



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner
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11th September 2013

Dear Mr. Nuttall,

Covert Surveillance

On 4th September 2013, an Assistant Surveillance Commissioner, Sir David Clarke, 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 Sir David's report which I endorse. Your RIPA usage is now very light. You have a good training programme, with a record of attendance, a sound RIPA structure and knowledgeable, committed senior officers

The single recommendation is that your Policy be further revised as indicated in Paragraphs 12 and 13 of the report

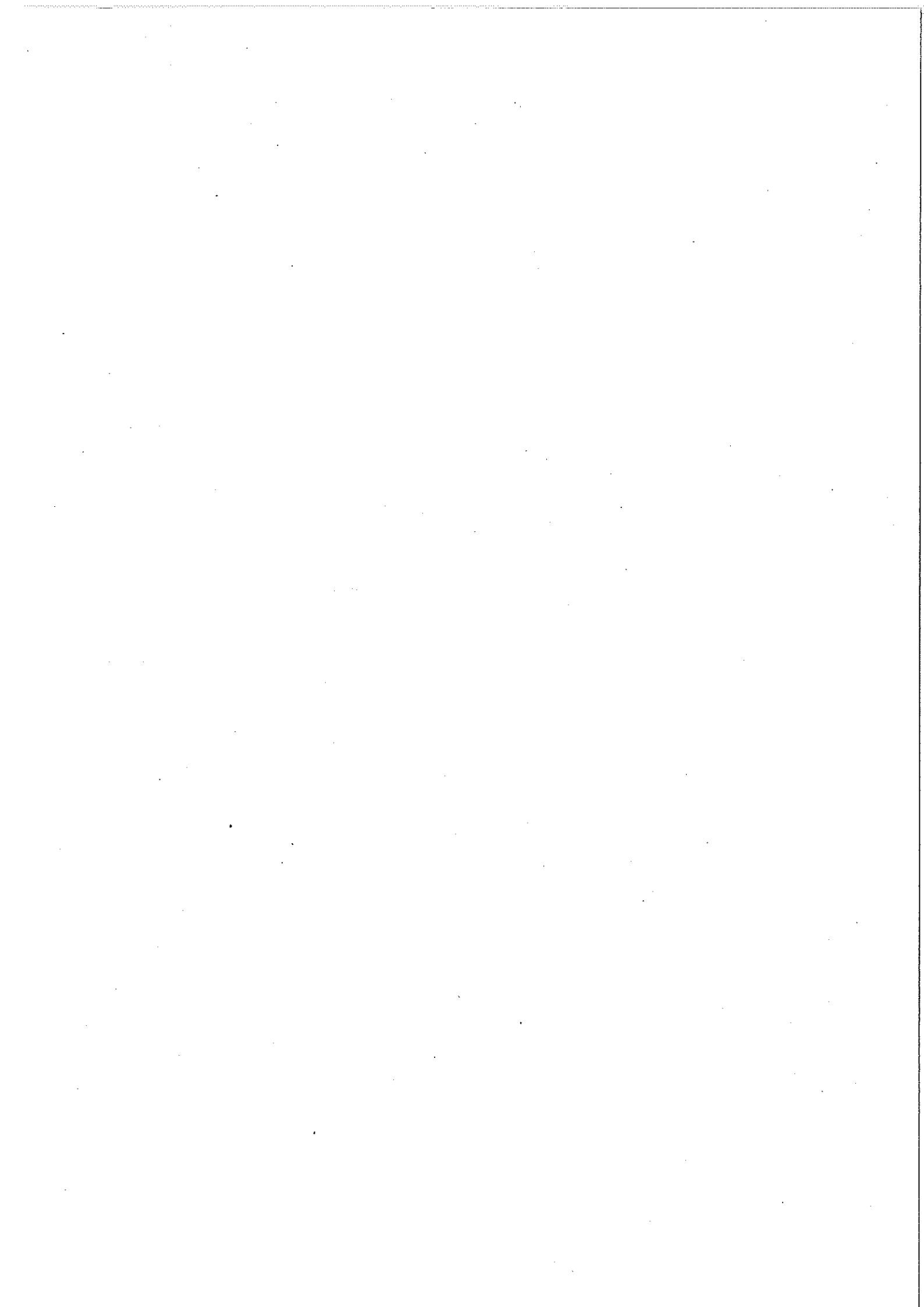
I shall be glad to learn that your Council accepts the recommendation and will see that it is implemented.

