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**Office of Surveillance
Commissioners**

**OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT**

**CARMARTHENSHIRE COUNTY COUNCIL
8 April 2010**

**Surveillance Inspector:
Andrew Mackian**

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Office of Surveillance
Commissioners

The Rt. Hon Sir Christopher Rose
Chief Surveillance Commissioner
PO Box 29105
London SW1V 1ZU

16th April 2010

OSC INSPECTION REPORT – CARMARTHENSHIRE COUNTY COUNCIL

INSPECTION DETAILS

1. Date of Inspection

8th April 2010

2. INSPECTOR

Andrew Mackian.

INTRODUCTION

3. Carmarthenshire County Council is a unitary authority with 9,000 employees serving an approximate population of 180,500. The council is made up of the following six directorates:
- Chief Executive
 - Education and Children's Services
 - Social Care and Housing
 - Technical Services
 - Regeneration and Leisure
 - Resources
4. The Chief Executive for the authority is Mr Mark James, Carmarthenshire County Council, County Hall, Castle Hill, Carmarthen SA31 1JP.

INSPECTION APPROACH

5. Pre-inspection arrangements were agreed with Robert Edgecombe, Senior Solicitor. A detailed briefing report was supplied setting out the use by the Authority of powers granted under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last OSC visit undertaken in 2007.
6. At the commencement of the inspection visit a further briefing was provided by Robert Edgecombe, supported by Philip Davies Head of Public Protection and currently senior officer with RIPA oversight responsibilities.

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7. Four authorisations to conduct Directed Surveillance as defined in section 26(2) of the 2000 Act had been granted in 2008, with a further six being authorised in 2009. No authorisations have been granted to date during 2010. None of the authorisations required the use of the urgency provisions. It is the current policy of the Authority not to use powers allowing the use of a Covert Human Intelligence Source (CHIS). There were no matters of confidential information gathering to report upon.
8. An examination was made of the Central Record of Authorisations, along with relevant policies and procedures and training records. An inspection was made of all authorisation records for 2009 in order that current compliance standards could be assessed.
9. An open forum meeting was held with available practitioners and Authorising Officers, along with Robert Edgecombe, and feedback was provided on the compliance standards of applications and authorisations. At the conclusion of the visit, a meeting was held with Philip Davies and Robert Edgecombe to discuss the findings of the inspection and subsequent recommendations.
10. A planned visit to the CCTV operations room had to be cancelled on the day due to the unavailability of staff. Although arrangements had been originally made to meet with the Chief Executive, notice was given prior to the inspection visit that unfortunately he would not be available.

REVIEW OF PROGRESS

11. The 2007 OSC inspection of the Authority produced the following two recommendations:

Recommendation 1.

Standardise Council-wide use of the most recent templates.

There was evidence that use of the latest Home Office forms remained inconsistent. It is likely that the forms will undergo further revision in the near future to take account of the latest Codes of Practice. The opportunity should be taken to ensure that the latest templates are introduced which can include any additional guidance the Authority may wish to include.

Recommendation 2.

Take care to ensure that future needs for protection by RIPA authorisation are not overlooked.

Mr Edgecombe, in his role as RIPA gatekeeper, maintains focussed oversight on all enforcement activity undertaken by the Authority, thereby ensuring that due consideration is given to the provisions of the 2000 Act.

POLICIES AND PROCEDURES

12. A comprehensive procedural document is in place which, through regular review, provides clear guidance on the application of legislative powers, along with internal compliance requirements. Some procedural revisions are proposed to meet the requirements of the latest Codes of Practice. It is intended to change the Chief Officer with responsibility for RIPA issues from Mr Philip Davies to Mr Lyn Thomas (Head of Administration and Law and Monitoring Officer). Mr Thomas is a member of the corporate management team.
13. It is also intended that the present annual RIPA compliance report prepared by the gatekeeper will be replaced by quarterly reporting to a designated member of the Council's Executive Board. Such reporting will include the use of RIPA powers to ensure that any use has been consistent with corporate policy. In addition, an annual report will be made to the same Executive Board Member for the purpose of reviewing the use of RIPA for the year and to set the policy for the next 12 months.¹
14. Authorising Officer posts for the purpose of the 2000 Act have been restricted to five Heads of Service, a Service Manager and the Chief Executive.
15. Mr Edgecombe, as Senior Solicitor, undertakes the role of RIPA gatekeeper effectively and quality assures all applications. There was evidence from email exchange that he provides appropriate guidance when considered appropriate.

RELATED TRAINING

16. Structured training is co-ordinated by the Senior Solicitor. A Welsh Assembly Government led RIPA training event is shortly to be held, following which a programme of refresher training will be delivered to practitioners and Authorising Officers. RIPA training records are maintained.

SIGNIFICANT ISSUES

17. Central Record of Authorisations.
This is maintained in ledger format by the Senior Solicitor. The information provided within the record was compliant with paragraph 8.1 of the new Code of Practice, save for the omission of a section to record whether the authorisation was granted by an individual directly involved in the investigation. Mr Edgecombe also records applications that have not proceeded to authorisation, as well as recording any compliance issues he has identified in his capacity as RIPA gatekeeper. Future entries on the Central Record would benefit from a brief description of the investigation or operation, including the names of the subjects if known, as required by the Code of Practice.

¹ Paragraph 3.30 of the latest Code of Practice under general best practice expounds that elected members should review the authority's use of RIPA powers. It is the intention of this authority to restrict such oversight to one designated member only.

