



Investigatory Powers
Commissioner's Office

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Andrew Bates
Chief Executive
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17 September 2020

Dear Mr. Bates,

**Inspection of West Devon Borough Council and
South Hams District Council**

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), before making any disclosure. This is also the case if you wish to make the content of this letter publicly available.

Your Council was recently the subject of a telephone-based inspection by one of my Inspectors, Mr Paul Gration. The inspection examined your level of compliance with regard to the use of directed surveillance and covert human intelligence sources (CHIS) in accordance with the provisions of the Regulation of Investigatory Powers Act 2000 and the acquisition of communications data in accordance with the provisions of the Investigatory Powers Act 2016. This discussion is ordinarily held with the Senior Responsible Officer (SRO) who should be in a position to outline how regular, ongoing internal oversight of the actual or potential use of these powers is conducted.

I understand that the role of SRO sits with the Chief Executive in your organisation, a position to which you have only recently been appointed. It was felt by your Monitoring Officer and Business Manager, Ms Catherine Bowen, that others were best placed to discuss the current arrangements which are delivered jointly across both authorities. Ms Bowen was joined in the discussion by your Head of Strategy (Governance), Mr Neil Hawke, and I should be grateful if you could pass on my thanks for their contribution and the provision of the necessary records and documentation. I trust you have been fully briefed with regard to the details of that discussion.

The information provided has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection. I ask you to consider and to ensure that any observations from the findings of the remote inspection are promptly addressed.

The Councils' previous inspection was conducted by His Honour Norman Jones QC who raised a number of recommendations. Mr Gration has reviewed those recommendations and while they are discharged, he has raised some of his own observations.

I understand, following receipt of my correspondence outlining my expectations regarding handling of data, that you are well placed with regard to the required safeguarding measures. Your current RIPA policy, although in need of a review in part, makes clear reference to the management of surveillance product and signposts staff to your current corporate record management policy for further guidance.

The finer points of Mr Gration's observations have been fully discussed with Ms Bowen and Mr Hawkes and can be summarised as follows:

Recommendation

- As mentioned previously, your current RIPA policy should be reviewed and the following amendments are required:
 - The policy should reflect recent legislative and procedural changes. This should include the impact of the Investigatory Powers Act 2016 and the recent amendment to the authorisation period for a juvenile CHIS.
 - Hyperlinks throughout the document could be more helpful, as they currently take the reader to the Home Office website front page rather than to the required reference point.
 - The appropriate crime threshold is correctly referred to on page 2, but requires correction on page 11 to reflect the amendment detailed in the RIPA Directed Surveillance and CHIS Order 2010.

Observation

- The role of SRO warrants further internal discussion. It is not in itself a compliance issue that it sits at CEO level but after review, you may feel it fits more comfortably elsewhere within the Corporate Leadership team. You, of course, may well be required to authorise activity as the senior authorising officer.
- HH Jones raised the requirement to keep Elected Members updated regarding RIPA activity in line with paragraph 4.47 of the Covert Surveillance and Property Interference Code of Practice. Although there has been no recent activity, it is important to remember that this remains a requirement and that they are given the responsibility to review the authority's use of RIPA and set your RIPA policy each year.

In conclusion, although your Council has not used its surveillance powers for several years, I take the opportunity here to reiterate to you the importance of regular, ongoing internal oversight of the actual or potential use of these powers. The role of SRO is key to that oversight and a timely review will give you the opportunity to assess who is best placed to perform that role.

It is also important that officers engaged in investigatory or enforcement areas where RIPA considerations are not so immediately apparent, maintain their levels of knowledge and know whom to approach for guidance. It is pleasing to note that you have conducted recent training for those likely to be involved in this type of activity. Ms Bowen and Mr Hawkes have given the appropriate reassurance 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.

I hope that you find this letter to be helpful and constructive. 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 the report within two months, and your plans regarding the above advice.

Yours sincerely,

A handwritten signature in black ink that reads "Brian Leveson". The signature is written in a cursive style with a prominent initial 'B'.

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