



Investigatory Powers
Commissioner's Office

PO Box 29105, London
SW1V 1ZU

Ms. Kath O'Dwyer
Acting Chief Executive
Cheshire East Council
Town Hall
Market Place
Macclesfield
Cheshire
SK10 1EA
Kath.O'Dwyer@Cheshireeast.gov.uk

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Inspection of Cheshire East Council

Dear Chief Executive,

Your authority was recently subject to inspection by one of my Inspectors, Mr. Graham McCrory MBE, as to the use of covert powers under the Regulation of Investigatory Powers Act 2000 (RIPA). I am grateful to you for facilitating this through your Senior Compliance and Customer Relations Officer, Ms. Helen Sweeney, who spoke with my Inspector on several occasions and provided him with all the relevant material and documentation, throughout the process.

I note that there has been some limited use of the available covert powers since the last inspection, with the forming of several directed surveillance authorisations, which my Inspector has viewed. I further note that no CHIS has been authorised.

One recommendation, made during the previous inspection of your Council, has been addressed. The recommendation relating to the use of the internet as an investigative tool, has led to the forming of a policy document to assist your Council employees understand better this developing area. It is encouraging to note that your authority has developed and latterly updated a specific policy regarding the use of the internet. The revised Code of Practice for Covert Surveillance and Property Interference 2018, paragraphs 3.10 to 3.17, contains some useful advice and examples of online covert activity which may be helpful to your staff and could be included within the current Council policy document.

My Inspector informs me that your Council has gone through significant personnel change since the last inspection. This has included significant change in senior leadership roles. The recent appointment of several new officers will, I hope, stabilise the management structures within the Council and assist further with the provision of robust but supportive oversight regarding matters affecting RIPA.

I note that RIPA refresher training has been undertaken in 2018 and 2019 through the use of both internal and external providers and following various processes. That said, it is a useful exercise to consider 'real life' RIPA scenarios, possibly by way of a 'table top' exercise, in order to assess not only the knowledge of your staff but also their operational suitability and capability to manage and deal with matters should the Act be engaged with. It is vitally important that those officers in senior roles develop their skills also and not only take part in training, but develop and drive high standards of compliance across your Council. I hope this is something you are willing to take forward.

The covert activity undertaken by your Council has been reviewed by my Inspector, as well as the recently updated Council policy for RIPA. There are some, significant, observations made by my Inspector, which are detailed below.

Whilst there is no need for a physical inspection at this stage, it is the recommendation of my Inspector, and with which I concur, that once your senior management team is fully established, further training is undertaken and the observations of my Inspector, as outlined below, are adhered to. He should then be updated and at that time will consider whether he feels that a further review of your Councils' compliance with the Act should be undertaken.

The observations of Mr McCrory are as follows:

1. In all of the Directed Surveillance Authorisations (DSAs) inspected, the quality of the applications was found to be of an extremely good quality and well formed. Every application was formed by a single staff member, who should be commended for the effort which has gone into each application.
2. Unfortunately, the same cannot be said for the quality of the authorisations formed and inspected. Overall, the considerations of each Authorising Officer (AO) was limited and consisted of a regurgitation of the proposed operational plan rather than an in-depth detailing of the statutory considerations required. In all authorisations viewed there was little or no consideration of the potential for collateral intrusion to occur. The form utilised for each authorisation considered the potential to gather confidential material rather than address the issues of collateral intrusion. This should be corrected, forthwith. In addition, the following matters specific to each authorisation were noted:
 - DSA 66 – The consideration of necessity and proportionality was satisfactory but would have benefited from a more detailed consideration by the AO. The authorisation dates were incorrect. An authorisation for directed surveillance is for three months only before a renewal is required to be considered, unless the authorisation is cancelled beforehand. In this case the authorisation period was noted as being from the 16th December 2016 to the 18th March 2017.
 - DSA 67- The consideration of necessity and proportionality was slightly better formed than had been viewed in other examples, but that said the AO had stated that due to no surveillance equipment being used in the 'test purchase' operation, the surveillance was therefore proportionate. Whilst it was understood what was meant by the AO, the proportionality of any surveillance is not based solely on the fact that no surveillance equipment is to be used.
 - DSA 68 – As with other authorisations, no collateral intrusion consideration was made by the AO. Whilst this was considered by the applicant, it is for the AO to consider and document with the authorisation which is required to be a 'stand-alone' document.
 - DSA 69- The comments made by the AO were as follows, "*I believe there is sufficient evidence to warrant the use of surveillance and this is proportionate given the potential risk to the public. I authorise this operation to take place.*" Proportionality considerations are based on more than potential risks to the public. There are four elements of proportionality that should be considered and as outlined within the relevant Code of Practice (paragraph 4.7). These should be the considerations made by the AO. Additionally, the authorisation is not for the operation to take place