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 Mike Nuttall
Chief Executive
South Ribble Borough Council
The Civic Centre
West Paddock
Leyland
Lancashire PR25 1DH



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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

South Ribble Borough Council

4th September 2013

**Assistant Surveillance Commissioner:
Sir David Clarke.**

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The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

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Office of Surveillance
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Chief Surveillance Commissioner
Office of Surveillance Commissioners,
PO Box 29105,
London,
SW1V 1ZU

4th September 2013

SOUTH RIBBLE BOROUGH COUNCIL

INSPECTION REPORT

Inspection date 4th September 2013

Inspector Sir David Clarke
Assistant Surveillance Commissioner

Introduction

1. The Council (SRBC) is a district council with borough status, serving a mixed urban and rural population of some 110,000 in Lancashire. The principal population centres are Leyland and the suburbs of Preston lying south of the river Ribble.
2. The most recent OSC inspection of SRBC was conducted by His Honour Norman Jones QC, Assistant Surveillance Commissioner, on 7th October 2010. I attended as an observer, so it was a pleasure to be welcomed back on this occasion.
3. The senior corporate management structure is essentially unchanged since the last inspection, but some financial and other services are now shared with the neighbouring Chorley Borough Council. These shared services do not yet include any activities which potentially involve usage of RIPA powers. The Chief Executive is Mike Nuttall, whose address is The Civic Centre, West Paddock, Leyland, Lancashire PR25 1DH.
4. SRBC is now a very sparing user of its RIPA powers, having granted no directed surveillance authorisations since the last inspection. Only two had been made in the period of three years since the inspection by Lord Colville in 2007.

Inspection

5. I carried out the inspection on 4th September 2013 at the Civic Centre. I met the following council officers:

- Maureen Wood, Director of Corporate Governance, Monitoring Officer to the Council;
 - Denise Johnson, Director of Regeneration and Healthy Communities;
 - David Whelan, Legal Services Manager.
6. All three officers participated in the 2010 inspection. Mrs Wood and Mr Whelan, as well as Mr Nuttall in his then post as a Corporate Director, also took part in 2007 when RIPA usage was much more frequent. This continuity of senior personnel is of value in maintaining RIPA awareness across the council.
 7. The inspection took the form of a discussion, primarily with Mr Whelan, of SRBC's RIPA management, policy and procedures, the designated authorising officers (AOs), training, and SRBC's responses to the 2010 recommendations. With no RIPA authorisations to be examined, the focus of my inspection was to ensure that RIPA awareness is maintained and that the necessary structure and procedures are in place if and when the need arises. When we were joined by Mrs Wood and Ms Johnson, the discussion was widened to RIPA usage, training and the impact of the recent legislative changes and guidance.
 8. I am grateful to all concerned, particularly Mr Whelan who made the arrangements and provided material in advance, for their helpful cooperation.

RIPA Structure

9. SRBC's *Policy Statement on RIPA (the Policy)* is, as Mr Norman Jones reported in 2010, a clear, thorough and useful document. It was amended in accordance with his recommendations, and has recently been updated to include the legislative changes of 2012, including the procedure and flowchart for obtaining judicial approval from a magistrate. All this work has been done to a high standard by Mr Whelan and a colleague.
10. I was pleased to see a useful new section on the approach to be adopted in investigating social networking sites, drawing attention to the need for directed surveillance authorisation or – if a relationship is to be established by, for example, asking to become a “friend” – a CHIS authorisation. I indicated that the OSC's Procedures and Guidance document may cover this topic in more detail in the next edition.
11. I made suggestions for some minor improvements to the *Policy*, which were noted by Mr Whelan and require no formal recommendation. Two points are of more substance.
12. The *Policy* accurately quotes the statutory definition of a CHIS, adding that a member of the public giving information will not generally be regarded as a CHIS. This is correct as far as it goes, but a member of the public giving information will be a CHIS if the information which he covertly passes to the authority has been obtained in the course of (or *as a consequence of the*

