

APPENDIX 2



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

Official – Sensitive

4 June 2015

Dear Mr Robertson,

Covert Surveillance

On 13 May 2015, an Assistant Surveillance Commissioner, Sir David Clarke, again visited your Council on my behalf to review your management of covert activities. I am grateful for the facilities afforded for the inspection.

I enclose a copy of Sir David's report which I endorse. I am pleased to see that of the 2 recommendations made by Sir David following his last inspection 2 years ago, the first has been discharged and the second is no longer extant, following a change of practice in relation to juvenile test purchases. Your Council continues to show a strong commitment to the maintenance of high standards of RIPA compliance. Your regular training programme is particularly commendable. The technical defects found by Sir David can be readily eliminated by training and quality control.

The recommendations are that the present practice of conducting juvenile test operations without RIPA authorisation be reconsidered and that care be taken to ensure correct expiry dates are set accurately.

I shall be glad to learn that your Council accepts the recommendation and will see that they are implemented.

One of the main functions of review is to enable public authorities to improve their understanding and conduct of covert activities. I hope your Council finds this process constructive.

Please let this office know if it can help at any time.

Yours sincerely,
Christopher Rose

Mr Eric Robertson
Chief Executive
Wirral Metropolitan Borough
Wallasey Town Hall
Brighton Street
Wallasey
Merseyside CH44 8ED

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OFFICIAL - SENSITIVE



OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT

Metropolitan Borough of Wirral

13th May 2015

Assistant Surveillance Commissioner:
Sir David Clarke.

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This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

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Office of Surveillance
Commissioners

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19th May 2015

METROPOLITAN BOROUGH OF WIRRAL

INSPECTION REPORT

Inspection date 13th May 2015

Inspector Sir David Clarke
Assistant Surveillance Commissioner

Wirral Borough Council

1. The Council (WBC) is a unitary metropolitan authority serving a mainly urban population of about 310,000 in Merseyside.
2. The Senior Corporate Management structure is headed by the Chief Executive, supported by an Assistant Chief Executive and three Strategic Directors. The recently appointed Chief Executive is Eric Robinson, whose address is Wallasey Town Hall, Brighton Street, Wallasey, Merseyside CH44 8ED.
3. The most recent OSC inspection of WBC was conducted by me on 8th June 2012. In my report dated 10th June I reported that all previous recommendations were discharged, but I made two fresh recommendations of my own.
4. WBC is a reducing user of its RIPA powers, having granted 14 directed surveillance authorisations since the last inspection. This compares with 55 in the previous three-year period, some of the reasons for which are discussed under **RIPA usage** below.
5. None of these applications was concerned with the likely acquisition of confidential information, and none concerned Covert Human Intelligence Sources (CHIS).

Inspection

6. I carried out the inspection on 13th May 2015 at Wallasey Town Hall. I met the following council officers:

- Surjit Tour, Head of Legal and Member Services, Monitoring Officer and RIPA SRO;
 - Colin Hughes, Group Solicitor;
 - Caroline Laing, a Constituency Manager (formerly a Service Manager in the Children and Young Persons Department), a RIPA Authorising Officer (AO);
 - Robert Clifford, Senior Manager (Highways and Transport), also an AO;
 - Mark Camborne, Head of Corporate and Community Safety, recently designated as an AO;
 - Gill Vicary, Operations Manager, Trading Standards;
 - Rob Cain, Senior Enforcement Officer, Waste and Recycling;
 - Susan Bannister, Team Leader, Waste and Environment.
7. The inspection started with a helpful and lively round-table discussion with all the officers listed above. It encompassed WBC's RIPA management, policy and procedures, the designated authorising officers (AOs), training, and the response to the last OSC report. I then spent time inspecting the Central Record and eight of the RIPA authorisations and associated forms. I then met Mr Tour and Mr Hughes for a short feedback discussion, followed by a courtesy visit to introduce myself to the Chief Executive¹, before departing the Town Hall.
8. I am grateful to all concerned, particularly Mr Hughes who made the arrangements and provided the pre-inspection reading materials, for their helpful cooperation which greatly eased my task. I am also grateful for the working lunch kindly provided to me.

Response to recommendations

9. My first recommendation was that revisions should be made to the *Policy* document. The appropriate revisions were made by Mr Hughes, and the recommendation is accordingly discharged.
10. My second recommendation related to juvenile test purchase operations. WBC's practice in relation to such operations has changed, and is discussed below. As it stands, the recommendation is no longer extant, but the topic will be the subject of a fresh recommendation.

