



**OFFICE OF SURVEILLANCE COMMISSIONERS**  
**INSPECTION REPORT**

**Carmarthenshire County Council**

**14th April 2016**

**Surveillance Inspector:**  
**Mr Neil Smart.**

## **OFFICIAL - SENSITIVE**

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**OFFICIAL – SENSITIVE**



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Chief Surveillance Commissioner  
Office of Surveillance Commissioners  
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14<sup>th</sup> April 2016

## **OSC INSPECTION REPORT – CARMARTHENSHIRE COUNTY COUNCIL**

### **1 Date of Inspection**

14<sup>th</sup> April 2016

### **2 Inspector**

Mr Neil Smart.

### **3 General Description**

- 3.1 Carmarthenshire County Council is the local authority for the county of Carmarthenshire, Wales, providing a full range of services under the elected control of councillors that includes education, planning, transport, social services, and public safety. The council is one of 22 unitary authorities that came into existence on 1<sup>st</sup> April 1996 under the provisions of the Local Government (Wales) Act 1994. The Council has some 6000 staff (excluding teachers) (FTE) serving a population of approximately 183,800<sup>1</sup> people.
- 3.2 The Strategic Management Team comprises the Chief Executive (Head of Paid Service) who is supported by two Assistant Chief Executives (Regeneration & Policy; and People Management & Performance), the Head of Administration and Law (Mrs Linda Rees-Jones who is the senior responsible officer (SRO) for RIPA), and a Joint Head of IT Services.
- 3.3 There are five 'Directorates': 'Chief Executive'; Community Services; Corporate Services; Environment; and Education and Children's Services.
- 3.4 The Chief Executive is Mr Mark James C.B.E.. The address for correspondence is Carmarthenshire County Council, County Hall, Castle Hill, Carmarthen, SA31 1JP.

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<sup>1</sup> Figures from the 2011 census.

- 3.5 The grade prescribed by SI 2010 No 521 for authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA) for directed surveillance and the use of covert human intelligence sources (CHIS) within a Local Authority is *'Director, Head of Service, Service Manager or equivalent'*. There are currently eight authorising officers designated for this Authority (subject to further comment in the 'Policy and Procedures' section of the report below) including the Chief Executive, who would be the authorising officer in respect of confidential information or juvenile CHIS.
- 3.6 Since the last OSC inspection of the Council in April 2013 there have been 13 authorisations conducted for directed surveillance (five in 2013, five in 2014 and three in 2015. There have been no authorisations to date this year). These were in respect of investigations into the underage sale of alcohol, benefit fraud (investigations now undertaken by the Department for Work and Pensions (DWP)) and 'fly tipping'. There have been no authorisations for the use and conduct of a covert human intelligence source (CHIS).

#### **4 Inspection**

- 4.1 The purpose of the inspection was to examine policies and procedures relating to the Regulation of Investigatory Powers Act 2000 (RIPA), in respect of directed surveillance and covert human intelligence sources (CHIS).
- 4.2 The inspection programme was agreed with the Council in advance and took the form of an initial meeting with Mr Robert Edgecombe (Legal Services Manager responsible for RIPA oversight / gate-keeping and the Central Record of Authorisations) and Mrs Linda Rees-Jones (Head of Administration and Law / SRO).
- 4.3 I held a focus group meeting with the following staff:
- a) John Gravelle – Revenue Services Manager / authorising officer
  - b) Aled Thomas – Trading Standards Officer / RIPA applicant
  - c) Paul Morris – Environmental Safety Manager / RIPA applicant
  - d) Rober Edgecombe - Legal Services Manager / Gate-keeper

Discussions included RIPA training, test purchase operations, the use of Social Networking Sites (SNS) to obtain intelligence, overt observations, directed surveillance, technical equipment management, 'status drift' issues from human intelligence sources towards that of a CHIS, and covert human intelligence sources (CHIS). A reasonable level of awareness of the legislation and associated processes was evident from those in attendance.

- 4.4 The inspection included examination of the 'Central Record', Policy / Guidance document, training record / material, and a discussion in respect of RIPA training. I examined five authorisations and related documents for directed surveillance, and the processes to obtain 'Judicial Approval'.
- 4.5 Feedback of the outcome of the inspection was given in a discussion with the SRO and RIPA Gate-keeper.