existence of)¹ a personal or other relationship. See paragraph 2.22 of the CHIS Code of Practice, and paragraph 270 of OSC Procedures and Guidance 2011, which refers to the risk of “status drift”. 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. This needs to be made clear in the *Policy* and in the training which officers receive. There should be a standard instruction to obtain legal advice before acting on the information received from such an informant.

13. Secondly, the *Policy* should also be revised to remove references to urgent oral authorisations, which are no longer within the power of local authorities.²

See recommendation

14. Mrs Wood is SRBC’s RIPA Senior Responsible Officer (SRO), and Mr Whelan continues to act as RIPA Monitoring Officer as at the last inspection³. In the event of RIPA usage he will maintain the central record and be custodian of the RIPA forms. As recommended in 2010, only the latest version of RIPA forms will be used in any future authorisations. The number of AOs has been held at three, plus the Chief Executive in the case of juvenile or vulnerable CHIS or for confidential information authorisations. This is good practice. I made the point that AOs are not in law, and should not be in practice, limited to considering applications from within their own directorates.
15. We discussed the Home Office Guidance on obtaining judicial approval, particularly paragraph 43 which suggests that the investigator should attend to make the application and deal with the magistrate’s questions. Since it will be the AO’s decision which is under review, logically the AO should attend. This will be considered on a case-by-case basis, when it arises.

RIPA usage

16. RIPA usage is now extremely very light. No authorisations were made in benefit fraud investigation, most being conducted jointly with DWP who take the lead. Much of the earlier RIPA activity was against noise nuisance, but monitoring equipment is now used only after clear warnings are given and there is no likelihood of private information being obtained.
17. We also discussed the potential use of covert surveillance without RIPA authorisation, though this is strictly outside the remit of an OSC inspection. Contrary to a common misunderstanding, local authorities are not prohibited

¹ RIPA, section 26(8)(c)

² Protection of Freedoms Act 2012, Schedule 9, Part 3, paragraph 9(2), amending RIPA s.43 by adding subsection (1A)

³ To avoid confusion, I generally prefer the designation “RIPA Coordinator”, but there appears to be no risk of confusion in the case of SRBC

by law from such non-RIPA surveillance, for example in non-criminal investigations falling outside the core functions of a local authority, undertaken for disciplinary reasons or to enforce contract compliance. In future its use may also be considered in cases of criminal or quasi-criminal investigations which do not pass the new serious crime threshold. In some authorities a non-regulated surveillance authorisation form, adapted from the standard RIPA forms, is provided for use in such cases. Whereas covert activity authorised outside RIPA does not have the protection which RIPA provides, a carefully structured and documented decision, made with full regard to human rights considerations, should strengthen resistance to any challenge.

Training

18. SRBC maintains a good RIPA training programme and keeps attendance records. In August 2013 a training session was held for investigators working in all relevant departments, and separate training sessions have been arranged for the AOs. I was provided with the training materials, which are clear and accurate. Mr Whelan also updates relevant staff regularly on any relevant changes in law and practice.

CCTV

19. I did not visit the CCTV installation on this occasion. The CCTV arrangements are unchanged since the 2010 inspection, at which they were reported as satisfactory.

Conclusions

20. As at the 2010 inspection which I attended, I found knowledgeable, committed and conscientious senior officers and a sound RIPA structure. The arrangements for training and the updating of the *Policy* are commendable, in an authority which makes so little use of its RIPA powers but in which it is essential that RIPA awareness is maintained.

21. I therefore make the following single

Recommendation

That SRBC's RIPA Policy be further revised in accordance with this report

David Clarke
Assistant Surveillance Commissioner