

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

17 April 2018

## OSC INSPECTION – LICHFIELD DISTRICT COUNCIL

### 1 Date of Inspection

A desktop review of Lichfield District Council was undertaken on Tuesday 17<sup>th</sup> April 2018.

### 2 Inspector

Mrs Gráinne Athorn.

### 3 Introduction

- 3.1 Lichfield District Council is a non metropolitan council in the county of Staffordshire. It was formed in 1974 and covers a population of approximately 100,000 people within Lichfield and the surrounding area.
- 3.2 The Leadership Team is comprised of the Chief Executive Diane Tilly, an Assistant Chief Executive and two Directors, who lead the portfolios of Place and Community and Transformation and Resources. The present Senior Responsible Officer for RIPA matters is Bal Nahal, Head of Legal, Property and Democratic Services. She is supported by Wendy Johnson the designated RIPA Co-ordinator who is a Legal Services Clerk.
- 3.3 Lichfield was last inspected during 2011 by HH Sir David Clarke. It was due to be inspected again in 2014 but due to illness this did not proceed.
- 3.4 The address for correspondence is Lichfield District Council, Frog Lane, Lichfield, Staffordshire WS13 6YU or by e mail to the Chief Executive:  
[Diane.Tilley@lichfielddc.gov.uk](mailto:Diane.Tilley@lichfielddc.gov.uk)

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### 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 2011 by Assistant Surveillance Commissioner HH Sir David Clarke. In the period since this Inspection, Lichfield DC has declined to use RIPA powers, preferring to rely upon overt investigative tactics.
- 4.2 This report has been prepared without visiting Lichfield District Council, however to assess the ongoing compliance of the Council, information provided by the SRO has been reviewed which included: a copy of the Council's RIPA Procedure, training records and a copy of the current RIPA Information Request Form, as well as a brief verbal discussion with the SRO.

### 5 Actions Taken on Past Recommendations

- 5.1 In his report of 2011 Assistant Surveillance Commissioner HH Sir David Clarke made two recommendations:
- 5.2 Recommendation 1 - *For the purpose of any future RIPA usage, LDC establish a Central Record complying with the Codes of Practice.*

The Lichfield DC RIPA Procedure sets out the requirement to retain a central record of authorisations which is retained by the RIPA Co-ordinating Officer. However due to the fact that RIPA powers have not been used for a substantial period this record is presently empty. The Council remains ready to use RIPA powers should it become necessary. Recommendation discharged.

- 5.3 Recommendation 2 - *LDC consider reducing the number of RIPA Authorising Officers.*

The number of designated Authorising Officers has been reduced from twelve to three. Recommendation discharged.

### 6 Review of Policies and Procedures

- 6.1 Lichfield DC maintains a RIPA Procedure document which sets out in detail the process that should be undertaken when making an application for surveillance or a CHIS (covert human intelligence source), and is based on policies provided by partner councils. It is a comprehensive document that contains guidance concerning how to assess necessity and proportionality and clearly states what surveillance activity council officials may or may not undertake. The Procedure

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also sets out who is responsible for the delivery of key areas of RIPA compliance such as training and the retention of records.

- 6.2 It is helpful to see that Lichfield DC has also identified that it may become necessary for investigators to undertake covert observations using the internet, including social media. As a consequence council officials are permitted to conduct observations in a covert manner utilising suitable profiles, albeit with the protection of a directed surveillance authorisation. At present there are no stated control mechanisms for such activity or a formal structure for management oversight. A suggested format for this is detailed within the subsequent recommendation.
- 6.3 The RIPA procedure has been very recently reviewed and updated and overall its reads very well. In addition to the recommendation above concerning the use of social media the following amendments are suggested for inclusion following the next routine review of the document:
- In respect of the section concerning the internet and social media it may be helpful to include how a CHIS may operate in this context. That is by utilising a covert profile to interact with a person online rather than merely covertly and passively observing information they provide (which the document already rightly states requires a directed surveillance authorisation).
  - The table detailing overt *versus* covert activity is a very helpful guide and may also benefit from the inclusion of CHIS information - for example a test purchase that requires a person to interact with a shop keeper on a repeated basis to gain their trust.
  - Finally the first line of the paragraph marked 'Duration' is a little confusing and should clarify that a directed surveillance authorisation is extant for three months following authorisation by a magistrate. During this period it should be reviewed at least once. The duration for a CHIS is one year from authorisation and must be reviewed at a frequency set by the Authorising Officer – this should include a review of the associated risk assessment.

## 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. It is therefore pleasing to see that Lichfield DC has delivered a continued commitment to investigative training through the delivery of a RIPA awareness course by an external provider during February 2017. This

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training was attended by key personnel including the SRO, all Authorising Officers and a range of Investigators from across the Council.

- 7.2 To ensure that the Chief Executive (in her capacity as AO for confidential information) is equipped with knowledge of recent developments in the use of social media for investigative purposes and how this engages with RIPA; and the changes brought about by the Protection of Freedoms Act 2012, it would be helpful to include her within the next internal awareness raising event.

### **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, even if this is to acknowledge that there has been no use. It is some time since such information was reported to Members, presumably because of the lack of RIPA activity. However a report is to be made shortly via the Audit and Members Standards Committee.

### **9 Liaison with the Magistrates' Court**

- 9.1 Lichfield DC has not used RIPA powers since prior to the introduction of the Magistrate's Authorisation Mechanism. Nevertheless the RIPA Procedure sets out the process for achieving this and identifies the RIPA Coordinator as the responsible person.

### **10 Authorising Officers**

- 10.1 There are presently three nominated Authorising Officers all of whom have recently completed RIPA training. The AOs are comprised of the SRO Bal Nahal, Anthony Thomas who is Head of Finance and Procurement and Gareth Davies, Head of Regulatory Services. All 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 Lichfield DC retains a town centre CCTV system which conforms to the standards set out within the Surveillance Camera Commissioner's Code of Practice. Controls for the use of this system for covert observations either directly by Council staff or police partners, is set out within the RIPA Procedure document.

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- 11.2 The Council states that it retains a single surveillance camera, albeit this has not been used for a significant period. All other equipment is for overt use.

### 13 Conclusions

- 13.1 Despite the fact that Lichfield District Council has not been the subject of an Inspection of its surveillance powers for a long period, and the fact that it has not used these powers for an equally long time, it remains in a state of readiness. There is in place a comprehensive RIPA Procedure which provides a helpful guide for any Council Investigator considering the use of covert surveillance or CHIS.
- 13.2 Refresher training has been provided to key personnel including both the Senior Responsible Officer and all Authorising Officers as recently as February 2017, thus ensuring all are equipped with knowledge of how privacy rights may be engaged during online surveillance, and are aware of the legislative changes affecting them since 2012.
- 13.3 It is important that the Chief Executive who may be called to make the more sensitive investigative decisions regarding the use of Surveillance or CHIS is equally up to date with recent legislative developments and operational practice, and thus she should be provided with suitable internal refresher training/awareness raising at the next opportunity.

### 14 Recommendation

- 14.1 The RIPA Procedure document allows for Lichfield District Council Investigators to utilise covert surveillance powers to undertake covert observations online, utilising social media and other sites. In order to ensure this activity is subject to suitable oversight it is recommended that the Procedure document should be updated to include control and management oversight mechanisms, including: a register of covert profiles used to undertake surveillance; details of who has used these profiles and when; and a record of what information was recorded, which should be made available to the relevant Authorising Officer for review.

**Gráinne Athorn**  
**Surveillance Inspector**