but for specific surveillance tactics to be undertaken. Tactics, such as foot, mobile or use of the internet, are required to be identified by the AO in order that the person(s) developing the surveillance are aware of what exactly has been authorised and therefore can then comply with *R v Sutherland* conditions.

- DSA 70 – Similar comments to those made by the AO in DSA 69 were made in this authorisation. In addition, it was noted that, yet again, the authorisation dates were incorrect. In this case authorisation was given on the 8th July 2019 but only until 2031hrs on the 12th of July 2019. The proposed activity was due to terminate at 2030hrs on this date. Not only did the AO incorrectly identify the authorisation dates, but by having an authorisation drawn so tightly, the potential for unauthorised activity to take place was increased.
3. Although the RIPA policy has recently been updated, the policy would benefit from the addition of the guidance offered within the CHIS Code of Practice 2018, paragraphs 2.18 to 2.26. These paragraphs outline how to manage information from public volunteers and when an AO should consider an authorisation. This is an area which is likely to affect the Council and is vital reading for Council employees who are in regular contact with members of the public. In addition, the RIPA policy, referring to the authorisation period for juvenile CHIS, states that this is for one month. This has been changed through 2018 legislation to a period of four months.
 4. It is noted that the Council policy identifies the role of the AO, paragraph 5.6 and the details required to be considered by the AO and contained within their authorisation, at paragraph 6.6. It is regretful to identify that, even with these details contained within the revised policy and as updated in 2019, these matters are not being adhered to fully by the AOs presently undertaking this role on behalf of the Council.
 5. Specimen directed surveillance authorisations, used by your Council, were reviewed by my Inspector and found to contain a section for use when utilising the urgency provisions. This section of the form should be removed, to avoid any confusion, as the use of the urgency provisions is no longer applicable to your Council following The Protection of Freedoms Act 2012.

I take this opportunity to thank you for the reply to my Inspector's initial request. It is obvious that significant investment is required to update the knowledge of existing officers within your Council involved in the consideration and authorisation of RIPA applications, as well as those newly appointed officers. This should be implemented as swiftly as possible.

I further remind you of the importance of regular, ongoing internal oversight of the actual or potential use of these powers, which should be managed by your Senior Responsible Officer. The role of the SRO should be an intrusive one. It is clear that the SRO has not identified and addressed the issues outlined by my Inspector. Whilst I am somewhat sympathetic to the issues faced by the Council, given the large turnover of senior officers within the Council recently and the added upheaval, this should be of concern to you.

I hope that you find the inspection report to be helpful and constructive. Generally, I am concerned at the reduction in the use of investigatory powers across England, Scotland, Wales and Northern Ireland and there may be greater scope for considering the use of authorised investigative activity. It goes without saying that these are operational decisions that are entirely for your Council, but IPCO is a resource to assist in the lawful use of these powers.

My Office is available to you should you have any queries following the inspection, or at any point in the future. Contact details are provided at the foot of this letter.

I should be grateful for an update to this Office, copied to Mr McCrory, within three months of the date of this letter.

Yours sincerely,

A handwritten signature in black ink that reads "Adrian Fulford". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail on the 'd'.

The Rt. Hon. Lord Justice Fulford
The Investigatory Powers Commissioner