RIPA Structure

11. As reported in 2012, WBC has a concise and clear *Policy and Procedure on the use of powers under RIPA* in place. It has been further revised by Mr Hughes, to incorporate the legislative changes which came into effect in November 2012, namely the requirement of magistrate's approval for authorisations and renewals in relation to both directed surveillance and CHIS, and the enhanced threshold requirements for directed surveillance.
12. In discussion I made a number of very minor suggestions for further updating and improvement, which were carefully noted and require no formal recommendation. In particular, the list of designated AOs requires to be

¹ I asked to meet him not only as an Assistant Surveillance Commissioner but also as a local resident

updated, and references to "*and preventing disorder*" removed from the description of the permitted statutory purpose; since the introduction of the new threshold, this is no longer available as a free-standing ground for authorisation.

13. WBC has never made a CHIS authorisation, and remains unlikely to do so. The *Policy* continues to provide that any CHIS authorisation may only be made by the Chief Executive. In 2012 I was told that this provision arose from the concerns of an elected member. I think it should be reconsidered; the legislation does not require a higher level of AO for general CHIS authorisation, though certain high-risk authorisations of both directed surveillance and CHIS are reserved to the Chief Executive (or his nominated Deputy in his absence).² It would be good practice for the Chief Executive to undergo RIPA training, which can be delivered internally on a one-to-one basis, rather than to be faced with the need to consider an application at short notice and without having received training.
14. Mr Tour is SRO for RIPA. Mr Hughes has day-to-day control, acting as RIPA Coordinator and keeper of the central record. He is highly experienced in this role, and his knowledge and clarity of thought are valuable assets to WBC. The Record complies fully with the Codes of Practice, and I found no discrepancies between it and the authorisations themselves.
15. Mr Hughes holds regular minuted meetings with RIPA coordinators from each relevant department of WBC, discussing any relevant developments and reviewing the authorisations granted in the period since the last meeting. This is good practice. I was provided with the minutes of the last few meetings, including one held very recently, and I was gratified to find that Mr Hughes had anticipated some of the points I would wish to discuss, being instances in which WBC's approach deviates from OSC Procedures and Guidance.³
16. A quarterly report of RIPA usage and issues is also made to the relevant committee of elected members, which therefore complies with the best practice recommended in the Codes of Practice. I was told that covert surveillance is a topic of close concern to some councillors who hold strong and sometimes opposing views. It is no part of my function to encourage or discourage the use of RIPA powers, but they are there to be exercised in appropriate cases, though always only as a last resort.
17. There are now four designated AOs, all of whom have received the appropriate training. Mr Camborne's name has been added to the list and he is to undergo AO training shortly. A further AO designation may be made when a departed AO is replaced in the near future.
18. Applications for judicial approval are presented to the magistrate by investigators rather than AOs. In this, WBC follows paragraph 43 of the Home Office Guidance to Local Authorities, and are not to be criticised for doing so. But Mr Hughes had drawn his colleagues' attention to paragraph

² This applies to any authorisation likely to result in the obtaining of confidential information, and any authorisation of a juvenile or vulnerable CHIS; see Annex A to each Code of Practice.

³ See paragraphs 18 and 19-23 below

291 of OSC Procedures & Guidance, which indicates the Commissioners' contrary view, and was not surprised when I raised the topic. The matter should be considered on a case-by-case basis, consideration being given to the AO attending in difficult cases if it is practicable to do so. Of course, if the application and authorisation are fully articulated, the magistrate should ideally have no questions to ask; but experience shows otherwise.

RIPA usage

19. At the time of the last inspection, WBC carried out juvenile test purchase operations under RIPA directed surveillance authorisation; I made observations and a recommendation on this topic, in relation to authorisations for multiple premises.
20. The practice has since changed, and such operations are conducted without the protection of RIPA. Ms Vicary explained that a somewhat different method is now used. Previously the juvenile volunteer wore covert recording equipment, so that the transaction (or attempted transaction) was caught on camera, but the adult officer waited outside the shop. It was considered that the use of recording equipment brought the activity within the description of directed surveillance.
21. Covert recording equipment is no longer used. However, the volunteer is supervised in the shop by an adult officer, as is necessary for his welfare and is recommended by the Better Regulation Delivery Office guidance on this topic. Officers did not dissent from my suggestion that the adult is likely to enter the shop separately, ahead of the volunteer, and to remain there until the volunteer has left, in order to keep his distance from the volunteer. It is the Commissioners' view that the presence of the adult officer in the shop is no different in principle from the use of covert recording equipment, as regards the likelihood or otherwise of private information being obtained.⁴
22. This view is supported, at least impliedly, by the fact that the investigation of under-age sales of alcohol and tobacco⁵ is exempted from the enhanced threshold requirement for directed surveillance, suggesting that Parliament considers directed surveillance authorisation appropriate in this context. It is noticeable that the BRDO guidance⁶ quotes the OSC Procedures and Guidance and suggests that those public authorities which do not adopt the guidance may have to justify themselves to the OSC.
23. I shall therefore recommend that this issue be kept under consideration. I do not make the recommendation in a spirit of criticism; WBC are not alone in the view they have taken, they have considered the issue carefully and apparently have some support from their professional training consultant.

