


RESTRICTED



Office of Surveillance
Commissioners

OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT

CAMBRIDGE CITY COUNCIL
26 April and 12 May 2010



Assistant Surveillance Commissioner:
His Honour Dr. Colin Kolbert

RESTRICTED

RESTRICTED

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.

The report is sent only to the recipient of the Chief Surveillance Commissioner's letter (normally the Chief Officer of the authority inspected). Copies of the report, or extracts of it, may be distributed at the recipient's discretion but the version received under the covering letter should remain intact as the master version. Distribution beyond the recipient's own authority is permissible but it is requested that the 'Secretary to OSC', Office of Surveillance Commissioners, is informed of the named individuals to whom copies or extracts have been sent. Any references to it, or extracts from it, must be placed in the correct context.

The Office of Surveillance Commissioners (OSC) is not a public body listed under the FOI Act 2000, however, requests for the disclosure to a third party of any information contained within this report should be notified to the Secretary to OSC."

RESTRICTED



Office of Surveillance
Commissioners

Chief Surveillance Commissioner
Office of Surveillance Commissioners
PO Box 29105
LONDON
SW1V 1ZU

26th April and 14th May 2010

OSC INSPECTION REPORT – CAMBRIDGE CITY COUNCIL

Dates of Inspection 26th April and 12th May 2010

Assistant Commissioner HH Dr Colin Kolbert

Cambridge City Council

- 1 The Council remains responsible for the City of Cambridge. The population served and staff numbers have not changed significantly since the last Inspection by Graham Wright on 24th April 2007 (120,000 and 1,250 respectively). The Corporate re-organisation under contemplation in 2007 has just been approved by the Council: the former five Directorates are to be reduced to three, namely People, Places and Resources. The three Directors, together with the Chief Executive, constitute the Central Management Team.
- 2 The Chief Executive is Antoinette Jackson, The Guildhall, Market Square, Cambridge, CB2 3QJ.

Inspection

- 3 The Inspection on 26th April was conducted with the most helpful assistance of Simon Pugh (Head of Legal Services and Monitoring Officer with overall responsibility for RIPA), Alastair Roberts (Safer Communities Manager) and Martin Beaumont (CCTV Manager and Co-ordinator, and Vice-Chairman, National CCTV Users' Group).
- 4 On 12th May Simon Pugh made available the file of papers relating to a breach of RIPA by the Council in purporting to authorise *ultra vires* Intrusive Surveillance (see the Appendix attached to this Report).

Progress Since the Last Inspection

- 5 Graham Wright commented (paragraph 7) that there was no corporate oversight of RIPA processes except by individual Authorising Officers, and no Central Record compliant with the Home Office *Code of Practice* (then paragraph 2.14) and recommended that the Head of Legal and Democratic Services should carry out central quality assurance and oversight of authorisations and processes and maintain a Central Record. This recommendation has been fully implemented and Simon Pugh has full oversight of all RIPA matters. Indeed it was he who noted the breach of RIPA and drew it to my attention.

- 6 In the light of the last Inspection, the Council's Internal Audit department conducted a full review of all authorisations on behalf of Simon Pugh and a comprehensive report was submitted to him. If its recommendations are indeed implemented, key aspects of authorisations should in future cause no problems, as there is sound guidance e.g. insisting that all forms are sent in the first instance to Simon Pugh; advising that the newly purchased Manual from "Act Now" (see paragraph 9 below) should always be consulted on key principles (*proportionality*, *collateral intrusion* and *necessity*); and requiring that all pre-typed sections should be deleted.
- 7 On the day after this Inspection, a Report on RIPA in the light of the new Home Office *Codes of Practice* (effective from 6th April 2010) was due to be presented to the Central Management Team. It drew attention to the existence of the new *Codes*; noted the provisions relating to Authorising Officers which would have no practical effect for the Council, though the Report recommends that thought be given to reducing the number of Authorising Officers; it also recommended the appointment of the Head of Legal Services as Senior Responsible Officer (again, no practical change). On the Councillors' Role, the Report states:

"6.1 The new code states that, at least once a year, councillors should review the Council's use of RIPA and set the general surveillance policy. They should also consider internal reports on the use of RIPA at least on a quarterly basis to ensure that it is being used consistently as per the council's policy and that the policy remains fit for purpose. The Code emphasises that councillors should not be involved in making decisions on specific authorisations.

