

# Taunton Deane Borough Council

## Corporate Governance Committee – 18 September, 2017

### Regulation of Investigatory Powers Act (RIPA) 2000 – Update Following Inspection

This matter is the responsibility of the Leader, Councillor John Williams

Report Author: Bruce Lang, Assistant Chief Executive

#### 1 Executive Summary

- 1.1 In accordance with normal procedure the Office of Surveillance Commissioners undertook an inspection of the Council's management of covert activities in respect of the Regulation of Investigatory Powers Act 2000 in June/July, 2017.
- 1.2 This report outlines the outcome from the inspection and seeks endorsement of the actions proposed.

#### 2 Recommendations

**2.1 That the Committee note the positive outcome of the Inspection by the Office of Surveillance Commissioners and that no formal recommendations were made;**

**2.2 That the Committee support the ongoing provision of appropriate training relating to the RIPA process**

#### 3 Risk Assessment

##### Risk Matrix

Description	Likelihood	Impact	Overall
If the RIPA policy is not up to date/ officers appropriately trained, the Council may not comply with its responsibilities under the act and could face a legal challenge	4	4	16
<i>The Council keeps its processes up to date and provides relevant training.</i>	2	4	8

## **4 Background and Full details of the Report**

- 4.1 As members may be aware, every three years Councils are inspected by the Office of Surveillance Commissioners to review the arrangements that are in place in regard to the authority's management of covert activities under the powers conferred by RIPA.
- 4.2 The Council were last inspected in 2014 and previously such inspections involved a site visit by an appointed inspector followed by a written report. This time round, in an attempt to reduce bureaucracy and cause the least possible disruption to local councils who are infrequent users of the powers under RIPA, the option was provided to have the inspection undertaken by way of a desk top assessment of compliance and progress on previous recommendations based on the completion of a questionnaire and examination of relevant documentation.
- 4.3 It was therefore decided to adopt this time saving option; in addition, the Surveillance Commissioners offered to undertake a combined inspection/report for Taunton Deane Borough and West Somerset Councils to save additional work and reflect that the respective policies in this matter were already aligned and the same officers were involved for both authorities. The Assistant Chief Executive, as Senior Responsible Officer for the RIPA processes for both Councils, duly completed questionnaires on behalf of the two authorities and submitted them to the appointed Inspector at the beginning of June, 2017, together with supporting documentation.
- 4.4 A copy of the covering letter subsequently received from the Rt Hon Lord Judge, the Chief Surveillance Commissioner, together with a copy of the Inspector's Report compiled by Mr Alex Drummond, is attached as Appendix A to this report.
- 4.5 It can be seen that the report was very positive, concluding that all recommendations from the previous inspection had been addressed and could be discharged. Most significantly, there were no formal recommendations made. There are some very minor alterations to wording relating to detail in the policy document that have been agreed to be made with the Inspector's guidance.
- 4.6 Notwithstanding this, it is important not to be complacent and recognise that the requirement for appropriate RIPA training is ongoing and hence this must not be lost sight of to ensure that the Council maintains its state of readiness to be able to properly apply its RIPA powers should they be required at some stage in the future. It is also suggested that some form of annual RIPA progress report is made to members even if it is only to confirm no changes of action has been taken under this act as a matter of information to note.

## **5 Links to Corporate Aims / Priorities**

- 5.1 There are no direct links to the Council's Corporate Aims; the matter relates to a statutory duty of the authority.

## **6 Finance / Resource Implications**

- 6.1 The only financial implications in this report would relate to any costs associated with the provision of ongoing training.

## **7 Legal Implications**

7.1 A Council must ensure that it follows its procedures set out in its RIPA Policy and that such policy is up to date. A failure to do so could lead to a legal challenge.

## **8 Environmental Impact Implications**

8.1 There are no environmental implications in regard to this report.

## **9 Safeguarding and/or Community Safety Implications**

9.1 There are no community safety implications in this report, although there will be community safety implications in assessing any authorisations under this policy.

## **10 Equality and Diversity Implications**

10.1

- *The three aims the authority must have due regard for are:-*
- *Eliminate discrimination, harassment, victimisation;*
- *Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- *Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

10.2 The application of the RIPA Policy must be undertaken in such a way to ensure that the human rights of individuals are taken into account.

## **11 Social Value Implications**

11.1 There are no social value implications in regard to this report.

## **12 Partnership Implications**

12.1 There are no partnership implications in regard to this report although the application of the policy may involve working with partners.

