

The Rt. Hon Lord Justice Fulford
Investigatory Powers Commissioner,
PO Box 29105
London SW1V 1ZU

January 31st, 2018.

**INSPECTION REPORT
REGULATION OF INVESTIGATORY POWERS ACT, PART II
TUNBRIDGE WELLS BOROUGH COUNCIL**

Inspector: His Honour Brian Barker CBE, Q.C.
Assistant Surveillance Commissioner.

Introduction

1. The Council serves a population of about 117,000, covering an area of approximately 128 square miles along the south west border of Kent, adjacent to East Sussex. It is partly on the northern edge of the Weald and the remainder is on the Weald Clay plain, part of the often called 'Garden of England'.
2. The Council operates on a leader and Cabinet basis. It has 48 councillors representing 20 wards; eight of those wards are within Royal Tunbridge Wells itself. The Mayor, Councillor Julia Soyke, is the first citizen and is elected annually. The office holder carries out civic and ceremonial duties and chairs full council meetings and acts as ambassador to promote the Council's name at home and elsewhere. There are 14 Parish and 2 Town Councils within the Borough representing their communities and providing services for them.
3. The senior management team consists of Chief Executive William Benson who is supported by the Directors of Finance, Policy and Development, and of Change and Communities; and then by ten Heads of Service.
4. The address for correspondence is Town Hall, Mount Pleasant Road, Royal Tunbridge Wells, Kent TN1 1RS
5. The last inspection was conducted by Kevin Davis, Surveillance Inspector, on November 19th 2014. He reviewed the one directed surveillance authorisation since the 2011 inspection relating to a housing benefit fraud. He noted the increasing preference to use overt methods and concluded that the oversight of the recently instated Tunbridge Wells and Swale Legal Service Department was capable of ensuring compliance.

6. That process of amalgamating and sharing various services has continued, and on the legal side Mid Kent Legal Services now additionally cover Maidstone Borough Council. Keith Trowell, Interim Team Leader – Corporate Governance, gives much of his attention to Tunbridge Wells and although not the deputed RIPA Co-ordinating Officer, is the effective first port of call at Tunbridge Wells.
7. There have been no subsequent applications due to a combination of the greater demands and threshold of the 2012 legislation, the increased use of overt methods and the traditional investigations such as benefit fraud being investigated elsewhere.
8. Based on the information provided and on a helpful and detailed phone conversation with Keith Trowell, it is my view that it is sufficient to present a written report without the necessity of a visit.

Previous Recommendations:

9.
 - (i) that the Central Record be fully compliant
 - (ii) the RIPA Policy be updated to take into account the Protection of Freedoms Act 2012.
 - (iii) the next training to include addressing the procedural matters raised during the inspection
10. These matters have been addressed.

Central Records and Forms:

11. It was noted in the last inspection report that the out dated Central Record would be replaced by a document that would serve both the Borough Council and Swale Borough Council, although appropriately divided. The now compliant and computerized document is held on a secure drive, but without use the file remains empty. Access to the current forms is available, as are the *Home Office Guides 2014* and the *OSC Procedures and Guidance 2016*.

RIPA Policy and Structure:

12. The “*Covert Surveillance and Access to Communications Data Policy and Guidance Notes*” document is adapted from that used by Swale Borough Council (the subject of praise in its 2013 inspection), and was last reviewed in July 2017. The cover page helpfully has the names of the Senior Responsible Officer, William Benson, Chief Executive, and of the Co-ordinating Officer, Donna Price, Team Leader Corporate Governance clearly accessible on the cover page. It consists of eighteen pages

(including Communications Data) with three appendices and is divided into five main parts.

13. As time has gone on Donna Price has spent a greater proportion of her time at the other two Councils and consideration should be given to transferring the title (and amending the documents) to show who currently has taken over the responsibility and is available for consultation and administration.
14. It is balanced and written in a clear style. It describes itself as a 'practical reference guide' and emphasises that officers must make themselves familiar with the *Home Office Codes of Practice*. It might assist at this early stage in the document to add hyperlinks to these and also a reference to the useful *Office of Surveillance Commissioners' Procedures and Guidance 2016*.
15. The Notes overall provide the proper picture although there are a few areas where some changes and additions would add to its value and breadth. The "Policy Statement" on the first page goes on to underline the commitment of the Council to implement the provisions of *RIPA* properly, and this section could be rounded off in two areas. First by underlining the importance of initial consultation with the Co-ordinating Officer at the earliest opportunity if such action is contemplated. And second making it clear at this introductory stage that as a result of the Protection of Freedoms Act 2012 the investigatory powers can only be used in relation to activities which would receive a minimum of six months imprisonment or are in relation to underage selling of alcohol or tobacco. (I appreciate that this change is explained at the back on the second page of Appendix 1). It is pleasing to see that the responsibilities of both the Senior Responsible Officer and the Co-ordinating Officer are set out clearly on page two.
16. The reader new to the subject may well be assisted in understanding what is not an easy topic by having stronger divisions and headings. I have in mind firstly existing section 1 "Background" subdivided into (a) 'Scope and Control' [existing 1.1 to 1.8]; then (b) 'Definitions' [existing 1.9 to 1.32]; and finally Social Networking Sites [1.33] to be separate at (c) to give this subject greater prominence.
17. The inevitable and almost automatic use of social media as an investigative tool needs careful thought, as an investigating officer can easily slip inadvertently into a *RIPA* situation without authorization having been considered. This has been a particular concern of the Commissioner in the recent past and reference is made at para. 289 of the *OSC Procedures and Guidance 2016*
18. Part 2: "General Rules on Authorisations" deals with this subject well. The list of Authorising Officers, namely the Chief Executive, the Deputy Chief Executive, (although with increasing budgetary pressures the post no

longer exists) the Finance Director and the Head of Environment and Public Realm are to be found at an early stage in the Notes before the necessary requirements to gain authorizing approval are explained. The remaining number of Officers is more than ample, providing that each has had appropriate refresher training.

