



Investigatory Powers
Commissioner's Office

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Dear Chief Executive,

Remote Inspection of Torridge 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.

Due to the ongoing Coronavirus pandemic your authority was recently subject to a remote inspection by one of my Inspectors, Mr. Paul Donaldson. The documentation and arrangements necessary for my Inspector to carry out the process was provided by Ms. Staci Dorey, Head of Legal and Governance and Monitoring Officer, who acts as your Senior Responsible Officer (SRO). This enabled an examination of all relevant policies and one of the three directed surveillance authorisations granted since the last inspection in September 2017. Ms. Dorey made herself available to be interviewed via video conferencing, and from the documentation examined and the information provided during the interview, the level of compliance shown by your authority removes, for the present, the requirement for a physical inspection.

At the last inspection your authority was not subject to any recommendations, and the inspection report largely outlined positive practice in place within the Council. It pleases me that this trend has continued and once more, no recommendations are made as a result of this remote inspection, although Mr. Donaldson has made some observations which mainly serve to encourage you to maintain good practices and to offer advice on the authorisation process attached to directed surveillance.

My Inspector has commented favourably on your *Corporate Surveillance Guide* which was last updated in November 2018 incorporating the changes brought about by the introduction of the revised Codes of Practice in August 2018. The document is comprehensive, providing detailed guidance to those involved in potential RIPA activity as well as clearly directing staff to the Senior Solicitor to seek assistance if necessary. The guide at section 14 very helpfully outlines a process to be applied in cases where covert activity may be considered necessary but incapable of being afforded the protection of RIPA. These types of situation can quite easily be envisaged in areas such as Social Services and Public Protection and commonly may involve the use of the internet for the research of open source material and social media platforms. This type of activity attracts the risk of interference with the Article 8 Rights of citizens, and the process you have in requiring the completion of a *Non-RIPA Form* which still addresses the necessity and proportionality of the activity is considered good practice. This is exactly the type of process envisaged by the Investigatory Powers Tribunal (IPT) in *BA & others v Chief Constable of Cleveland IPT/11/129/CH (13 July 2012)*, who commended that maintaining a documented record and audit trail of such covert activity would reduce the risk of there being a disproportionate use of covert surveillance, and help ensure legitimate aims are being pursued.

The document contains guidance at section 7 on Social Networking Sites, which quotes directly from paragraphs 3.10 to 3.15¹, and would benefit from signposting practitioners to the helpful examples that are provided in paragraph 3.15 and in the following two paragraphs. There are also relevant sections within the *Code of Practice on Covert Human Intelligence Sources* at 4.11 to 4.17 which would be worthwhile including within your document and from staff being signposted to the scenario examples contained therein. It is important that employees are reminded of the obligations public authorities have to the Article 8 Rights of individuals, and of the need to demonstrate legitimate and proportionate reasons for carrying out online research. In discussion with the SRO it was clear she is conscious of these dangers and is keen to ensure there is a wider awareness of the potential issues within your authority.

RIPA permits your authority to recruit and authorise CHIS, and whilst there appears to be no real appetite for their use, your guide outlines the principles and rules governing this tactic. It is important that staff are sufficiently knowledgeable to be conscious of situations where potential considerations of CHIS may be necessary. Some good examples of situations are described in paragraphs 2.18, 2.23 and 2.25², the highlighting of which within your policy would benefit staff who may interact with members of the public who offer information, particularly those who may do so repeatedly, and where it may be necessary for them to give some consideration to the guidance within the code of practice.

Helpful guidance is provided at Section 6 around the acquisition of communications data, but this section requires to be updated to highlight the changes brought about by Section 73 of the Investigatory Powers Act 2016 which enables local authorities to acquire additional data from communications service providers.

I also acknowledge the process you have in place to report to Elected Members in accordance with paragraphs 4.47³ and 3.30⁴ which involves regular reporting of RIPA activity to the Audit and Governance Committee, and when necessary to the Full Council Meeting.