## **13 Health and Wellbeing Implications**

13.1 *Demonstrate that the Council has given due regard to:-*

- *People, families and communities taking responsibility for their own health and wellbeing;*
- *Families and communities are thriving and resilient; and*
- *Somerset people are able to live independently.*

13.2 The application of the RIPA Policy must be undertaken in such a way to ensure that the health and wellbeing of affected individuals are taken into account.

## **14 Asset Management Implications**

14.1 There are no asset management implications in regard to this report.

## **15 Consultation Implications**

15.1 There are no consultation implications in regard to this report.

**Democratic Path:**

**Corporate Governance Committee – Yes**

**Reporting Frequency :**  Once only  Ad-hoc  Quarterly

Twice-yearly  Annually

**List of Appendices**

Appendix A	Letter from the Chief Surveillance Commissioner and Inspector's Report
Appendix B	
Appendix C	

**Contact Officers**

Name	Bruce Lang	Name	
Direct Dial	01984635200	Direct Dial	
Email	bdlang@westsomerset.gov.uk	Email	



CHIEF EXECUTIVE  
TAUNTON DEANE & WEST SOMERSET

- 2 AUG 2017



Chief  
Surveillance  
Commissioner

**Official -Sensitive**

**26 July 2017**

### OSC Inspection

Dear *Chief Executive,*

I enclose a copy of the report dated 10 July 2017 prepared by Mr Alex Drummond, Surveillance Inspector, following his inspection of the arrangements made by both Councils to secure compliance with the statutory provisions which govern the use of covert surveillance. The report was prepared on the basis of material sent to Mr Drummond for his examination. There was no personal visit to either Council.

I have studied the report and endorse it. Nothing in the report suggests to me that a personal visit is necessary, but if such a visit might be thought helpful, appropriate arrangements can readily be made.

The reality is that neither Council has ever made more than minimal use of its statutory powers, and they have not been used at all since the last inspections in June and in July 2014. This broad policy is unlikely to change. The real question therefore is whether the arrangements currently in force are adequate to cater for an unanticipated occasion when it becomes necessary for the powers to be used.

Following the last inspections two identical recommendations were made to each Council. The first recommendation related to training, the second, to amendment to the Policy document, in effect to update it, in particular in relation to investigative use of social media sites and Internet.

These recommendations have all been addressed and can be discharged. The training arrangements have been sufficient, but, for the avoidance of doubt, I emphasise that they should be seen as an ongoing requirement. Attention has been paid to the use of social media sites in the Policy documents, and particular attention should be paid in the course of training to underlining that there are circumstances in which such use may engage the legislation. Paragraph 11.1 the report underlines the importance of vigilance about this issue. Beyond these observations, it is commendable that the Policy documents have continued to be updated and that these would provide a satisfactory reference point in the event that the legislative powers came to be used.

There are no specific recommendations. The report is a positive one, reflecting credit on Mr Bruce Lang, the SRO.

From the point of view of the OSC, the creation of a new combined Council, should sensibly resulting a single Policy and procedure document.

Yours sincerely,



The Rt Hon Lord Judge  
Chief Surveillance Commissioner

Penny James  
Chief Executive  
Taunton Deane Borough Council and West Somerset District Council  
The Deane House  
Belvedere Road  
Taunton  
Somerset TA1 1HE



Office of Surveillance  
Commissioners

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Taunton Deane Borough Council  
And West Somerset District Council

July 2017

Surveillance Inspector:  
Mr Alex Drummond





## **OFFICIAL- SENSITIVE**

### DISCLAIMER

This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

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.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

The report is sent only to the recipient of the Chief Surveillance Commissioner's letter (normally the Chief Officer of the authority inspected). Copies of the report, or extracts of it, may be distributed at the recipient's discretion but the version received under the covering letter should remain intact as the master version.

The Office of Surveillance Commissioners is not a public body listed under the Freedom of Information Act 2000, however, requests for the disclosure of the report, or any part of it, or any distribution of the report beyond the recipients own authority is permissible at the discretion of the Chief Officer of the relevant public authority without the permission of the Chief Surveillance Commissioner. Any references to the report, or extracts from it, must be placed in the correct context.

