

IPCO

Investigatory Powers
Commissioner's Office

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21 May 2021

Dear Chief Executive,

IPCO Surveillance and CHIS Inspection of Wirral Metropolitan Borough Council

Your Council was recently the subject of a remote inspection by one of my Inspectors, Mr Graham Wright, who looked at your use of powers and procedures in relation to directed surveillance and CHIS. This was facilitated through Mr Colin Hughes (Group Solicitor and RIPA Monitoring Officer) as well as Mr Paul Martin (Principal Solicitor and due to take over responsibility as RIPA Monitoring Officer), who provided information during professional discussion and a video conferencing session.

The information provided has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection. The two recommendations from the previous inspection in December 2018 have been discharged. These related to the need for enhanced guidance and training in relation to the use of social media by Council staff.

There have been three authorisations for directed surveillance granted since the previous inspection and copies of the relevant forms were made available for Mr Wright to examine. He makes the following points in relation to those authorisations:

1. It is pleasing to note that Trading Standards now seek a directed surveillance authorisation for test purchase operations where a member of Trading Standards staff covertly observes the under-age volunteer attempting to make the test purchase. The applications in relation to the two such operations were adequately detailed, but in authorisation URN: TP8 2019/2020, the authorising officer's input was rather cursory in relation to necessity and proportionality; the officer had failed to set a review date; and the expiry date of the authorisation was not given.
2. In relation to the authorisation regarding an investigation into repeated fly-tipping, the application and input from the authorising officer were exemplary and might be used as an example of how things should be done. Reviews were carried out at regular intervals and a cancellation submitted, setting out the results of the activity.

My Inspector has reviewed your Council's RIPA Policy. This document, *Policy and Procedure on the Use of Powers Under the Regulation of Investigatory Powers Act*, is a useful guide to practitioners and has been suitably expanded in relation to the use of social media to support investigations.

The RIPA Monitoring Officer outlined his oversight activity, including a description of the processes used to ensure that no unauthorised surveillance or CHIS management activity takes place. Key to this are the regular meetings of the RIPA Co-ordinators Group which discusses emerging issues, training needs and usage of the powers. This group pays particular attention to the use of social media, and its membership has been expanded to include a wider range of departments.

Although your Council has only used the powers sparingly, Mr Hughes was reminded of the importance of ensuring that the designated authorising officers maintain their level of training. Two of the three authorising officers have received refresher training since the last inspection and the third is due to attend, but has in the meantime been unable to grant authorisations until this training has taken place.

In respect of staff who may currently undertake surveillance duties (including internet and open source research) as part of their professional role, Mr Hughes stated that there had been two sessions of training since the previous inspection, and over 40 staff have attended. Further training will take place this year.

The monitoring of social media and the internet can offer initial investigative leads and assist with your enforcement or other responsibilities, but it behoves you to ensure that such resources as these are used in a controlled, auditable, and well understood manner. The Home Office Covert Surveillance and Property Interference Code of Practice provides some helpful advice on this point. Mr Hughes provided My Wright with details of how your organisation approaches these activities:

- that guidance is provided to staff within the relevant policy and operating procedures;
- any staff wishing to conduct social media research must seek approval from a RIPA trained officer who will assess whether an authorisation need be sought. If not, a log of the internet activity will be completed and this log is periodically reviewed by the RIPA Monitoring Officer and SRO; and
- that staff were not permitted to use covert profiles or pseudonymous accounts to conduct internet or social media enquiries.

The Council owns town centre CCTV systems. These have not been used covertly since the date of the last inspection. A suitable protocol with Merseyside Police has been drawn up in relation to their use of the systems.

In accordance with section 4.47 of the Home Office Covert Surveillance and Property Interference Code of Practice, you provide Elected Members on the Audit and Risk Committee with an annual report sufficient to enable them to determine that the Council's policy remains fit for purpose, together with regular reports on RIPA activity (or inactivity).

In relation to the matter of Data Assurance, I wrote to you in September 2020 setting out my concerns about this matter. You Council already had an information security policy, but the RIPA Co-ordinators Group have held several meetings and taken action in response to my letter. Enquiries have been made in relation to the process for the retention, review and destruction of CCTV product and this has been found to be satisfactory. In addition, a policy specific to material acquired through RIPA activity (including CCTV images) has now been drawn up, to supplement the Council-wide regime. This RIPA specific policy, *Security and Retention of Personal Data Derived From RIPA Investigations*, introduces procedures for the secure retention of material, reviews of the grounds for retention, and the subsequent destruction of material. Structured reviews of material will be carried out and submitted to the SRO. This is an area of compliance which IPCO will focus on more deeply in future inspections. In particular, we shall expect to see that the additional guidance provided to staff has enabled practitioners to understand fully their responsibilities and that the Safeguards have been applied in practice.

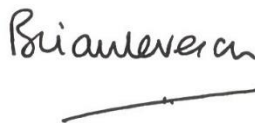
In conclusion, it must be emphasised that although your Council has only used the RIPA powers very sparingly, it is vital that the relevant staff are appropriately trained should the need to authorise covert activity arise. It is also important that officers engaged in investigatory areas where RIPA considerations are not so immediately apparent (for example Children's Services), maintain their levels of knowledge and know whom to approach for guidance. Your training provision and the RIPA Co-ordinators Group are very helpful towards ensuring this.

Mr Hughes has given assurances to the Inspector that the integrity of your Council's processes and governance procedures will be maintained to ensure that high standards of compliance with the Act and relevant codes of practice are achieved. He is a most conscientious and experienced officer, with whom Mr Wright has had dealings over a number of years, and he has been instrumental in the good standards that exist. His successor has a hard act to follow, but inherits a sound and compliant RIPA regime.

I hope that this video-based inspection has proved to be a worthwhile exercise. My Office is available to you should you have any queries following the recent inspection, or at any point in the future. Contact details are provided at the foot of this letter.

I shall be grateful if you would acknowledge receipt of this letter within two months.

Yours sincerely,



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

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