

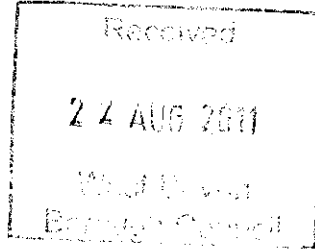


Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

Restricted



17th August 2011

Sean M. Heard,

Covert Surveillance

On 27th July 2011, an Assistant Surveillance Commissioner, HH Norman Jones QC, again, 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 Mr Jones's report which I endorse. Your Council has not used its covert powers but has to know what to do should the need arise. For some time officers have been shared with South Hams DC. There has now been a full fusion of administrative services which will be followed by a single RIPA management system and policy, necessitating fresh training and the appointment of appropriate officers.

The recommendations, as in relation to South Hams District Council, are that the two Councils construct a unified system suitable for both with the SRO and RIPA Co-ordinating officer exercising robust oversight and quality control, that authorising officers be appointed who can authorise for both Councils, that training for officers who may be involved in RIPA be provided soon and followed by refresher training about every 18 months and that a unified policy and procedures document be produced to cover the future requirements of both Councils.

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,
Christy Hooper*

Mr Richard Sheard
Chief Executive
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Kilworthy Park
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Chief Surveillance Commissioner,
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4th. August 2011

INSPECTION REPORT WEST DEVON BOROUGH COUNCIL

Inspection 27th. July 2011.

Inspector His Honour Norman Jones QC.
Assistant Commissioner

West Devon Borough Council.

1. West Devon Borough Council administers an area of South Devon half of which consists of part of the Dartmoor National Park. It serves a population of about 50,000. Main areas of habitation are found in Tavistock, Okehampton, Princetown and Chagford. Otherwise the Council serves a rural community living in a number of small, scattered villages and hamlets.
2. For some years West Devon BC has shared a number of officers, including the Chief Executive, with the neighbouring South Hams DC. Since April of this year the Council has taken this arrangement a step further and joined administratively with South Hams District Council. Consequently there is now one management structure covering both Councils. The senior management is presently engaged in restructuring the departmental systems of each Council to form single administrative units which will cover both Councils. Consequently this report will consider the changes needed to create a single effective *RIPA* system for both Councils. This is made easier by the fact that all Council Officers are now officers of both Councils.
3. The new Corporate Management structure consists of the Chief Executive, Mr. Richard Sheard, who is supported by two Corporate Directors. These officers have largely strategic responsibilities. They are immediately supported by seven Heads of Services.
4. West Devon Borough Council was last inspected by me in April 2009.
5. Since the last inspection West Devon BC has not authorised covert surveillance.

6. The Senior Responsible Officer (SRO) for both Councils is Ms. Tracey Winser, Corporate Director and authorising officer, who was on leave at the time of the inspection and unable to attend. However Mr. Alan Robinson, the other Corporate Director and an authorising officer, attended the latter part of the inspection. Ms. Delys Jenkins-Evans is the Councils' Head of Legal Services and Monitoring Officer and an authorising officer. She has responsibility for keeping the Central Record of Authorisations. Ms. Catherine Bowen is a Principal Solicitor (Corporate), and authorising officer. Ms Becky Fowlds is also a Principal Solicitor (Regulatory Team) and likewise is an authorising officer. Both of these officers held responsibility for *RIPA* previously, Ms. Bowen in West Devon and Ms. Fowlds in South Hams DC.
7. The Council headquarters is at the Council Offices, Kilworthy Park, Tavistock, Devon, PL19 0BZ.

Inspection.

