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INSPECTION REPORT

Bath and North East Somerset Council

June 2017

**Surveillance Inspector:
Mr Alex Drummond**

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OSC/INSP/075

The Rt. Hon. Lord Judge
Chief Surveillance Commissioner
Office of Surveillance Commissioners
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London
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26th June 2017

OSC INSPECTION – Bath and North East Somerset Council

1 Inspector

Alex Drummond

2 Introduction

- 2.1 Bath and North East Somerset Council is a unitary authority in the South West of England providing a single tier of local government for a population of around 180,000. At its heart is the historic city of Bath, one of the principal cities in the South West and a prime destination for international tourism. The Authority covers an area of 220 square miles of predominantly green belt land including the settlements of Keynsham, Midsomer Norton, Radstock and the Chew Valley.
- 2.2 The Chief Executive, Ashley Ayre, who has been in post since August 2016, leads a team of three Strategic Directors who together make up the corporate management structure. The Divisional Director for Legal and Democratic Services, Maria Lucas, acts as the Senior Responsible Officer for matters relating to the Regulation of Investigatory Powers Act 2000 (RIPA) and has provided the information and comprehensive supporting documentation from which this report has been compiled.
- 2.3 The report provides an evaluation of compliance, policies, procedures, operations and administration in respect of the Council's use of directed surveillance and covert human intelligence sources (CHIS).
- 2.4 The address for correspondence is The Chief Executive, Bath & North East Somerset Council, The Guildhall, High Street, Bath, BA1 5AW or by email to maria_lucas@bathnes.gov.uk.

3 Progress against Recommendations

- 3.1 The Council was last inspected in May 2014 when a single recommendation was made:

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The Authority should revise its policy and procedures to include advice and guidance on the use of the Internet and Social Media in investigations.

- 3.2 It is pleasing to report the Council accepted the recommendation and has developed an appendix to its surveillance policy to provide relevant guidance to investigators. This is discussed in more detail below and the recommendation is discharged.

4 RIPA Structure and Policy

- 4.1 Although the Council does make some use of the powers available under RIPA Part I for the acquisition of communication data, the Council is not a prevalent user of the powers available under RIPA Part II for the use of directed surveillance or CHIS. The last authorisation for directed surveillance was granted in February 2012 and no use has ever been made of CHIS. In recent years the loss of the Council's Benefit Fraud investigators to the Department of Work and Pensions single fraud investigation service, has reduced this need further and reduced the level of capability and resource the Council has available to conduct covert investigations.
- 4.2 Despite the infrequent use, the Council has maintained a comprehensive policy and procedural guide that covers the process for the application, authorisation and oversight of directed surveillance and use of CHIS. The policy has been regularly updated since the last OSC inspection including the observations that were made during that assessment and provides a very useful guide and source of reference.
- 4.3 The policy provides a straightforward explanation on the requirements of RIPA and an overview of the legislation. It directs readers to seek further information from the relevant Codes of Practice and the OSC Procedures and Guidance document for which hyperlinks are provided in the electronic version.
- 4.4 A schedule to the policy now provides guidance to investigators on the use of the Internet and social media. Advice is given on the overt use of the Internet during investigations and also conducting general research for which an authorisation is not required. The schedule explains the triggers at which the need for authorisation of directed surveillance should be considered such as the requirement to by-pass privacy settings, or when the use becomes 'systematic' through repeated viewings that build up a profile of a subject's lifestyle.
- 4.5 Applications for activity under RIPA and subsequent authorisations are completed in hard paper copy with the details and a unique reference number held on the electronic central record which contains all the information required by the Code of Practice.

5 Reports to Members

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- 5.1 The Senior Responsible Officer provides an annual report on the use of RIPA powers to the Full Council and Group Leaders. More frequent reports are provided to Group Leaders if RIPA powers are exercised.

6 The Protection of Freedoms Act 2012

- 6.1 The requirement for endorsement of an authorisation by a magistrate under the Protection of Freedoms Act 2012 is included within the Council's RIPA policy, but as there has not yet been a requirement to seek such endorsement, no formal process is in place. However the Senior Responsible Officer is currently in communication with the local courts to agree a formal procedure for when the need arises.

7 Training

- 7.1 Although the Council has not had cause to use its powers under RIPA since the last OSC inspection, it has continued to provide training and awareness commensurate with needs of the organisation. This has included training to the Senior Responsible Officer, a new Authorising Officer and training to investigators on the use of the Internet.

8 Directed Surveillance

- 8.1 Although no recent use has been made of directed surveillance, if the procedures set out in the policy document are followed by applicants and Authorising Officers it should result in authorisations that are granted in compliance with the legislation.

- 8.2 The Council does not have access to specific surveillance equipment but does have a small stock of cameras that are used with overt signage by waste enforcement officers to deal with fly tipping. In April 2017 a small stock of body worn video cameras was acquired for use by enforcement officers. These cameras are for overt use and a separate policy and procedural guide covers their use. The guide does include advice on the limitations and restrictions that need to be applied during operation, including the caution that should be exercised if operated within dwellings, and a reminder on the principles of RIPA.

9 Covert Human Intelligence Sources (CHIS)

- 9.1 The Council has not made any use of CHIS and is unlikely to do so in the foreseeable future. The information provided within the policy document as to what constitutes a CHIS is acceptable for current needs, but further training would be required in areas such as risk assessment and steps to protect true identities of CHIS if the Council was ever to consider the use of this tactic.

- 9.2 The Council's surveillance policy does recognise that should there be a need for one of its staff to establish and maintain a covert relationship, for example between a Trading Standards officer and a trader in counterfeit goods, an authorisation for CHIS would be required. The

policy also usefully explains when contact would not amount to a relationship such as simple test purchase. With the exponential use of the Internet and social media for illicit trading, the use of Trading Standards officers acting as a CHIS in an 'on-line undercover' capacity is becoming more frequent across local authorities. Should the Council embark on this route it would be beneficial to develop some separate bespoke guidance and training for its investigators undertaking such tasks and those managers that would be required to provide oversight to investigations by virtue of Section 29(5) RIPA.

10 CCTV

- 10.1 The Council operates an overt CCTV system within the City and district in accordance with a code of practice. The Council has completed the Surveillance Camera Commissioner's self assessment tool which has been submitted for certification and regular checks on compliance are undertaken by the Council's in house audit team. Although not used for directed surveillance a process is in place to ensure any requirement for covert use of the system would be done under the provisions of RIPA.

11 Conclusion

- 11.1 Bath and North East Somerset Council is unlikely to be more than an occasional user of the powers available under RIPA. Such infrequent use does not allow its staff to become proficient and confident in the use of covert powers, however, the Council has maintained a good state of 'readiness' with the policy and procedures in place and the level of training provided. Consequently a follow up physical inspection is not considered necessary on this occasion.
- 11.2 The Council has recognised that increasing use of the Internet and social media has presented new opportunities for conducting both overt and covert investigations, but also recognised the need to provide guidance to its staff to ensure investigations are conducted in compliance with RIPA.
- 11.3 In this digital age these opportunities will continue to increase and as a result the need for local authorities to remain vigilant to the extent of activity being undertaken has never been greater, not just the traditional activity conducted by enforcement officers, but the increasing need to use these methods across all roles, for example housing, education and children's services. The Council should continue to keep this in mind and could perhaps make use of its internal audit team to conduct periodic reviews.

12 Recommendations

- 12.1 No recommendations are required.

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