6.2 RIPA falls within the Leader's portfolio. We took a report to the Leader and Strategy and Resources Scrutiny Committee in September 2008 reviewing the use of powers and are intending to take another report to the meeting on 5 July. We can submit a policy for the use of RIPA to that meeting, and thereafter annually. I suggest that we meet the provision to report on RIPA on a quarterly basis by sending a summary to committee members. If we do this sufficiently in advance of the four meetings each year, this would allow members to "call in" any use of RIPA that they believe should be discussed."

The *Report* recommends that the Central Management Team endorses this approach. It is suspected that in some quarters there may be a "push" for elected members to become involved in operations, but emphasis is to be placed upon the statement in the *Codes* that they should not be involved in any decisions on authorisations and restricted expressly to a review of the Council's use of RIPA and set the general policy "at least once a year."

- 8 The *Report*, which is admirably thorough, draws attention to the further guidance on *proportionality* now included in the new *Codes* which appears to be designed to discourage the use of RIPA for "minor offences" and views expressed on CCTV and noise monitoring, all of which accord with the Council's current practices.

Policies and Procedures

- 9 The Council has a brief "*Procedure Guide on the use of Covert Surveillance and CHIS*." It was produced by Simon Pugh and gives clear guidance to applicants and Authorising Officers, who are listed by name and post in an Appendix. It is available on paper and on the Council's Intranet. Though the *Guide* is itself correct, it was disappointing to find that the sample forms appended had not been amended to take account of S.I. 2003, No. 3171, even though the Internal Audit Report had recommended that application forms should show only the grounds available to the Council. I was assured, however, that only up-to-date forms will now be used and that Authorising Officers will follow the excellent guidance on how to complete an application and authorisation which is included in Ibrahim Hasan's "*Act Now*" (3rd ed. 2010) which has been used for training and is now to be followed for all RIPA applications.
- 10 As noted above, there is now a Central Record of Authorisations compliant with the Home Office *Code of Practice* and maintained by Simon Pugh who will be designated as Senior Responsible Officer.
- 11 There were no authorisations of Directed Surveillance in 2009 or, so far in 2010, save for the breach (see below). It is perhaps unfair to be over-critical of some older authorisations on the file (there were three in 2008), but old forms were used without the prompts which are now routine and do usually ensure better explanations of *proportionality* and details of exactly what is authorised (the 5 "W's"), provided that they are followed. Dates of review and expiry, formerly variable, should now be secure and correct, given the degree of oversight exercised by Simon Pugh.
- 12 It is proposed in the restructuring (see paragraph 1 above) that the Council's Authorising Officers should be the three Directors and Heads of Service. The Chief Executive would of course be required to act in any case involving confidential material. It is suggested, when the restructuring has settled, that consideration be given to the appropriate number of Authorising Officers and their level of seniority which would be sensible for an authority which seems likely to remain a sparing user of Directed Surveillance.
- 13 No use has been made of CHIS and none seems likely.

Training

- 14 The attention of all staff is drawn to Ibrahim Hasan's excellent "*Act Now*" with its comprehensive guidance on the completion of authorisations.
- 15 It was admitted that formal training is "overdue" and sessions to be provided by Bond Solon are under active consideration.

CCTV

- 16 Under the supervision of Martin Beaumont, the Council is a leader in the development and operation of CCTV systems. The principles followed are set out in a plain-speaking *CCTV Code of Practice*, to which is added a Protocol between Cambridgeshire Police and the Council which is intended to ensure that there are always clear audit trails when CCTV is used jointly. Thus:

"Where consultation between CCTV local authority and Cambridgeshire Constabulary takes place and agreement is made concerning the non requirement of an authority the officer giving that advice from Cambridgeshire Constabulary will make a written record of the advice in a retrievable manner to support any review of rational (sic.) and audit trail at a later date. Where use of a CCTV system is utilised and a RIPA authority is in place the details of the date and time of the authority along with the details of the authorising officer and authority reference number will be given to the local authority CCTV office for the use of an audit trail and review at a later date."