19. Confidential, sensitive and juvenile matters are dealt with in Part 3 “Special Rules on Authorisations” and sets out the role in these areas of the Chief Executive, or in his absence his deputy.
20. “Authorisation Procedure for Covert Surveillance” is dealt with in Part 4 and starts helpfully by indicating where the forms can be found on the internet. Detailed instructions are given as to what is required as part of the application, and ‘Good Practice Hints’ in para 4.3 and the explanation of the additional structures and requirements to be satisfied in the use of a *CHIS* in para 4.9 are also commendable. The necessary circumstances for the use of a *CHIS* have not arisen in recent times, and it is likely that if any possibility should arise then matters would be passed over to the Kent Constabulary with whom the Council has a long standing good working relationship.
21. The second change brought about by the 2012 legislation was the necessity of obtaining approval from the local Magistrates’ Court. This is dealt with in paras. 4.12 to 4.15, but given that this is a further layer of scrutiny and an important change it merits an underlined heading to be consistent with the rest of the document. Which officer should attend in support has been a subject of debate, but the preferred practice is for the Authorising Officer to attend if possible to field any questions as he/she will have come to an independent judgment in conducting the authorization process. (see para. 292 on of *OSC Procedures and Guidance 2016*).
22. Part 5 sets out the authorization procedures for communications data (via the NAFN secure website facility), and the final topic is the “Authorisation Control Matrix/Aide Memoire” – a useful device to ensure that the dates of reviews, renewals and cancellations are attended to and properly recorded. (An example form appears at Appendix C).
23. For completeness, a reference to the existence of the Investigatory Powers Tribunal created under *RIPA* should be noted as an avenue for any complaint by members of the public about the use or conduct by public authorities of these powers.
24. Appendix A sets out summaries of the relevant pieces of legislation to which the Investigatory Powers Act 2016 should be added, and also provides a list of available codes of practice and guidance notes. Again reference to the *OSC Procedures and Guidance* would aid research and hyperlinks would speed access. This would be a convenient place to record that the Office of Surveillance Commissioners and the Interception

of Communications Commissioners Office have now been absorbed into the new broader Investigatory Powers Commissioner's Office.

25. Appendix B contains the Home Office flow chart for application to a Justice of the Peace. This contains an error in that if an investigator does not intend to use directed surveillance then nothing flows and he/she would not go on to complete a RIPA authorization form and take subsequent steps.

see recommendation

Training:

26. Since the last inspection there has been one training session for officers provided by the external organization Act Now in 2015. A further training/refresher session is a matter of high priority with the possibility of combining with one of the neighbouring authorities. Keith Trowell can advise where necessary and the intranet is used across the partnership to bring changes and updates to attention. The continuation of interest and awareness is in his remit and he was attracted by the idea of a dedicated RIPA page on the intranet where outlines, the Policy and guidance could be found in one place, or easily accessed through links.

see recommendation

Councillors:

27. The Annual report to Cabinet is presented in June and the information disseminated to members. Even though there has been no activity a 'nil usage' report it is an opportunity to remind elected members of the powers available through legislation when other overt methods have failed.

CCTV:

28. A jointly owned system with Tonbridge and Malling Borough Council was instated in 1997 covering a number of towns, and expenditure is now met in full by the two Authorities. The control rooms at Tunbridge Wells and Sevenoaks are managed Sharon Wright who won a national award in 2016 for her outstanding work. An independent audit of the facility dated March 2107 was provided to me which was highly complementary in all areas.
29. Consideration, however, is being given to the future of the system due to financial constraints and the likely closing of the Town Hall and the moving of the authority to a new civic centre.

Conclusions:

- 30. The Borough Council is fortunate in having in William Benson, the Senior Responsible Officer, and in Keith Trowell two officers of considerable experience and knowledge. Despite the shift to overt methods and the complete non-use for a number of years, there remains a proper understanding of the necessity to be ready and to be able to operate compliantly and lawfully if the necessity arises.
- 31. Keith Trowell appreciates that there is reluctance for officers to use a tool if not in practice, and this is an area that he is addressing. Despite the unlikelihood of use, it is still important that officers should be in a position to 'recognise a CHIS situation when they see one' and this requirement should be borne in mind in a future training session – the need for which is recognized as a matter of some urgency.
- 32. From my discussion and investigations it is clear that the Borough Council and Mid Kent Legal Services take their statutory responsibilities seriously and are taking swift steps to ensure that compliant and effective systems are in place.

Recommendations:

- 33. *(i) minor amendments to the Policy and Guidance Notes.*
(ii) institute training/refresher sessions for appropriate officers in the near future

Brian Barker
Assistant Surveillance Commissioner.