

IPCO/INSP/075

The Rt. Hon. Sir Adrian Fulford
Investigatory Powers Commissioner
Investigatory Powers Commissioner's Office
PO Box 29105
London SW1V 1ZU

22 June 2018

OSC INSPECTION – DACORUM BOROUGH COUNCIL

1 Date of Inspection

A desktop review of Dacorum Borough Council was undertaken on Friday 22nd June 2018.

2 Inspector

Mrs Gráinne Athorn.

3 Introduction

- 3.1 Dacorum Borough Council is a second tier local authority in the county of Hertfordshire. It is one of the ten district or borough councils in the county, which contains no unitary authorities. The principal towns are Hemel Hempstead, Berkhamsted and Tring, but it also contains part of the Chiltern area of outstanding natural beauty.
- 3.2 The senior leadership team is comprised of the Chief Executive Sally Marshall, Corporate Director of Housing and Regeneration, Mark Gaynor and Finance and Operations, James Deane. They are supported by a team of six Assistant Directors which includes the Solicitor to the Council Mark Brooks who performs the role of Senior Responsible Officer (SRO) for matters concerning the Regulation of Investigatory Powers Act 2000 (RIPA). The role of RIPA Coordinator is allocated to Nargis Sultan, Lead Litigation Lawyer.
- 3.3 Dacorum BC was last inspected during November 2014 by Assistant Surveillance Commissioner HH Sir David Clarke.
- 3.4 The address for correspondence is Civic Centre, Marlowes, Hemel Hempstead, Hertfordshire HP1 1HH or by e mail to Sally.Marshall@dacorum.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). The last inspection was undertaken during 2014 by Assistant Surveillance Commissioner HH Sir David Clarke. In the period since this Inspection Dacorum Borough Council has utilised directed surveillance powers on one occasion. Detailed information relating to this activity was provided during the course of this review.
- 4.2 This report has been prepared without visiting Dacorum 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 Corporate Policy and Procedures Document for Covert Surveillance and the use of CHIS, a copy of the central record and details of the directed surveillance application and subsequent reviews.

5 Actions Taken on Past Recommendations

- 5.1 In his report of 2011 Assistant Surveillance Commissioner HH Sir David Clarke made three recommendations:

- 5.2 Recommendation 1 - *That DBC's RIPA Policy document be amended in accordance with paragraph 12 of the Inspection Report.*

The policy has been comprehensively reviewed and all proposed amendments have all been made - recommendation **discharged**.

- 5.3 Recommendation 2 - *RIPA training needs analysis be conducted by or under the direction of the SRO, and that in-house training be provided so as to ensure that a proper level of RIPA awareness is maintained throughout the council.*

No RIPA training has been provided since the last Inspection, however the SRO has advised that it will take place shortly. This recommendation will remain **extant** until training is provided to relevant council officials.

- 5.4 Recommendation 3 - *The extant CHIS authorisation 2014/LG/leo/1 be cancelled and fresh consideration given to the future conduct of licensing enforcement investigations.*

The related authorisation was cancelled soon after the Inspection and the policy has been updated to reflect recent guidance concerning all types of investigation. **Discharged**.

6 Review of Policies and Procedures

- 6.1 Dacorum's Corporate Policy and Procedures Document for Covert Surveillance and the use of CHIS is a comprehensive and well set out manual which seeks to guide the reader as to what RIPA covers and how it may be applied in relation to council business. The document has been comprehensively updated since the last Inspection and thus contains key components of current guidance including the crime threshold introduced in 2012 and court authorisation procedures.
- 6.2 There remain a number of areas where the policy would benefit from being further updated:
- Within the section applying to CHIS it makes reference to 'appropriate arrangements for the management and oversight of a CHIS' needing to address the health and safety of the source. This must include the requirement to complete a risk assessment (to be signed off by the Authorising Officer) detailing any factors that may impact upon the welfare of the source.
 - RIPA Section 29(5) states there must be persons responsible for the oversight and management of a source, roles known as Handler and Controller. The policy should be altered to require the applicant to detail who these people will be in relation to the source.
 - Finally, despite the removal of urgent oral authorisations from the body of the policy, reference to them remains within section H12 and must be removed.

