

**APPENDIX 1**

**REPORT OF SIR DAVID CLARKE**

**ASSISTANT SURVEILLANCE COMMISSIONER**

**26 JUNE 2012**



Office of Surveillance  
Commissioners

28 JUN 2012



Chief  
Surveillance  
Commissioner

Restricted

26 June 2012

*Ian M. Coleman*

Covert Surveillance

On 8 June 2012, an Assistant Surveillance Commissioner, Sir David Clarke, visited your Council on my behalf to review your management of covert activities. I am grateful to you 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 your Council shows a strong commitment to maintaining high standards of RIPA compliance and you have a particularly commendable training programme. The defects found in trading standards authorisations can be readily addressed in accordance with the second recommendation.

The two recommendations are that your policy document be further amended in the light of paras 12 and 14 of the report and that authorisations for juvenile test purchase operations be more restricted in scope with care taken in addressing necessity and proportionality in relation to particular premises targeted.

I shall be glad to learn that your Council accepts the recommendations 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 Ian Coleman  
Acting Chief Executive  
Wirral Council  
Town Hall,  
Brighton Street  
Wallasey  
Wirral  
Merseyside, CH44 8ED

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Commissioners

**OFFICE OF SURVEILLANCE COMMISSIONERS**

**INSPECTION REPORT**

**Metropolitan Borough of Wirral**

**8<sup>th</sup> June 2012**

**Assistant Surveillance Commissioner:  
Sir David Clarke**

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## **RESTRICTED covering CONFIDENTIAL**

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10<sup>th</sup> June 2012

**METROPOLITAN BOROUGH OF WIRRAL**

**INSPECTION REPORT**

Inspection date      8<sup>th</sup> June 2012

Inspector              Sir David Clarke  
                                 Assistant Surveillance Commissioner

**Wirral Borough Council**

1. The Council (WBC) is a unitary 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 six Service Directors. The Acting Chief Executive is Ian Coleman, whose address is Wirral Council, Wallasey Town Hall, Brighton Street, Wallasey, Wirral CH44 8ED.
3. The Director of Law, Human Resources and Asset Management is Bill Norman, who is designated Senior Responsible Officer (SRO) for RIPA matters.
4. The most recent OSC inspection of WBC was conducted by Graham Wright, Surveillance Inspector, accompanied by Kevin Davis, on 1<sup>st</sup> July 2009. In his report dated 10<sup>th</sup> July 2009, Mr Wright reported that all previous recommendations were discharged but made three fresh recommendations of his own.
5. WBC is a frequent user of its RIPA powers, having granted 55 directed surveillance authorisations since the last inspection.
6. None of these applications had used the urgency provisions, none was concerned with the likely acquisition of confidential information, and none concerned Covert Human Intelligence Sources (CHIS).

**Inspection**

7. I carried out the inspection on 8<sup>th</sup> June 2012 at Wallasey Town Hall. I met the following council officers:
  - Ian Coleman, Acting Chief Executive;
  - Bill Norman, Director of Law, Human Resources and Asset Management;
  - Colin Hughes, Group Solicitor, Legal and Member Services<sup>1</sup>;
  - Caroline Laing, a Service Manager in the Children and Young Persons Department, an Authorising Officer;
  - Derek Payet, Trading Standards Strategic Manager, an Authorising Officer.
8. The inspection started with a discussion, primarily with Mr Norman and Mr Hughes, of WBC's RIPA management, policy and procedures, the designated authorising officers (AOs), training, and the actions taken on the recommendations in the last OSC report. I then inspected the Central Record and a sample of the RIPA authorisations themselves. I then met Mr Norman, Miss Laing and Mr Payet for a feedback discussion before departing the Town Hall.
9. I then visited WBC's CCTV control room at Cheshire Lines Building, Canning Street, Birkenhead, where I met the following:
  - Robert Henderson, Head of Regulation Division;
  - Tom Almond, the CCTV operator on duty.
10. 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.

### RIPA Structure

11. WBC has a concise and clear *Policy and Procedure on the use of powers under RIPA* in place. In his 2009 report, Mr Wright recommended a number of improvements, which were duly made and approved formally by the appropriate committee of the council. *His first recommendation is therefore discharged.*
12. In discussion I made a number of suggestions for further improvement, as follows:
  - (a) In paragraph 3.6, it should be made clear that *private information* is not limited to *a person's private or family life* (as presently stated), but includes the way in which he conducts himself in his working life<sup>2</sup>;
  - (b) In paragraph 3.13 (or in an Appendix), the designated AOs should be listed;
  - (c) In paragraph 3.19.1, it should be made clear that any audio recording device must not be capable of picking up conversations within the home targeted (rather than *should not normally*, as presently stated).