8. I received a warm welcome from Ms. Jenkins-Evans, Ms. Bowen and Ms. Fowlds who remained throughout. Mr. Ian Bollans, Head of Environmental Health and an authorising officer joined later as did Mr. Robinson. All officers made substantial and enthusiastic contributions and afforded all assistance during the inspection for which I am most grateful.
9. The inspection was conducted by interview of and discussion with the officers. An examination of the Central Record and one authorisation was undertaken. Among issues discussed was the advisable future *RIPA* management structure, action taken on previous recommendations, authorising officers, training, policy and procedures, the Central Record of Authorisations, Elected Members responsibilities, noise nuisance and *CHIS*.
10. Because of the restructured administration it was considered appropriate to conduct a joint inspection of West Devon BC and South Hams DC. Consequently much of the content of this report will be common to both Councils. At this time separate reports for each Council have been produced since the joint administration has only been effective in relation to each Council for a part of the time since it was last inspected. In the future it may well be advisable to produce a single report covering both Councils.

Management Structure for *RIPA*

11. Separate structures have existed for *RIPA* management in the two Councils. We considered whether such a system should be retained or whether to create a unified structure for the two Councils. It was felt that as the aim of the Councils was to unify all management structures then such would be the best approach for *RIPA*. The problems which can arise in Councils which merely share the services

of officers who are appointed officers of one Council do not arise since all officers are now officers of both Councils.

12. The decision has already been taken to appoint one *SRO* and it would be illogical to then have two separate *RIPA* management teams reporting to her.
13. The *SRO* is aware of her duties which are outlined in the Council's *RIPA* Policy and Procedures document. They include responsibility for the integrity of the *RIPA* process within the Council; for compliance with *RIPA* and its regulatory framework; for engagement with the Commissioners and Inspectors when they conduct inspections; for overseeing the implementation of any recommendations made by the OSC and for ensuring that authorising officers are of the appropriate standard.
14. The requirement to have one officer with day to day responsibility for *RIPA* was revisited. It was agreed that this was a sensible approach and that one such officer should be appointed to cover both Councils. S/he would best be entitled the *RIPA Co-ordinating Officer*. A decision would be taken about which officer best would suit the role which would include: (a) maintaining the Central Record of Authorisations and collating the original applications/authorisations, reviews, renewals and cancellations; (b) oversight of submitted *RIPA* documentation; (c) organising a *RIPA* training programme; and (d) raising *RIPA* awareness within the Council.
15. It was recognised that both officers held a responsibility to exercise oversight on authorisations and the general *RIPA* process within the Councils. This would require the *RIPA Co-ordinating Officer* reviewing each authorisation and ancillary *RIPA* document as it was submitted. The *SRO* also should periodically review the submitted documentation. Documentation which either officer felt was not of a good standard should be referred back to the authorising officer, if necessary with a request to cancel and reissue. It is by such robust oversight procedures that quality control is maintained and compliance ensured.

See recommendation

Authorising Officers

16. Two officers, the Chief Executive and Mr. Robinson are authorising officers for all purposes at South Hams, but Mr. Robinson is not an authorising officer for West Devon, and the Chief Executive authorises only for the statutory sensitive cases at West Devon. This position should be regularised. There is little point in the Chief Executive authorising for other than the employment of juvenile or vulnerable *CHIS* or for the acquisition of *confidential information*. If Mr. Robinson is to authorise it should be for all purposes for both

Councils. Both officers, as with any authorising officer, require to be fully trained.

17. Tracey Winser, as *SRO*, is an authorising officer, though she should only authorise in exceptional circumstances since regular authorisation would conflict with her oversight responsibilities. Either Ms. Winser or Mr. Robinson would be expected to deputise for the Chief Executive in his absence.
18. Ms. Jenkins Evans, Mr. Ian Bollans, Ms. Lisa Buckle (Head of Finance), and Mr. Darren Cole (Head of Revenues and Benefits) are all nominated authorising officers for West Devon. In addition Ms. Fowlds is an authorising officer for South Hams DC. With the exception of Mr. Cole, who has joined the Council recently, all received training at a training session in 2010 conducted by professional trainers.
19. A decision should be made as to the numbers of authorising officers required by the joint administration. West Devon BC traditionally has not undertaken covert surveillance and South Hams DC very little. It may well be that fewer authorising officers are required.