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 Authorising Officers was in 2011. Since that time legislation has changed the application of RIPA powers to local councils and tactics such as open source research has emerged. To ensure that personnel who may have a role in RIPA process, or who may authorise such conduct are fully up to date with legislation, codes of practice, and best practice, it is important that training is provided. This is a particularly acute need where surveillance powers are being actively used.
- 7.2 The Senior Responsible Officer for RIPA matters has provided a commitment that a training needs analysis will be conducted and a course delivered, the

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second recommendation of the 2014 report will remain extant until this is completed.

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 used. No reports relating to the Council's use of RIPA have been made since the last Inspection which is of concern because directed surveillance powers were used as recently as early 2018. It is therefore recommended that an exceptional report be made to Members as a matter of urgency prior to the quarterly reporting requirement (even for negative returns) recommencing.

9 Liaison with the Magistrates' Court

- 9.1 Dacorum BC has made use of RIPA powers and as such liaison with the Magistrates' Court has taken place in accordance with procedures set out within the corporate policy. Evidence of the Court's authorisation was provided as part of the Inspection process.

10 Authorising Officers

- 10.1 There are presently three nominated Authorising Officers, albeit one post is currently vacant. Both AOs completed training in 2011. These roles are both Assistant Director posts which 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 Dacorum Borough Council operates a CCTV system which is operated in accordance with the CCTV Code of Practice, and as such there is in place a protocol for the use of the system by third parties such as police. The Council also retains three mobile surveillance cameras which are held under the control of the CCTV Manager.

12 Directed Surveillance

- 12.1 In February 2018 Directed Surveillance Authorisation was granted in order to facilitate an investigation into the systemic dumping of domestic and construction waste onto private land within the Dacorum Borough Council area. The application for directed surveillance contained a good briefing as to the extent of

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this activity so far, the locations affected and a coherent operational plan in terms of what equipment was to be deployed and why.

- 12.2 Evidence was provided to the AO to show that less invasive means such as proactive patrols had been utilised, however due to the nature of the offences these were unlikely to yield the desired result of identifying the perpetrators. The necessity was based upon offences relating to the dumping of waste that may be environmentally hazardous, therefore fulfilling the required crime threshold.
- 12.3 The application may have been enhanced by further addressing the following areas:
- No details were provided as to what private information was to be obtained, which is important in allowing the AO to effectively judge proportionality.
 - Proportionality considerations contained no detailed reference to the potentially serious environmental impact on the fly tipping, for example by explaining what harmful materials dumped waste had previously contained which would help further justify the proposed activity.
- 12.4 At the time of this report two reviews have been completed. During the first month no incidents were captured. During the second an incident was captured but the images were insufficient to identify the perpetrators. In both cases the AO offered only minimal comments. At the very least, an AO must justify why continuance of the authorisation was necessary, particularly in light of the outcome of the second review.
- 12.5 It is evident that correct authorisation procedures have been observed, particularly in reference to the authorisation of the surveillance by the Magistrates' Court. Likewise it is helpful to observe that the authorisation has been regularly reviewed. It is difficult to ascertain from the Authorising Officer's comments whether they have exercised active oversight of the investigation in terms of the surveillance tactics being used which further highlights the need for refresher training.

13 Conclusions

- 13.1 Despite the fact that Dacorum Borough Council had not used its surveillance powers for some time, the most recent investigation into environmentally damaging fly tipping appears to have been managed well and in accordance with legislation and the Council's internal policy.
- 13.2 The majority of recommendations made by Assistance Surveillance Commissioner Sir David Clarke in 2014 have been completed, in particular the

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policy has been comprehensively updated. The only outstanding matter remains the need to provide key officers with refresher training. It is not for IPCO to dictate how the Council chooses to deliver such training other than to state that internal refresher training provided by legal services is sufficient.

- 13.3 It is notable that Members have not been made aware of the use that has been made of RIPA (or otherwise) for a number of years. The only recommendation of this report is to direct that the requirement of the Covert Surveillance and Property Interference Code of Practice, to produce regular reports, must be delivered.

14 Recommendations

- 14.1 Recommendation 2/2014 remains extant:

RIPA training needs analysis be conducted by or under the direction of the SRO, and that in-house training be provided so as to ensure that a proper level of RIPA awareness is maintained throughout the council.

- 14.2 Recommendation 1/2018:

An exceptional report should be made to Members as to the use of covert surveillance powers and the reporting of such activity on a quarterly basis should commence.

Gráinne Athorn
Surveillance Inspector