¹ Home Office Code of Practice, Covert Surveillance and Property Interference, Revised August 2018

² Home Office Code of Practice on Covert Human Intelligence Sources, Revised August 2018

³ Home Office Code of Practice, Covert Surveillance and Property Interference, Revised August 2018

⁴ Home Office Code of Practice on Covert Human Intelligence Sources, Revised August 2018

Mr. Donaldson examined one directed surveillance authorisation and found it to be generally of a good standard with both the applicant and Authorising Officer dealing well with the requisite elements of necessity, proportionality and collateral intrusion and applying specific considerations to the type of activity and nature of the surveillance deployment. He has made the following observations and I direct your attention to the issue raised around the requirements in relation to reviews and cancellations:

1. Applicants provided good and specific considerations around necessity, proportionality and collateral intrusion.
2. Regular reviews should be undertaken to assess continued justification against necessity and proportionality. At the review stage details should be provided as to the nature of the tactics deployed and if any information obtained as a result has had any benefit to the investigation, as per paragraphs 4.34 to 4.37⁵.
3. The Authorising Officer explicitly detailed the surveillance activity being authorised in line with paragraph 4.8⁶ and the obligations laid down by *R v SUTHERLAND*⁷.
4. The Authorising Officer outlined clearly their considerations attached to proportionality and collateral intrusion and provided some commentary around the management of collateral intrusion.
5. Authorising Officers are directed to the requirement to ensure their authorisations are maintained in accordance with paragraphs 5.22 to 5.24⁸ and Chapter 9 of the code of practice. Cancellations should provide detail on what activity has been undertaken, the type and extent of the product and material obtained, and how it is to be managed, with the Authorising Officer providing some direction or instruction for its management.

I note that since the last inspection one training session has been delivered, in November 2018 from an external provider, which I suspect would have come at a financial cost. Whilst I am aware that the usage of covert powers within your authority is low, I must emphasise the importance of ensuring staff are appropriately trained should the need arise to authorise and carry out covert activity. Given that your SRO's attitude to training and oversight is strong, I am confident Ms. Dorey will seek to ensure a programme of training is delivered to maintain knowledge levels and general RIPA awareness.

I am aware that you have received my letter dated 3rd August 2020 outlining IPCO's Data Assurance Programme and that your guidance policy contains two distinct sections to cover safeguarding and the retention, review and disposal of material obtained through covert activity. The guidance provided takes appropriate account of the relevant chapters within each of the *Home Office Codes of Practice on Covert Surveillance and Property Interference and Covert Human Intelligence Sources*.

I am very pleased to report there being suitably strong governance processes in place within your Council to ensure compliance with the legislation and codes of practice, and that some good practice has been identified. I would highlight the observations made herein are designed to assist your organisation and enable your staff to be more efficient in their respective roles whilst applying the legislation to covert investigative techniques.

I note your authority is registered with the services provided by the National Anti-Fraud Network (NAFN), and that practitioners are aware of the changes brought about by the Investigatory Powers Act 2016, allowing additional data to be acquired which may provide added investigative benefit.

⁵ *Home Office Code of Practice, Covert Surveillance and Property Interference, Revised August 2018*

⁶ *Home Office Code of Practice, Covert Surveillance and Property Interference, Revised August 2018*

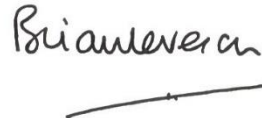
⁷ *R v SUTHERLAND (2002) EW Misc 1 (EWCC)*

⁸ *Home Office Code of Practice, Covert Surveillance and Property Interference, Revised August 2018*

I hope that you find the outcome of this remote inspection helpful and constructive, and my Office is available to you should you have any queries following the receipt of this letter, or at any point in the future. Contact details are provided below. I shall in any case, be interested to learn of your proposed response to any of the observations made within this letter.

The Inspector would like to thank Ms. Staci Dorey for her enthusiastic engagement with the remote inspection process, and for providing the necessary documentation to enable it to be achieved.

Yours sincerely,



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