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<sup>1</sup> The Head of Legal and Democratic Services, Surjit Tour, was on leave on the day of my inspection

<sup>2</sup> Code of Practice on Covert Surveillance etc., paragraph 2.4

13. Mr Wright commented in 2009 that the *Policy* included little guidance in respect of CHIS. In response to this, the CHIS section (paragraphs 4.1-4.6) was usefully expanded. It accurately describes two scenarios in which the issue of CHIS may arise – a private detective posing as a tenant to obtain information about antisocial behaviour, and a trading standards test purchaser who goes beyond the basic transaction and engages the trader in further discussion to obtain further information.
14. These are both situations in which the source is tasked to obtain information. In discussion, however, I drew attention to paragraph 2.22 of the CHIS Code of Practice, pointing out that a CHIS problem may arise without any tasking. When an informant gives repeat information about a suspect or about a family, and it becomes apparent that the informant may be obtaining that information in the course of a family or neighbourhood relationship, alarm bells should begin to ring. It probably means that the informant is in reality a CHIS, to whom a duty of care is owed if the information is then used, even though he or she has not been tasked by the public authority to obtain information on its behalf. This needs to be made clear in the *Policy* document, perhaps with an exhortation to refer any such instance for legal advice before acting on the information received from such an informant.

**See recommendation I**

15. WBC has never made a CHIS authorisation, and remains unlikely to do so. The *Policy* provides that any CHIS authorisation may only be made by the Chief Executive<sup>3</sup>. I was told that this provision arose from the concerns of an elected member.
16. Mr Norman is SRO for RIPA. Mr Tour is formally keeper of the Central Record, but the task is delegated to Mr Hughes who has day-to-day control. The Record complies fully with paragraph 8.1 of the Covert Surveillance Code of Practice, and I found no discrepancies between it and the authorisations themselves.
17. Mr Hughes holds a quarterly meeting with RIPA coordinators from each relevant department of WBC, reviewing the authorisations granted in that quarter, thus providing the quality assurance found by Mr Wright to be lacking in 2009. *Mr Wright's second recommendation is therefore discharged.*
18. A quarterly report of RIPA usage and issues is made to the Audit and Risk Management Committee of WBC, which therefore complies with the best practice recommended in paragraph 3.30 of the Code of Practice.
19. Following a number of retirements and other departures, there are only three designated AOs in WBC. One of these is presently suspended from his post awaiting disciplinary proceedings. It is accepted that two is an insufficient number of AOs in an authority of this size making substantial use of its RIPA powers. WBC has already arranged that the new Head of the Antisocial

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<sup>3</sup> It is conventional, and indeed a requirement of the CHIS Code of Practice (paragraphs 4.22-4.23 and Annex A), that only the Chief Executive may authorise a vulnerable or juvenile CHIS, but this restriction does not apply to CHIS authorisations in general

Behaviour Team, a Service Manager of appropriate status, will attend the next training session and will then be designated as an AO; accordingly no formal recommendation is required.

### Training

20. An annual training day is held for all AOs and RIPA applicants, the training being delivered by Ibrahim Hassan of Act Now Training. This year's training day was delayed in the expectation that section 38 of the Protection of Freedoms Act 2012 would come into force, but it is to proceed in September in any event.
21. A clear and accessible training register is maintained, which is a good practice not always followed elsewhere.

### Examination of Records

22. The 55 directed surveillance authorisations in the three-year period under review can be subdivided as follows:
  - 35 for antisocial behaviour, of which I examined the most recent five;
  - 15 for trading standards (primarily under-age sales), of which I examined three;
  - 5 for fly-tipping, of which I examined two.
23. I found that the RIPA1 authorisation form in use was not the current version, in that the paragraph references to the Codes of Practice relate to the earlier Codes preceding the 2010 revisions. In particular, the important box for "collateral intrusion" has a wrong reference and is therefore misleading. This has been immediately remedied by downloading the full set of current forms from the Home Office website, so that no formal recommendation is required.
24. In the antisocial behaviour and fly-tipping cases, correct expiry dates and proper reviews were consistently set, and in all cases cancellations were timely and appropriate.
25. The antisocial behaviour cases can be further subdivided. Some were for surveillance of public areas of housing estates, where groups of young people habitually congregated and caused nuisances ranging from noise and rowdiness, through dangerous driving, excessive drinking and drug taking, to brazen drug dealing. In some cases the targeted individuals were already subject to ASBOs and believed to be in persistent breach. These housing estates are areas in which there is a culture of non-cooperation with the authorities and of witness intimidation and reprisals. The authorisations were well articulated by the applicant and the AO and are a model of their kind. One in particular, concerning a 12-year-old boy already under an ASBO, was very carefully considered by the AO, referring to:

*... the negative impact the target's behaviour has had on the local community and that he is getting away with the order on a regular basis ... undermining the justice system and public confidence ... if*



*there had only been one or two breaches it could be argued the surveillance is not proportionate, but there have been numerous breaches and efforts by the ASBO team and the police to catch him have failed”.*

26. The other category concerns feuding neighbours, where a household is targeted by a near neighbour's family with threats, assaults and criminal damage. The authorised surveillance involved the installation of covert CCTV (with audio) in the targeted house, trained on the front and roadway outside. Again, these were well argued and appropriate.
27. The fly-tipping authorisations were likewise of high quality, though they were all 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, and may feel that they can safely proceed without RIPA authorisation when section 38 of the 2012 Act (adding sections 32A and 32B to RIPA) is brought into force.
28. The trading standards authorisations were for juvenile test purchase operations, each one planned to take place on a single evening. One, on 4<sup>th</sup> November 2011, was for the sale of fireworks; the remainder for alcohol and tobacco. Perhaps understandably, the AO set very short expiry dates, each authorisation to expire within a day or two after the planned operation was completed. Accordingly, no review dates were set.
29. This is an incorrect method of achieving a proper objective. All directed surveillance authorisations must be set to expire at 2359 hrs on the last day of the three month period from the date of authorisation, in accordance with the prompt on the form itself. The correct way to achieve the objective is to set an early review date and to cancel on review. It is right to add, however, that these authorisations were not left to lapse; all were properly and formally cancelled.
30. More importantly, I am a little troubled that the authorisations were for test purchases at a large number of shop premises, some 20 in number. Different considerations of necessity and proportionality may have affected different shops in the list; some may have been previously visited and warned, or been the subject of specific intelligence; others merely situated in the vicinity of juvenile drinking locations<sup>4</sup>.
31. The fireworks authorisation did not list the shops encompassed within it. It named two shops, plus *“the list of premises provided by the Fire Brigade (attached)”*. No such list is attached to the retained RIPA forms, so it is impossible to see how many test purchase visits were authorised.
32. In the case of each of these authorisations, the cancellation form showed that eight tests were made and that one sale took place. So it seems that many of the shops were not tested, despite the applicant's assertion, and the AO's

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<sup>4</sup> See OSC Procedures and Guidance, December 2011 revision, paragraph 262

**David Clarke**  
**Assistant Surveillance Commissioner**

agreement, that to test each of them was necessary. This might render the entire authorisation susceptible to challenge.

33. For the future, the remedy is to seek authorisation only in relation to those retail outlets which there is specific reason to test, and then to follow it through in relation to each: A single authorisation, not so tightly limited in time, can properly cover a multiple test purchase operation which is not limited to a single day, so long as the issues of necessity and proportionality are sufficiently addressed in relation to each of the premises to be visited.

See recommendation II

## CCTV

34. WBC operates a network of some 100 CCTV cameras in locations throughout the borough, monitored by WBC operators from a control room at Cheshire Lines. These are operated under a protocol between WBC and Merseyside Police which I was shown. Most of the cameras incorporate a 28-day automatic recording facility.
35. I was shown the Control Room handbook, the daily log and the CCTV viewing book. The viewing book primarily records instances of the police attending to view recorded material, i.e. evidence-gathering as opposed to real-time surveillance. But it also contains some (highlighted) instances of police attendance to carry out real-time surveillance, in which case the serial number of the police RIPA authorisation is recorded. I was shown the retained copy of the police notification of RIPA authorisation.
36. My visit was made without prior warning to the operator on duty. I am satisfied that the arrangements in place provide suitable safeguards against any unauthorised covert use of WBC's overt CCTV equipment.

## Conclusion

37. WBC exhibits a strong commitment to maintaining high standards of RIPA compliance. Their training programme is particularly commendable. The defects which I found in the authorisations emanating from one department can be readily addressed in the light of this report.
38. I make the following

## Recommendations

- I. *That WBC's RIPA policy document be further amended in the light of paragraphs 12 and 14 of this report;*
- II. *That future authorisations for juvenile test purchase operations be more restricted in scope, care being taken to address the issues of necessity and proportionality in relation to the targeted premises.*