See recommendation

Previous Recommendations

20. Recommendations made in the last inspection report were:
 - I. *The RIPA Monitoring Officer should heighten RIPA awareness throughout the Council to ensure that unauthorised covert surveillance does not occur.*

West Devon continues to avoid conducting covert surveillance. However the officers are aware of the risks of unauthorised surveillance and have taken steps to ensure that there is awareness throughout the Council of the need to consider authorisation under *RIPA* whenever surveillance is a possible option in an investigation. Following the last inspection emails were circulated on the Council intranet drawing attention to this need. In addition information was cascaded down from management meetings to departmental staff. However this has not been done in the last year due to the demands of restructuring within the Council. Council departments likely to resort to covert surveillance do not do so since alternative overt means of investigation have been found to be successful. This recommendation has been discharged, but will require to be reactivated.
 - II. *The RIPA Monitoring Officer should ensure that adequate RIPA training is undertaken expeditiously by all those who may be*

involved in applying for, or authorising, covert surveillance for the Council.

A full day training session was held in February 2010 jointly with South Hams DC and was conducted by the professional trainers "Act Now". Care was taken to ensure that all staff who may have recourse to *RIPA* attended. Twenty four officers attended from both Councils. This recommendation has been discharged.

- III. *The number of authorising officers should be reduced and they should be identified by name and rank in the Annex to the RIPA Policy and Procedures document.*

This was undertaken following the inspection and West Devon reduced its authorising officers to four. This recommendation has been discharged.

- IV. *Some amendments should be made to the RIPA Policy and Procedures document.*

These amendments have been made. This recommendation has been discharged.

Training.

21. Some new and untrained officers have been appointed and a new *RIPA* management system will be put in place. Consequently it is felt that this is an opportune time for refresher training to be undertaken. We discussed the options of conducting it by "in house" training by the *RIPA Co-ordinating Officer* or by again employing an external trainer. It was felt that it would be beneficial to adopt the latter course which would ensure that all officers would be trained to a high standard, and that thereafter refresher training could be conducted "in house".
22. Refresher training should be undertaken at eighteen monthly intervals to accommodate both changes in *RIPA* and its regulatory framework, and the requirements of any newly appointed officers.

See recommendation

Policy and Procedures

23. The West Devon BC *RIPA Policy and Procedure* document was last edited in April 2010 to accommodate the changes in the revised *Codes of Practice*. It is an accurate and eminently readable document cogently setting out all the requirements of any applicant or authorising officer. It contains a description of the responsibilities of the *RIPA SRO* but will require a further amendment to add the responsibilities of the *RIPA Co-ordinating Officer*.

24. The South Hams DC *Policy for Ensuring Compliance with RIPA, Covert Surveillance and Use of Covert Human Intelligence Sources* was last edited earlier in this year. Again it is a commendable document though different in style to that of West Devon. It requires a paragraph outlining the responsibilities of the SRO and it would be helpful if the responsibilities of the *RIPA Co-ordinating Officer* were set out in a separate paragraph.
25. However the prime change which should now be undertaken is to construct a unified policy and procedures document for both Councils. We discussed the best approach and it was felt that the style of the West Devon document was probably the best to adopt, and that the content should seek to adopt the best from each existing document.

See recommendation

Central Record of Authorisations.

26. At West Devon BC this document has remained in the same format since 2003. It is fully compliant with the *Code of Practice for Covert Surveillance and Property Interference (8.1)* but would benefit from the inclusion of details of reviews. A similar record would be appropriate for South Hams DC.
27. Such a Central Record would benefit from being set up in spreadsheet format which would make it an excellent tool for quality control and oversight by both the *RIPA Co-ordinating Officer* and the SRO.
28. The Councils should decide whether to retain separate Central Records of Authorisations as at present, or whether to set up a single document to cover both Councils. In any event it would be appropriate to retain the files of authorisations and ancillary documents separately for each Council. If a decision is taken to create a unified spreadsheet Central Record then the Council for which an authorisation is granted should be recorded against each grant.