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18. Directed Surveillance

During the course of 2008 two instances of activity occurred whereby the Senior Solicitor considered that a breach of RIPA legislative requirements had taken place. Both matters related to action undertaken by Trading Standards Officers. The first event concerned a response to immediate information relating to the sale of counterfeit goods and the second related to the use of juvenile test purchase operatives. With regard to the first matter, no prosecution took place, in fact the suspect approached the investigating officers. Advice was given that in any future such circumstances, a judgement has to be made as to whether the circumstances represent an immediate response² or require an urgent oral authorisation.³ The second event was influenced by LACORS guidance that advised if no private information was likely to be gathered, then a Directed Surveillance authorisation may not be necessary. Whilst it appeared that a covert surveillance device was not in use at the time, an adult was present observing the purchase, therefore consideration should in future be given to current OSC procedural guidance.⁴

19. During 2009 Trading Standards Officers carried out a further Test Purchase operation relating to under age tobacco sales, again using young persons. Despite advice from the Senior Solicitor, the operation proceeded without a RIPA authorisation, based on the LACORS guidance. The matter was reported by the Authority to the OSC as a breach and the matter was recorded on the Central Record of Authorisations. Again advice was given as to OSC procedural guidance which was re-enforced at the open forum meeting, which included within the group, representatives from Trading Standards.
20. Two operations conducted during 2009 by Trading Standards were supported by Directed Surveillance authorisations and related to test purchase operations aimed at underage tobacco and alcohol sales. Both applications were well constructed, although it was immediately evident that a degree of 'cut and paste' had been undertaken. Care must be undertaken to ensure that a lapse into template entries does not occur.⁵
21. Whilst necessity and proportionality had been addressed in both applications and authorisations to a reasonable standard, future authorisations would benefit from applying the OSC guidance and Code of Practice advice by both applicant and Authorising Officer to these important considerations.⁶
22. Both test purchase operations involved a number of commercial premises ranging from large supermarkets to small off-licence premises and corner shops. A generic entry had been made within both applications regarding the consideration given to collateral intrusion. It is advised that specific consideration is given to the likely impact of collateral intrusion at the different venues visited during the course of such operations, with reference being made as to the level of collateral intrusion

² See paragraph 2.23 of New Code of Practice

³ See paragraph 5.6 of New Code of Practice

⁴ See paragraph 253 of OSC Procedures and Guidance

⁵ See paragraph 158 of OSC Procedures and Guidance

⁶ See paragraphs 103 to 104 of OSC Procedures and Guidance and paragraph 3.6 of new Code of Practice

likely when visiting small retail premises, as opposed to large supermarkets.

23. The duration of both operations had been well managed by way of reviews and cancellation had been promptly undertake. More detail as to the outcome of the enforcement action undertaken would benefit future cancellations along with evidence that Authorising Officers had ensured that suitable arrangements were in place for the retention and destruction of surveillance material.⁷ Such instruction is within section 9 of the Authority's RIPA policy document.
24. Two authorisations for Directed Surveillance undertaken by Technical Services involved in one case the deployment of a covert observation vehicle and in the other the use of the Dyfed Powys police helicopter. Both applications and authorisations were completed to a competent standard, but again would benefit from the additional detail as set out in the foregoing paragraphs.
25. Discussion with practitioners and Authorising Officers confirmed that operational staff are briefed as to the content and parameters of RIPA authorisations.⁸ It is recommended that this requirement is included within the next review of the Authority's RIPA policy document. The policy within section 8 provides guidance on joint operations. Evidence of the application of this guidance in relation to the use of the police helicopter would have enhanced the authorisation inspected, either by way of the authorisation being signed by the police or evidence of an operational protocol. There is little doubt that such dialogue took place.
26. Management of Technical Surveillance Equipment
A protocol for the control of surveillance devices is in place, requiring a nominated officer in each departmental business area to keep a register of use linked to the Unique Reference Number (URN) of the RIPA authorisation. Each nominated officer is required to report on the use of technical equipment for covert purposes to the Senior Solicitor annually. A copy of the register format prepared by Trading Standards was made available for examination. Whilst acknowledging the sound procedures put in place, the test at the time of the next inspection visit, will be to determine if policy has been put into practice.
27. CCTV
A well established operational protocol is in place with Dyfed Powys police regarding the use of CCTV assets for covert purposes. Although the arranged visit to the Carmarthen CCTV control room did not take place, adherence to the protocol should ensure that appropriate consideration is given to legislative requirements.
28. Good Practice
Appointment of Senior Solicitor as RIPA gatekeeper.
(Paragraph 15)
- Recording of compliance issues within Central Record of Authorisations
(Paragraph 17)

⁷ See OSC Procedures and Guidance paragraph 146 and new Code of Practice paragraph 9.3

⁸ See paragraph 148 of OSC Procedures and Guidance

CONCLUSIONS

29. As has proved the case when similar arrangements are in place, the appointment of a Senior Solicitor within a public authority as gatekeeper ensures that the appropriate level of consideration and oversight is given to RIPA compliance requirements.
30. In relation to this authority, Mr Edgecombe has ensured that sound policy and procedures are in place, supported by regular training which he co-ordinates and delivers. There is clear evidence of his oversight and guidance. The steady implementation of successive OSC inspection recommendations has further contributed to this outcome.
31. Departments who may choose to undertake surveillance contrary to the advice of the Senior Solicitor may well place the Authority in a perilous position.
32. The advent of the new RIPA Codes of Practice provides an opportune interlude to deliver refresher training, with particular emphasis being given to the concepts of necessity and proportionality. Whilst not significant users of covert enforcement powers, this authority, if present oversight standards are maintained, can justifiably pursue such tactics, providing such action is both necessary and proportionate, with a degree of confidence.

RECOMMENDATIONS

33. Recommendation 1
Refresher training for applicants and Authorising Officers.
(Paragraph 21)
34. Recommendation 2
RIPA policy to include advice that those carrying out surveillance activity are required to view the relevant surveillance authorisation.
(Paragraph 25)

AE Mackie

Surveillance Inspector.