#### **5 Recommendations from the previous inspection**

- 5.1 The Council was previously inspected by Mr Andrew Mackian on 16<sup>th</sup> April 2013. On that occasion there were three recommendations made on which I report the progress to date.
- 5.2 **Recommendation 1** – *Standard Operating Procedure for the covert use of Social Networking Sites to be included within the Council RIPA procedural document. (Paragraph 14)*
- 5.3 A section has been added to the procedural document. Although this is subject to some fine tuning requirements (referred in the ‘Policy and Procedures’ section of the report below) I am satisfied that **the recommendation is discharged.**
- 5.4 **Recommendation 2** – *Retention of the original documentation by the gate-keeper and improved oversight. (Paragraphs 14 and 18 – 20)*
- 5.5 Original documents are still retained by investigators and copies electronically held on the IT system as attachment files to each operation in the same ‘folder’ as the Central Record of Authorisations on the Council’s computer system. This was a conscious decision to reduce the administrative burden. Although I have again raised the issue in respect of centralised management of original documents with the SRO and the position will be reviewed, the Council is compliant with this legislation in respect of documentation held. There has been an improved level of oversight and a process introduced using the Central Record to ensure the prompt submission of reviews and cancellations. I am satisfied that **this recommendation is discharged.**
- 5.6 **Recommendation 3** – Consideration be given to the introduction of an electronic Central Record.
- 5.7 The Central Record of Authorisations is now an ExCel spreadsheet retained on the Council’s IT system in a restricted access file. **The recommendation is discharged.**

## 6 Training

- 6.1 RIPA training has been conducted by external trainers (Act Now) since the last inspection; the last was in February of this year. In addition some internal training has been conducted by the Legal Services Manager. Records are kept of those in attendance. Those officers encountered during the inspection were reasonably confident in relation to the use of the legislation.
- 6.2 The examination of RIPA documentation during the inspection revealed a training need in respect of what should be written on the RIPA forms, in particular ‘painting a pertinent picture’ as to why directed surveillance was required as a tactic, supporting that with a concise intelligence case, and proportionality considerations. There would clearly be a value in the introduction of some sort of practical exercise(s) during the training days, as discussed with the SRO and is advised.
- 6.3 Any opportunities for joint training with other Councils in the area or Dyfed Powys Police should be seized upon. It is important that training continues in order for staff to retain their skills base and appropriate standards can be achieved and maintained.

- 6.4 **Recommendation 1 - RIPA training should continue to be formally delivered by the Council to staff who are likely to engage the legislation to ensure it can be applied to the appropriate standard. Training should include some practically based scenarios in respect of what should be written on the RIPA forms.**

## 7 **Policies and Procedures**

- 7.1 The 'Central Record' for covert surveillance is in the form of an ExCel spreadsheet maintained by the RIPA 'Gate-keeper / Co-ordinator. The record is fully compliant with paragraph 8.1 of the Code of Practice (Surveillance). The record in addition includes reviews which although not a statutory requirement is a useful management tool. A comments section would also facilitate the collation of oversight critique for analytical purposes over the year and is advised. The entry of relevant data from the Central Record to the 'Performance Information Management System' (PIMS) generates reminders to applicants and the RIPA Gate-keeper / Co-ordinator which has tightened document submission in respect of timeliness. This is considered good practice.
- 7.2 The Council has made no use of CHIS although it is empowered to do so. It is advised that a Central Record in respect of Covert Human Intelligence Sources (CHIS) be established containing the relevant data documented within paragraph 7.1 of the Code of Practice (CHIS) to formally record the Council's position. This could be done on a separate tab of the existing Central Record.
- 7.3 The 'Covert Surveillance Council Procedure' document was last revised in May 2015 and includes the requirements under the provisions of the Protection of Freedoms Act 2012.
- 7.4 The document was examined in detail. The following minor amendments should be made to the document when next revised. It is comprehensive and useful guidance to practitioners.
- a) It would be wise to ensure total clarity of purpose to split the document when next revised into separate sections in respect of 'Covert Surveillance' and 'CHIS'.
  - b) Section three, Paragraph 5 refers to Intrusive Surveillance and quite rightly states that the council can not engage in such activity. It would be prudent in this section to also cover the interference with property which the Council also can not authorise. It may be the case that some degree of trespass may need to take place on land, for example in order to deploy surveillance equipment for use in directed surveillance in relation to 'fly tipping'. In any such case where a trespass is envisaged officers should seek immediate advice from the Legal Services Manager.
  - c) The document should include reference to paragraphs 2.25 and 2.26 of the Code of Practice (Surveillance) in respect of '*core functions*' of the Council and Investigatory Powers Tribunal case *C v The Police and Secretary of State for the Home Office IPT/03/32/H dated 14<sup>th</sup> November 2006* in relation to employees.
  - d) Section 11 in respect of Social Media and on-line activity should be aligned to Note 288 of the OSC Procedures and Guidance 2014.