See recommendation

Elected Members

29. Elected Members have a responsibility to ensure that the policy and procedures for *RIPA* adopted by the Council are compliant with the legislation and regulatory framework and are fit for purpose. To enable them to adequately discharge these responsibilities information is required to be placed before them which will enable them to make appropriate decisions.
30. The *Codes of Practice* recommend that quarterly and annual reports should be prepared for Councillors. Such reports are presently

prepared by West Devon DC. These may contain statistical information about the numbers and types of authorisations granted, and will indicate the granting departments and the areas of work affected. An annual report should go to the Council Members setting out any matter which may affect their considerations. However Councillors must not be involved in individual authorisations and should not be given information from which it may be possible to identify persons subjected to covert surveillance.

Noise Nuisance

31. Mr. Bollens indicated that, following the failure of a letter to a perpetrator producing a reduction of the disturbances, the Councils used Matron equipment to record noise nuisance. Such equipment, either before the operator switches it on or after it is switched off, does have the facility to pre and post record noise for short periods. Warning was given that such would amount to *intrusive surveillance* unless the householder operator was told of the facility beforehand. Local authorities are not empowered to undertake *intrusive surveillance*. However it was the personal experience of Ms. Bowen that such warnings were given.
32. Similarly the capacity of such machines to record low level speech could also give rise to *intrusive surveillance* and must be avoided.

Covert Human Intelligence Sources (CHIS)

33. West Devon BC has never employed and is unlikely to employ a CHIS. The position is similar at South Hams DC. Nevertheless the requirement to manage a CHIS sometimes arises unexpectedly and the Councils must be prepared for such an eventuality. At present no officer is trained specifically for this purpose. It would be advisable to identify appropriate officers and to particularly invite the anticipated professional trainers to address this issue in future training

See recommendation

Conclusions

34. West Devon BC has not been a user of covert surveillance and is satisfied that, for its purposes, overt means of investigation are adequate. However it has to be in a state of preparedness since it has been given the right to use RIPA procedures to protect the Council from the possible legal consequences of such conduct. It has officers who understand RIPA and who are ensuring that the Council would be RIPA compliant if it resorted to covert surveillance.
35. Officers have been shared for some time with South Hams DC and this arrangement has been turned into a full fusion of administrative services. This will now be followed by a single RIPA management

system and policy and procedures covering both Councils. Officers appointed to *RIPA* roles will act for both Councils. This will involve some fresh training and the appointment of *RIPA* officers common to both Councils. The *SRO* has already been appointed. This is an interesting and challenging development which should be for the benefit of both Councils.

36. There will continue to be a need to be vigilant that unauthorised covert surveillance is not occurring, and the *RIPA Co-ordinating Officer* must recommence the practices designed to raise *RIPA* awareness in the Council.
37. The *SRO* and *RIPA Co-ordinating Officer* must act robustly in undertaking their oversight and quality control functions.

Recommendations

38.
 - I. West Devon BC together with South Hams DC should reconstruct their *RIPA* management systems to produce a unified system suitable for the purposes of both Councils, and the *SRO* and the *RIPA Co-ordinating Officer* should exercise robust oversight and quality control. ((paragraphs 11 to 15 and 28)
 - II. Authorising officers should be appointed sufficient to authorise for both Councils. (paragraph 19)
 - III. Training of all officers who may be involved in the *RIPA* process should be undertaken in the near future. This should include training of officers who could have specific *CHIS* responsibilities. Thereafter regular refresher training should occur at about eighteen monthly intervals. (paragraphs 22 and 33)
 - IV. A unified policy and procedures document should be produced to cover both West Devon BC and South Hams DC future requirements. (paragraph 25)

His Honour Norman Jones, QC.
Assistant Surveillance Commissioner.