



PO Box 29105, London

Ms Madeline Homer
Chief Executive
Thanet District Council
By email

8 April 2022

Dear Ms Homer,

**IPCO Surveillance and CHIS Inspection of Thanet District Council
Regulation of Investigatory Powers Act 2000 (RIPA)**

Please be aware that IPCO is not a “public authority” for the purpose of the Freedom of Information Act (FOIA) and therefore falls outside the reach of the FOIA. It is appreciated that local authorities are subject to the FOIA and that they may receive requests for disclosure of our reports. In the first instance the SRO should bring the matter to the attention of the IPCO Data Protection Officer (at: info@ipco.org.uk), before making any disclosure. This is also the case if you wish to make the content of this letter publicly available.

Your Council was originally due to be the subject of a remote inspection, however owing to your significant previous use of RIPA powers, including a rejected application and associated non-RIPA authorisation for internal surveillance, the decision was made to conduct a physical visit. This inspection has been delayed by the Covid pandemic but finally took place on Monday 28th March 2022 and was facilitated by the Senior Responsible Officer for RIPA matters, Estelle Culligan – Director of Law and Democracy, and Eden Geddes - Head of the Thanet Multi-Agency Task Force.

The last inspection, a desktop examination of your processes, was conducted in late 2017 and resulted in no recommendations. Between 2017 and 2019, RIPA powers to authorise directed surveillance were used on nine occasions, and a non-RIPA process once. All relevant material was sent to [REDACTED] by email in advance of the inspection. The visit to your Council provided an opportunity to debrief the content of these, with the following a summary of the feedback:

- i. Operation Urban was an investigation into the conduct of civil enforcement officers concerning their activities while on duty. A directed surveillance application was initially authorised on the 11th October 2017, but was rejected at the court approval stage on the 23rd of the same month because the operation did not relate to a ‘core function’ of the Council, in accordance with paragraph 3.35 of the Covert Surveillance and Property Interference Code of Practice (the Code).
- ii. The application lacked background information, such as how the allegations had arisen, what investigative activity had been conducted so far, and a justification as to why the personnel concerned had been selected. The necessity and proportionality were equally as brief and failed to conform to the standard required by the Code.

- iii. Similar shortcomings were identified within the 'non-RIPA' application, authorised in relation to the same investigation a short time later. This document requested that statistical analysis be performed of data collected in conjunction with the same civil enforcement officer's duties, in a manner that amounted to surveillance, with the objective of assessing how, and if, they were performing their duties. Although the tactic appeared a reasonable and less invasive way of managing the operation, there was again very little supporting information explaining why the personnel were under investigation (other than a brief description of the allegations), while the necessity and proportionality cases were insufficiently expressed to justify why the proposed tactics were the most suitable option in the circumstances of the case. It was also noted that the scope of the investigation had been expanded to include more personnel, but no explanation was provided for this. The activity was authorised on the 27th October 2017, however no cancellation document was provided so it was not possible to ascertain when the activity ceased and what was the outcome.
- iv. As you will be aware, the intention of a non-RIPA process is to mirror the directed surveillance authorisation procedure, insofar as possible justifying the infringement of respect for privacy rights. It is therefore important that every part of the normal authorisation process is observed, including the need to express fully why the proposed surveillance was necessary and proportionate.
- v. Of the remaining directed surveillance authorisations examined, all related to the use of static observation posts to monitor fly tipping hotspots. In each case, surveillance was requested and erroneously authorised for eight weeks (directed surveillance may only be authorised for three months and renewed, if necessary, for the same period thereafter).
- vi. The summary section of the surveillance application forms consistently provided very little case specific information other than a brief, templated, summary of the location concerned and an indication of when fly tipping events had occurred. Photographs were included in the package of material provided at court, evidencing that further information such as the size and composition of previous incidents were available, however none of this information was included within the documents.
- vii. The repeated use of a templated application form was made obvious by the failure to change the URN on some documents, and similar (and sometimes identical) necessity and proportionality cases. While it is accepted that the nature of the crime under investigation was common to each case, the failure properly to articulate the core statutory considerations, and substantially alter the authorisation documents, gives the impression that no *meaningful* consideration had been given to the impact of each deployment and the rights of the people it was aimed at detecting, or those affected through collateral intrusion.
- viii. In all but one case, the surveillance was cancelled shortly prior to the (incorrect) expiry date, regardless of the success or failure of the tactic, and in the case of Operation , the cancellation was missing altogether. Reviews always permitted the continuance of the activity without true consideration for the status of the observations. Surveillance must always cease when it is no longer justifiable, which requires ongoing assessment rather than the arbitrary observation of a deadline.

feedback as to the poor quality of documentation, and the failure to manage correctly the authorisation process, was graciously accepted on the day of the inspection. It was explained to her that the roles of Senior Responsible Officer and Taskforce Lead are now under new leadership, and that any future use of surveillance or CHIS powers would be subject to substantially more robust oversight.

A draft RIPA policy document, setting out how covert investigatory powers may be applied for and authorised, has been in draft format since the last inspection in 2017. I understand that this document is now under formal review, with a view to it being finalised and published. The final draft will be presented to Members via the Governance and Audit Committee during the next meeting in July. It is suggested that for transparency, a copy of this letter also be submitted for their awareness¹.

In her capacity as Acting Senior Responsible Officer, Ms Culligan's intention is to identify the most appropriate senior personnel to be designated as Authorising Officers, replacing staff who have left the Council. Mr Geddes has also indicated his contentment to act as Gatekeeper, having had some knowledge of RIPA processes from a former role in another council. All key personnel, including the SRO and AOs, require refresher training to ensure that they are up to date with the processes contained within the amended policy and the content of the latest Codes of Practice. I also recommend focusing on the key element of how Council staff make use of the internet and social media during investigations.

Efforts have been made to re-establish the Central Record of authorisations, which will now be retained within the Legal Services Team under the control of the SRO. All RIPA material, that is the Central Record of authorisations, applications, authorisations, reviews and cancellations, and any material obtained as a result of surveillance or CHIS activity, is subject to the Data Safeguards chapters contained within both the Surveillance and CHIS Codes of Practice. These safeguards apply to the handling, retention, review and deletion (RRD) of RIPA material and require that you take active steps to ensure all material is held in accordance with your document retention policy.

In order to provide reassurance that RIPA material is retained in a compliant manner, and that you have the necessary policies and procedures for RRD in place, I will require confirmation in your response to this letter that such a review has been completed.

I am very appreciative of the way [REDACTED] was welcomed on the day of the inspection. She was left with the impression that there is a willingness to re-establish processes to ensure that the Council returns to a compliant state.

I would be grateful if you could respond to this letter within two months, and provide me with an Action Plan which sets out how you plan to address the areas requiring improvement, and the related timescales set for this, as well as updating me on any matters that have, by then, been dealt with.

If you have any feedback about the inspection process, I am always pleased to receive it.

Yours sincerely,



The Rt. Hon. Sir Brian Leveson
The Investigatory Powers Commissioner

¹ Please note that if this letter is to be made publicly available, you should seek a redacted version from my Office.