- e) The CHIS section should include a caveat that if the use and conduct of a CHIS is being considered, urgent advice should be sought from the Legal Services Manager before any engagement takes place.
- f) The cancellation section should be aligned to Note 109 of the OSC Procedures and Guidance 2014.

7.5 The document, in an Appendix, sets out eight authorising officers (including the Chief Executive) for the Authority. Given the level of engagement the Council has had with the legislation since the last inspection it would be wise for the SRO to review this number and consider a reduction, to ensure that those appointed had exposure to live cases and became proficient in the role.

7.6 Oversight in the form of retrospective quality assurance is conducted by the Gate-Keeper / RIPA Co-ordinator. A 'comments' column on the Central Record to document any issues identified is advised. It is important that issues identified in the oversight process lead to remedial action where required (a full audit trail of all documents should be maintained) and in addition are fed into RIPA training to ensure these matters are corporately addressed and others have the benefit of the learning. As discussed during the inspection, benefit would be derived from the occasional dip sampling of investigations by the Legal Services Manager to ensure no unauthorised covert surveillance is being conducted.

7.7 Elected members are advised of the level of covert activity conducted by the Council and the current Policy and Procedures by way of a quarterly report to the Executive Board Member (Pam Palme) who is the Deputy Leader of the Council. An annual report is also placed before the Executive Board as an 'open document' for discussion if considered necessary.

## 8 Significant Issues

### *Directed Surveillance*

8.1 Five of the more recent applications / authorisations and related documents were examined in relation to underage sale of alcohol, benefit fraud, and 'fly tipping'.

8.2 Applications were of a reasonable standard however would benefit from more clarity in respect of painting a 'pertinent picture' as to why directed surveillance was being considered as a tactic, which should be supported by an intelligence case. This was particularly relevant to a 'fly tipping' investigation application and another in respect of a 'test purchase' operation involving an underage volunteer where some 15 premises were targeted in relation to the underage sale of alcohol.

8.3 The intelligence case in respect of the 'fly tipping' case was nonexistent. Intelligence in respect of the test purchase operation examined was generic in nature and could not have justified 'proportionality' grounds for directed surveillance from the documentation examined. It is clear that the Council has an obligation to 'check and test' legislative compliance in relation to the sale of alcohol where visits by 'underage test purchase officers' may be conducted where no surveillance equipment is worn, and any positive sale may be considered intelligence for the future and where the shop owner / manager is given advice. Failure to heed the advice or more complaints may result in an 'evidential' test purchase operation. Such an approach may overcome some of the issues being experienced by Council officers in justifying directed surveillance.