- 17 The Council operates 222 cameras in 20 systems, some of which cover residential homes and council premises.
- 18 147 cameras cover public spaces and record some 5,000 incidents a year (4,000 of them being crimes). Every camera in every system is kept under review and has to be justified – thus five of the public space cameras are about to be removed.
- 19 All staff are trained internally and are made aware of new policies as they develop. The CCTV office is a central point for advice and training on RIPA for other departments.
- 20 The operators of public space CCTV cameras will all have completed an external B.Tec (Advanced Operators) course run by Tavcom by August 2010 (16 of 20 operators have already completed the course). All other operators are regularly updated by Martin Beaumont on their roles, responsibilities and general RIPA awareness.

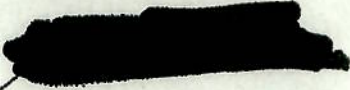
Conclusions

- 21 The Council remains a very sparing user of covert surveillance. As Graham Wright commented in paragraph 8.1 of his Report, there is no philosophical objection to the use of RIPA powers, but now that noise complaints are dealt with overtly and there are other more efficient ways to investigate benefit frauds there may well be less need for covert means to be employed. Nevertheless, those who assisted in this Inspection were extremely well-informed and willing to shoulder their responsibilities. Simon Pugh has imported a much needed rigour to the Council's RIPA procedures and maintains close oversight of the authorisation system, so that no operation should now start, or find its way onto the Central Record (or even be afforded a Unique Reference Number) without his approval. Martin Beaumont is *doyen* of the CCTV Users' Group and runs a notably tight ship of which he is justifiably proud. The Council's *Policy* documents are clear and concise and should provide clear guidance to anyone who troubles to read them.
- 22 We discussed the vital ingredients of a cross-examination-proof authorisation – full description of the operation (in the light of *R v Sutherland and Others*); full attention to *necessity* and *proportionality*; Authorising Officer's statement in own handwriting dealing in detail with the "5 W's" and stating *how* and *why* the operation is *necessary* and *proportionate* (in the Authorising Officer's opinion and own words); and ensure that dates for review and cancellation are correct. (These issues were also referred to in paragraph 7.9 of Graham Wright's Report).

- 23 From the above, one would have concluded that all necessary systems were in place to ensure that, were the Council to embark upon a covert operation, all would be well. Then Simon Pugh brought to my attention a recent breach in the form of Intrusive Surveillance conducted *ultra vires* (see below). Unfortunately the surveillance ran for a month before Simon Pugh discovered it and stopped it immediately. It is only fair to add that under the system which he now has in place whereby he examines every authorisation when allocating its URN and entering it upon the Central Record such an error simply should not happen: but happen it did, despite all the Policy documents and training.
- 24 The Council's *Policy* documents, as already noted, are admirably clear and concise. They are now supplemented by the "*Act Now*" booklet which provides a comprehensive "child's guide" to completing authorisations, which should be first class if only its advice is acted upon: but the papers in the breach case failed in every important respect, namely setting out the details of what is authorised, with consideration of *necessity* and *proportionality*, and the Authorising Officer's statements, all of which would have been totally destroyed by any competent cross-examiner challenging the case in Court, to the acute embarrassment of the Council and all concerned. The admirable system in place is of no avail if it is not followed. The critical aspect of all authorisations were set out in paragraph 7.9 of Graham Wright's Report, and were discussed during this Inspection (see paragraph 22 above). It should no longer be necessary to have to stress such fundamental issues now that RIPA is about to celebrate its tenth anniversary.

Recommendations

- 25 Plainly, the Council must never stray into Intrusive Surveillance at all. If training and documentation cannot ensure that there is no repeat, Simon Pugh's oversight should pick up such a transgression before the proposed operation commences.
- 26 Authorising Officers should have the "*Act Now*" booklet to hand at all stages of an authorisation and follow its guidance as well as the prompts on the RIPA forms. It should be superfluous to comment that it is foolish not to follow the guidance provided, but unfortunately it is necessary to stress the point.
- 27 Training, which it is acknowledged is already overdue, should be in hand in the near future, with particular emphasis on some of the fundamental issues outlined in this Report.


(Colin Kolbert)

Assistant Surveillance Commissioner

