement since 2012 and a critical factor on calculating the expiry date of an authorisation. Recommendation **extant**.

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- 5.4 Recommendation 3 - *The Senior Responsible Officer should ensure that RIPA training is refreshed for all relevant officers undertaking the role of applicant or Authorising Officer, at regular intervals. Such training should include discussion of CHIS recognition and management issues.*

Refresher training was provided to a number of key Council staff, including legal services personnel in 2015, however it is acknowledged that there is a requirement to provide further training for the three nominated Authorising Officers (AOs) and Chief Executive. As a consequence this recommendation remains extant but is altered in light of the information above. Recommendation **extant**.

- 5.5 Recommendation 4 - *In relation to directed surveillance authorisations:*

- i, At review or renewal stages, applicants and Authorising Officers should ensure that they address afresh each time the key matters of necessity, collateral intrusion and proportionality, as these will tend to require further justification and comment the longer an operation has been in progress.*
- ii, Reviews must be completed on the correct forms.*
- iii, At cancellation, the Authorising Officer must provide his direction regarding any product obtained as a result of the surveillance (Note 145 of the OSC's 2011 Procedures & Guidance document).*

No use has been made of surveillance or CHIS powers since the last Inspection in 2012 and as a consequence it has not been possible to verify the above requirement. Given that a period of six years has elapsed, this recommendation will be discharged however any future applications will be reviewed against this criteria. Recommendation **discharged**.

6 Review of Policies and Procedures

- 6.1 Maidstone Borough Council maintains a Covert Surveillance and Access to Communications Data Policy and Guidance Note for personnel seeking to find out how RIPA powers may be applied for and utilised. This is a clear and comprehensive document which provides the reader with explanations of key principles such as proportionality and collateral intrusion. The policy has been updated to account for legislative changes introduced in 2012 which includes the requirement to seek authorisation at a Magistrates' Court.

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6.2 There are two areas where the policy would benefit from being further updated:

- Paragraph 2.7.3 makes reference to the required headings for the Central Record which are no longer accurate (as is the record itself). They should not include reference to urgency provisions which are no longer available to Councils, and must reference the date a request was authorised by the court or otherwise.
- Within the policy there is reference to the monitoring of persons via social media and/or the internet potentially requiring an authorisation for directed surveillance, however there are no control measures outlined (for example by maintaining a register of covert online profiles utilised and a record of their use) or direction given as to whether the Council wishes to permit such activity. It is therefore recommended that prior to publication this section is further amended to address the points raised.

7 Training

7.1 With the continued ability to use RIPA powers comes an obligation to ensure preparedness by ensuring that key staff complete regular refresher training, thus ensuring their knowledge is up to date with recent developments in legislation, guidance and best practice. The most recent training made available to key personnel such as legal services officers and heads of units most likely to use surveillance techniques was in 2015. The value of such refresher training cannot be overstated in maintaining control over how RIPA powers are used, and as such the Council has already acknowledged the need to further roll this out to Authorising Officers (see Recommendation 1).

8. Reports to Members

8.1 To ensure that Members have an awareness of the Council's use of RIPA they should be informed on a regular basis how often these powers are requested and broadly why. An annual report, including RIPA matters, has been made to members of the Audit, Governance and Standards Committee. It appears that this is only the case if the Council utilises RIPA powers, however it should equally be a matter of scrutiny if RIPA is not used.

9 Liaison with the Magistrates' Court

9.1 Maidstone BC has not made any use of RIPA powers since prior to the last Inspection in 2012, however the corporate policy document sets out in detail the

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process that must be employed when seeking the authorisation of a court, including in urgent circumstances.

10 Authorising Officers

- 10.1 There are presently three nominated Authorising Officers which are Mark Green - Director of Finance and Business Improvement, William Cornell – Director of Regeneration and Place and John Littlemore - Head of Housing and Community Safety. The Chief Executive Alison Broom will act as AO where the use of a juvenile source is required or where confidential information may be obtained. All AOs are sufficiently senior to fulfil the requirements of SI 2010/521 which states that AOs must be of at least Director, Head of Service or Manager level.

11 CCTV and Technical Equipment

- 11.1 Maidstone Borough Council works in partnership with Medway Council and other local authorities in relation to the management and use of the local CCTV system. The local service covers Maidstone town centre only and is operated in accordance with the relevant Code of Practice.
- 11.2 The Council also maintains a small amount of surveillance equipment including five static cameras and noise monitoring equipment.

12 Conclusions

- 12.1 Despite the fact that Maidstone Borough Council has not used its RIPA powers for some time it has maintained a good level of preparedness which includes maintaining a Central Record and comprehensive policy document, albeit the former still requires amendment.
- 12.2 The Council acknowledges that there is a requirement to train additional officers including the nominated Authorising Officers which is therefore also the subject of a continued recommendation. It would be helpful if this training could address the use of social media and internet information during investigations as an area of growing use among local authorities. This may assist in further developing the social media guidance contained within the RIPA policy which is the subject of a further recommendation, in order that the Council makes clear what its staff are and are not permitted to do online.

13 Recommendations

- 13.1 Recommendation 1 - The Senior Responsible Officer should ensure that RIPA training is refreshed for all relevant officers undertaking the role of applicant or Authorising Officer, at regular intervals. Such training should include discussion of CHIS recognition and management issues and the use of the internet and social media during investigations.
- 13.2 Recommendation 2 - The Central Record should be updated to ensure it contains all the matters highlighted at paragraph 8.1 of the Covert Surveillance and Property Interference Revised Code of Practice.
- 13.3 Recommendation 3 - Changes should be made to the Covert Surveillance and Access to Communication Data Policy and Guidance Note in accordance with paragraph 6.2 of this report.

Gráinne Athorn
Surveillance Inspector