- 8.4 Statutory considerations were generally well made but could be improved. As discussed during the inspection, it is wise to include, if reference can be made, that the matter is *a priority issue for the Council* and the public expectation of enforcement activity in relation to such matters i.e. *'there is a pressing social need for intervention and enforcement'*. The balance between the levels of the intrusion into the private lives of those affected by the surveillance against the need for the activity in operational terms was also not documented to the required standard. Less intrusive means tried / considered was generally documented but under 'necessity' rather than 'proportionality'. Attention is drawn to Notes 73 and 74 of the OSC Procedures and Guidance 2014.
- 8.5 Authorisations were appropriately documented although the authorising officer frequently made conditions to the authorisation in respect of where observations should be conducted, for example a car in the road staffed by one officer, and during what times, e.g. between 8am and 9.30am daily. An authorisation is for a three month period. More intensive management can be undertaken by suitably short review dates. On occasions conditions made were tactical, best left to practitioners as these may change due to circumstances on the ground.
- 8.6 It was noted that authorisations frequently excluded basic camera equipment in the text. Although a matter for the authorising officer, investigators should surely attempt to obtain 'best evidence' if covert surveillance is being undertaken to prove or disprove the investigative requirement, hence the justification for it.
- 8.7 Cancellation documentation was generally sufficiently detailed in relation to the extent and outcome of the surveillance activity and what product was obtained. Authorising officers should make direction in respect of the management of that product in the cancellation (Note 109 of the OSC Procedures and Guidance 2014 refers).
- 8.8 It was noted that from the date of authorisation to the obtaining of 'Judicial Approval' could be a period of several weeks. For example, URN 94/15 was authorised on 8<sup>th</sup> May 2015 and Judicial Approval granted on 21<sup>st</sup> May. Discussions revealed this to be an issue. This may be a matter the Chief Executive / SRO may wish to take up with Her Majesty's Courts Service as the delay in starting the surveillance may impact on the ongoing proportionality case due to the intelligence being historic before the surveillance actually gets to commence. This issue was discussed with the SRO on conclusion of the inspection.
- 8.9 It was also noted that each application for 'Judicial Approval' was accompanied by a full witness statement from the investigator setting out the detail of, and requirements of the investigation. It was surprising that the statement contained far more detail than the application. This should not be the case. The requirement for a statement is a matter between the Council and the Magistrates' Court, however the statement should not impact on or be part of the RIPA process. An application should be able to stand alone for consideration by the authorising officer.
- 8.10 There is a comprehensive regime in respect of the secure management of technical equipment capable of being used for covert surveillance with appropriate records kept by a designated officer. These records are cross referenced with the URN of the directed surveillance authorisation.

#### *Covert Human Intelligence Sources (CHIS)*



- 8.11 No CHIS authorisations have been conducted by the Council. There is an appropriate understanding within the Council of the statutory obligations in respect of roles, management of risk, and documentation required should this be a future consideration.

#### *Social Networking Sites (SNS)*

- 8.12 The Trading Standards Department has use of a 'standalone' computer that is not attributable to the Council for use in purchases on line. The department has investigators who have false personas on the 'Facebook' social networking site. These are used to access on line trading sites only in respect of counterfeit goods. There appears to be no issue in respect of unauthorised activity. It is advised that a Central Record of false personas is maintained by the Legal Services Manager and the use of Social Networking Sites by Trading Standards Officers be subject to periodic oversight.

### **9 CCTV**

- 9.1 The Council has overt CCTV with monitoring facilities at three Dyfed Powys police stations. Last summer, funding was withdrawn by the Police and Crime Commissioner (PCC) and these are no longer monitored. They remain in fixed positions and live. The police cannot operate the cameras, although can arrange to view historic product should there be an operational requirement to do so. The matter will be subject to review after the PCC elections in May.

### **10 Good Practice Identified**

- 10.1 The use of the PIMS IT system to generate reminders in respect of critical dates (Paragraph 7.1 refers).

### **11 Observations**

- 11.1 Like many other councils, Carmarthenshire County Council has adopted a problem solving approach to investigations and some previously undertaken, now rest with the DWP. As a consequence little recent use of this legislation has been made. The Council's responsibilities under the legislation are however taken seriously and there are systems and processes in place to use it effectively.
- 11.2 Training has been conducted and it is appreciated that staff likely to use the legislation require periodic training. The importance of thorough and clear documentation when the legislation is used is key to ensure the process is not vulnerable to legal challenge if used in proceedings. This is a matter that should be considered ongoing professional development for the practitioners concerned.
- 11.3 Some good work has been undertaken since the last inspection to increase RIPA awareness and tighten processes. The increase in compliance standards since the last OSC inspection, in particular regarding the timeliness of reviews and cancellations, is formally acknowledged.

11.4 I would like to thank the staff from Carmarthenshire County Council for their participation and positive approach to this inspection process, in particular Mr Robert Edgecombe who facilitated it.

## 12 Recommendations

12.1 Recommendation 1 - RIPA training should continue to be formally delivered by the Council to staff who are likely to engage the legislation to ensure it can be applied to the appropriate standard. Training should include some practically based scenarios in respect of what should be written on the RIPA forms (Paragraphs 6.1 – 6.4, 8.2 – 8.7 refer).



Surveillance Inspector