



Investigatory Powers  
Commissioner's Office

PO Box 29105, London, SW1V 1ZU

Mr Ade Adetosoye  
Chief Executive  
London Borough of Bromley  
*By email*

24<sup>th</sup> February 2023

Dear Mr Adetosoye,

### **IPCO Surveillance and CHIS Inspection of the London Borough of Bromley**

*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](mailto: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.*

During February 2023 your Council was the subject of an inspection by Gráinne Athorn, who examined your use of powers under Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) in relation to directed surveillance and Covert Human Intelligence Sources (CHIS). This process was facilitated by the Senior Responsible Officer (SRO) for RIPA matters, Tasnim Shawkat - Director of Corporate Services & Governance, and Robert Vale - Head of Service Trading Standards & Commercial Regulation.

The London Borough of Bromley was last inspected during December 2019 which resulted in the continuation of one extant recommendation from 2015 and two new recommendations. The 2015 recommendation highlighted that the Council's RIPA policy did not reference the requirement for a risk assessment to be completed prior to the deployment of a CHIS. Although the policy has been updated as recently as October 2022, the required change has been overlooked and must be addressed - this recommendation will remain extant.

The first of the two new recommendations (which we now refer to as areas of non-compliance) concerned the need for the SRO to ensure a process is in place to conduct regular reviews of extant directed surveillance authorisations. Since our last inspection, directed surveillance powers have been used once, and for a duration of several weeks during which a review was conducted. Although the review submission was extremely brief, it seems to have provided sufficient reassurance to enable the AO to sanction the continuation of surveillance.

In order to provide a corporate solution to the necessity to complete regular reviews, there is an intention to adapt the Sharepoint system to provide an automatic reminder service to applicants, including notifying them that a review is due. I welcome this approach, albeit automation should not detract from intrusive human oversight by the AO – recommendation discharged.

The second recommendation of 2019 explained that AOs must provide direction as to the management of product obtained as a result of directed surveillance activity when the authorisation is cancelled. Mr Vale explained that the parts of the Council responsible for the use of RIPA powers have internal policy and processes that detail how evidence and intelligence is retained and further used. The Covert Surveillance and Property Interference Code of Practice 2018 states that it is '*good practice that a record should be retained detailing the product obtained from the surveillance*', however, such detail was not recorded by the applicant or AO on the last authorisation. Future cancellations must reference the location of related case files and RIPA material, and as such, this recommendation requires further action.

The inspection discussion included the Data Safeguards introduced by the 2018 Covert Surveillance and CHIS Codes and the need for the Council to ensure its practice is compliant with the guidance provided. This will require two actions to be undertaken. The first is that the Central Record of authorisations must be reviewed to ensure that the documentation held complies with corporate record retention periods. The second element will require the SRO to consider how they will ensure that regular record retention reviews, performed against the Central Record of authorisations and the related case files, are undertaken in tandem, removing the risk that one element of each case is retained for longer than the other.

In respect of the use of covert surveillance undertaken during early 2020, Mr Vale kindly provided a copy of the authorisation documentation in advance of the inspection. The investigation concerned the covert monitoring of a rural fly-tipping hotspot for a period of a few weeks. Mrs Athorn provided feedback on the standard of the document and observed:

- The proposed surveillance and the rationale for the deployment were sound, however the assertion that the surveillance would not result in collateral intrusion was incorrect. The applicant is advised that collateral intrusion can rarely be eliminated and in this case was likely to be low (and thus justifiable). Thus an emphasis should be placed on minimising collateral intrusion by ensuring that excessive private information is not processed as a result of the surveillance.
- The proportionality argument presented by the applicant did not comply with the guidance set out by paragraph 4.7 of the Covert Surveillance and Property Interference Code of Practice (2018).
- The AO's statement concerning the necessity and proportionality of the proposed surveillance was informative and provided an insight into his considerations. Concerning the 'size and scope' element of proportionality, it may have been helpful to highlight that the cameras to be used were video only and placed in a position intended to minimise intrusion.
- The AO did not clearly state what he was authorising.
- The review document listed an incorrect expiry date, and it was unclear from the detail provided when the cameras had been deployed and for how long.

It is accepted that the use of covert surveillance is not a daily activity for local government, however I welcome your plans to deliver refresher training for key personnel during March and ask that the points highlighted above be included as areas of attention.

With regard to your RIPA policy, this document was updated as recently as October 2022. It provides a helpful guide for personnel to gain a basic understanding of what is required from the surveillance and CHIS authorisation process, however a number of amendments are required:

- The document makes repeated reference to the Office of Surveillance Commissioners which no longer exists and was replaced by IPCO in 2017.
- The wording of paragraph 5.5 is confused and thus ambiguous and requires redrafting.
- Paragraph 6.4 should include the duration of juvenile CHIS authorisations as 4 months.
- In paragraph 6.28 the reference to urgent renewals is incorrect and should be removed.

The policy contains guidance on the use of social media and the internet for surveillance purposes, however it is suggested that this section be reviewed actively following the delivery of the planned RIPA training, to ensure that it accurately summarises current practices.

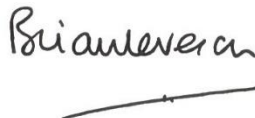
Paragraph 4.47 of the 2018 Covert Surveillance and Property Interference Code of Practice requires that Elected Members be provided with a regular update on the use of RIPA powers and the Council's policy. This is currently facilitated via the Policy Development and Scrutiny Committee. The findings of this letter and the amended policy should be presented as part of the next future update.

I hope that you and your colleagues have found the inspection process helpful in focusing on what activity must be sustained in order to maintain compliance and readiness to use RIPA powers. If you require any further assistance or wish to provide feedback, my Office is available to you.

I would otherwise ask you to respond to this letter within two months of receipt, providing an update against the extant recommendations and new actions. I am mindful that several of the matters identified by my Inspector have been languishing for some time, despite the ease of their remediation. It would be extremely disappointing for any of the findings to have to be repeated by the time of your next inspection.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink that reads "Brian Leveson". The signature is written in a cursive style and is positioned above a horizontal line.

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