**OFFICIAL - SENSITIVE**





**OSC/INSP/075**

The Rt. Hon. Lord Judge  
Chief Surveillance Commissioner  
Office of Surveillance Commissioners  
PO Box 29105  
London  
SW1V 1ZU

10<sup>th</sup> July 2017

**OSC INSPECTION - TAUNTON DEANE BOUROUGH COUNCIL and  
WEST SOMERSET DISTRICT COUNCIL**

**1 Inspector**

Alex Drummond

**2 Introduction**

- 2.1 Taunton Deane Borough Council (TDBC) serves a population of some 111,000 people across a mixed rural and urban area of some 463 square kilometres extending from the Somerset Levels along the River Tone, with the Quantock Hills to the north and Blackdown Hills to the South. The main centres of population are Taunton and Wellington.
- 2.2 West Somerset District Council (WSDC) covers a largely rural area of some 726 square kilometres, bordering the Bristol Channel and serves a population of around 35,000. The main population centres run along the 'Coastal Strip' which stretches from Minehead, through Watchet and Williton to the north, and Porlock to the south. The area also includes part of Exmoor, Dulverton, Hinkley Point and Dunster.
- 2.3 Since early 2014 both Councils have shared a Chief Executive and Senior Management Team, who work closely with both sets of Council Leaders, elected Members and relevant partnerships to deliver the corporate priorities for each authority. The shared Chief Executive is Penny James who is supported by three Directors and an Assistant Chief Executive and Monitoring Officer who also acts as the Senior Responsible Officer (SRO) for matters relating to the Regulation of Investigatory Powers Act 2000 (RIPA).
- 2.4 In March 2017 the Councils made a joint submission to the Secretary of State for Communities and Local Government seeking agreement to the creation of a new Council covering the existing TDBC and WSDC areas, which if accepted would probably come into being at the next local government elections in May 2019.

- 2.5 The Councils are also embarking on an ambitious transformation programme which will take place over the next two years, which, regardless of the proposed merger outcome will look at technology and working practices to improve the customer experience.
- 2.6 The shared SRO, Bruce Lang, has provided the comprehensive questionnaire response and supporting policies and documentation on behalf of each Council from which this report has been compiled. Following the last inspections of the Councils in 2014, each adopted a near identical policy and procedure document as it was recognised that the same shared officers are responsible for the RIPA procedures in both Councils. In line with that progression the OSC inspections for 2017 have been combined within a single report.
- 2.7 This report provides an evaluation of compliance, policies, procedures, operations and administration in respect of the Councils' use of directed surveillance and covert human intelligence sources (CHIS).
- 2.8 The address for correspondence is The Chief Executive, The Deane House, Belvedere Road, Taunton, Somerset, TA1 1HE. Or by email to [BLang@westsomerset.gcsx.gov.uk](mailto:BLang@westsomerset.gcsx.gov.uk)

### 3 Progress against Recommendations

- 3.1 TDBC was last inspected in July 2014 when two recommendations were made:
- i. RIPA training should continue to be formally delivered to Council staff who are likely to engage the legislation, to ensure it can be applied to an appropriate standard. This should be considered as ongoing professional development.*
- Completed** – Regular training has been provided attended by the SRO, Authorising Officers and Applicants.
- ii. The Policy / Guidance document should be further amended as detailed in the report*
- Completed** - Amended as required.
- 3.2 WSDC was last inspected in June 2014 and two formal recommendations were made:
- i. RIPA training should continue to be formally delivered to Council staff who are likely to engage the legislation, to ensure it can be applied to an appropriate standard. This should be considered as ongoing professional development.*

**Completed** - Regular training has been provided attended by the SRO, Authorising Officers and Applicants.

- ii. *The Policy / Guidance document should be further amended as detailed in the report.*