See recommendation

⁴ OSC Procedures & Guidance, paragraph 243

⁵ Though not, paradoxically, of other age-restricted goods such as knives, solvents etc

⁶ BRDO: Age Restricted Products and Services: A Code of Practice for Regulatory Delivery, paragraph 13.1

24. There has also been a marked reduction in the number of authorisations made in respect of antisocial behaviour enforcement, largely due to altered priorities and staffing arrangements. The new imprisonable crime threshold led to a cautious approach, but the seriousness of some of these offences and the public concern about them, particularly those involving harassment, may lead to a reversal of this trend.
25. Around the table more generally, I detected a feeling that political pressures had led in recent years to a more cautious approach to RIPA usage, which may now change. As it was put to me, the council was risk-averse but is becoming more risk-aware. I should say at once that all the authorisations which I examined were in respect of serious matters of public concern, and were entirely justified in principle. I found no sign of RIPA powers being used in questionable circumstances.
26. No internet investigation work is done, but WBC are aware of the guidance contained in paragraph 288 of OSC Procedures & Guidance. It would be sensible, indeed, to incorporate a brief passage on this topic in the *Policy* document.
27. No RIPA authorisations have been made for some years in benefit fraud investigation. Such investigation is now in the hands of the DWP pursuant to the roll-out of its national Fraud and Error Service.

Training

28. WBC continues to maintain a regular training programme. An annual training day is held for all AOs and RIPA applicants, the training continuing to be delivered by Ibrahim Hassan of Act Now Training.
29. A clear and accessible training register is maintained, which is a good practice not always followed elsewhere. It was produced for my inspection.

Examination of Records

30. The 14 directed surveillance authorisations in the three-year period under review can be subdivided as follows:
- nine for antisocial behaviour, of which I examined the most recent five;
 - five for fly-tipping, of which I examined three.
31. All the application and authorisations of high quality, though (as in 2012) some were fly-tipping cases in which the CCTV surveillance was not (or may not have been) truly covert in that warning notices of CCTV surveillance were posted on the approach to the sites where illegal tipping had occurred. WBC were clearly adopting a belt-and-braces approach, with some justification having regard to the seriousness of the problem. They are dealing with serious offenders dumping large quantities of industrial waste for profit, clearly surveillance-aware and in the habit of sabotaging the surveillance equipment when they find it.

32. I found some inconsistency in the setting of expiry dates; in two cases they were beyond the statutory period by a day or two, which might have rendered the entire authorisations susceptible to challenge by an astute defence lawyer. Some ambiguity is created by the magistrate's approval requirement, whereby an authorisation does not take effect until the approval is signed. The safer practice now is to defer dating the authorisation until approval is given, explaining if necessary) to the magistrate why this is done. The expiry can then be set at 2359, 3 months (less one day) from the approval date.
33. In one case (14-15-01), authorised on 2nd May and approved on 6th May 2014, the AO specified that the surveillance "*would take place from Tuesday 3rd June*". There was no apparent reason for this discrepant statement, which was clearly a slip of the pen but should have been noticed by the applicant, and indeed by the magistrate. The AO's intention was to set the first review to take place on 3rd June that date, as indeed it did. The review showed that the surveillance commenced as planned on 7th May. I have been assured that procedures are now in place to minimise the risk of such an error going unnoticed in future.
34. In this instance, describing the surveillance which she was authorising, the AO used the expression "*We intend to place three cameras . . . etc*". This is inappropriate language, implying that the AO is a participant in the activity. The proper language is language of independent authorisation, not apparent participation.
35. Subject to these points, I considered that all the applications, authorisations and reviews were well and fully articulated and were of high quality.

CCTV

36. WBC's network of overt CCTV cameras in is no longer monitored by WBC operators at their control room at Cheshire Lines Building, which I visited in 2012. The CCTV feed is now monitored by Merseyside Police at their Joint Command and Control Centre in Bootle, and any use of the overt CCTV system for covert (targeted) surveillance is required to be covered by police RIPA authorisation.

Conclusion

37. WBC continues to exhibit a strong commitment to maintaining high standards of RIPA compliance. The council has faced a number of challenges in recent years, resulting in major changes of senior personnel, but RIPA matters have remained in the competent hands of Mr Hughes who now reports directly to Mr Tour. Their regular training programme is particularly commendable.
38. The somewhat surprising technical defects which I found in some authorisations, albeit not impugning their underlying merit, can be readily eliminated in future by training and quality control. It would be embarrassing for WBC to find itself challenged on such grounds by lawyers seeking loopholes. Even if such a challenge is unsuccessful, it shines some light on a sensitive topic and can cause reputational damage.

39. Accordingly I make the following

Recommendations

- I. That WBC reconsider its present practice of conducting juvenile test purchase operations without RIPA authorisation;*
- II. That care be taken to ensure that correct expiry dates are accurately set, so as to minimise the risk of challenge to any future authorisations*

David Clarke
Assistant Surveillance Commissioner