**Completed** - Amended as required.

#### **4 RIPAStructure and Policy**

- 4.1 TDBC nor WSDC have been prevalent users of the powers available under RIPA. Neither Council has granted an authorisation for directed surveillance within the last ten years, nor had a requirement to ever utilise the role of a CHIS.
- 4.2 Despite the infrequent use, the Councils have maintained comprehensive policies and procedures for the application, authorisation and oversight of directed surveillance and use of CHIS. The policies have been regularly updated since the last OSC inspection including the observations that were made during those assessments and provide useful guides and sources of reference.
- 4.3 The policy documents provide a straightforward explanation on the principles of RIPA and Human Rights, followed by an overview of the requirements set out by the legislation. They include instructions that should be followed by officers making an application and explain the responsibilities of the Authorising Officer. Both policies direct readers to seek further information from the relevant Codes of Practice and the OSC Procedures and Guidance document for which hyperlinks are provided in the electronic version.
- 4.4 A section was added to both policies following the 2014 recommendations to provide guidance to investigators on the investigative use of the Internet and social media. Although adequate for a basic awareness, this section would now benefit from being updated and enhanced with the latest guidance from the OSC, as circulated by the Chief Surveillance Commissioner to local authorities in March 2017. This guidance was disseminated across both authorities on receipt, however, it would be advisable to adopt the main principles of that message into the formal RIPA policies to ensure future awareness and compliance is maintained. These points were discussed with the author of the policies during the inspection process and are being actioned.
- 4.5 Any application for activity under RIPA and the subsequent authorisation would be completed in hard paper copy with the details and a unique reference number held on the electronic central record maintained by each Council, both of which contain all the information required by the Code of Practice.

## **5 Reports to Members**

- 5.1 Each Council policy requires that reports will be provided to the Corporate Governance Committee on a regular basis. The Senior Responsible Officer provides such a report following each OSC inspection to advise on the outcome and seek authority to implement any recommendations. As there has been no use of RIPA for over ten years no further reports have been provided, however, the SRO is currently considering whether to provide an annual return in any case, even if just to confirm there has been no use made of RIPA in the previous twelve months. A locally agreed protocol is also in place whereby the SRO would ensure that the Chairman and Vice-Chairman of the Committee and Executive Portfolio Holder are kept appropriately informed with regard to any potential and/or actual authorisations for undertaking covert surveillance .

## **6 The Protection of Freedoms Act 2012**

- 6.1 The requirement for endorsement of an authorisation by a magistrate under the Protection of Freedoms Act 2012 is included within the Council's RIPA policy, but there has not yet been a requirement to seek such endorsement.

## **7 Training**

- 7.1 Although the Council has not had cause to use its powers under RIPA since the last OSC inspection, it has continued to provide training and awareness commensurate with needs of the organisation. This has included guidance on the investigative use of the Internet and social media. Attendees have included the SRO, the cadre of Authorising Officers and applicants.

## **8 Directed Surveillance**

- 8.1 Although no recent use has been made of directed surveillance by either Council, if the procedures set out in the policy documents are followed by applicants and Authorising Officers it should result in authorisations that are granted in compliance with the legislation.
- 8.2 Neither Council possesses equipment designed specifically for covert surveillance but does have a small stock of equipment used overtly by Environmental Health officers for noise pollution control.

## **9 Covert Human Intelligence Sources (CHIS)**

- 9.1 The position of both Councils is that they are most unlikely to ever initiate the use or authorisation of a CHIS. Nevertheless, recognising they have a power to do so, and that staff must be able to recognise a

situation where such a source unexpectedly and unavoidably approaches an authority with information, the Councils have agreed basic procedures to manage a source in accordance with RIPA. The information provided within the policy document as to what constitutes a CHIS is acceptable for current needs, but further training would be required in areas such as risk assessment and steps to protect true identities of CHIS if the Council was ever to consider the use of this tactic.

## **10 CCTV**

10.1 WSDC have access to CCTV in the Minehead and Watchet districts with protocols in place should there be a requirement to use these overt systems for a covert purpose under an authorisation for directed surveillance. TDBC has no access to CCTV.

## **11 Conclusion**

11.1 Whether they remain as separate authorities with shared services or combine to form a new Council, TDBC and WSDC are unlikely to be more than occasional users of the powers available under RIPA. This may change if the need and opportunity to harness information available through the Internet continues to increase and the SRO should therefore remain vigilant as to the nature of all Internet and social media research being conducted across both Councils, not just that traditionally undertaken by investigation and enforcement teams.

11.2 The infrequent" use does not allow staff to become proficient and confident in the use of covert investigation powers, however, the SRO is clearly knowledgeable and passionate about his responsibilities and has ensured the policies in place, and the training delivered, has maintained a good state of 'readiness' for each Council. Consequently a follow up physical inspection is not considered necessary for either Council on this occasion.

11.3 Regardless of the outcome of the proposed merger, the use of a shared RIPA regime has not only reduced bureaucracy, it has brought consistency and more focus to training and emerging themes such as Internet investigation. It would now seem a natural progression to also adopt a single joint policy and procedure document.

## **12 Recommendations**

12.1 No recommendations are required for either Council.

*Alex Drummond*

**Surveillance Inspector**

