



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

OFFICIAL-SENSITIVE

11th June 2015

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Dear Mr Mehmet,

Covert Surveillance

On 21st May 2015, 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. I am pleased to see that the close working relationship between Mr Gary Williams, your RIPA SRO, and Miss Lisa Jones, your RIPA Co-ordinator, is maintaining a compliant RIPA structure, with a sound policy document and good refresher training. Following the recommendations will lead to further practical improvement

The recommendations are that your Policy document be further amended as indicated in paragraph 11 of the report and that, as in 2012, the matters identified in paragraph 21 to 24 be borne in mind and addressed through ongoing internal quality assurance and updated training as necessary.

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.

Gary to author please
M.

Yours sincerely,
Christopher Rose

Mr Mohammed Mehmet
Chief Executive
Denbighshire County Council
County Hall
Wynnstay Road
Ruthin
Denbighshire LL15 1YN

The solution is $y = \frac{1}{2}x^2 + \frac{1}{2}x + \frac{1}{2}$

Let $y = \frac{1}{2}x^2 + \frac{1}{2}x + \frac{1}{2}$
Then $y' = x + \frac{1}{2}$

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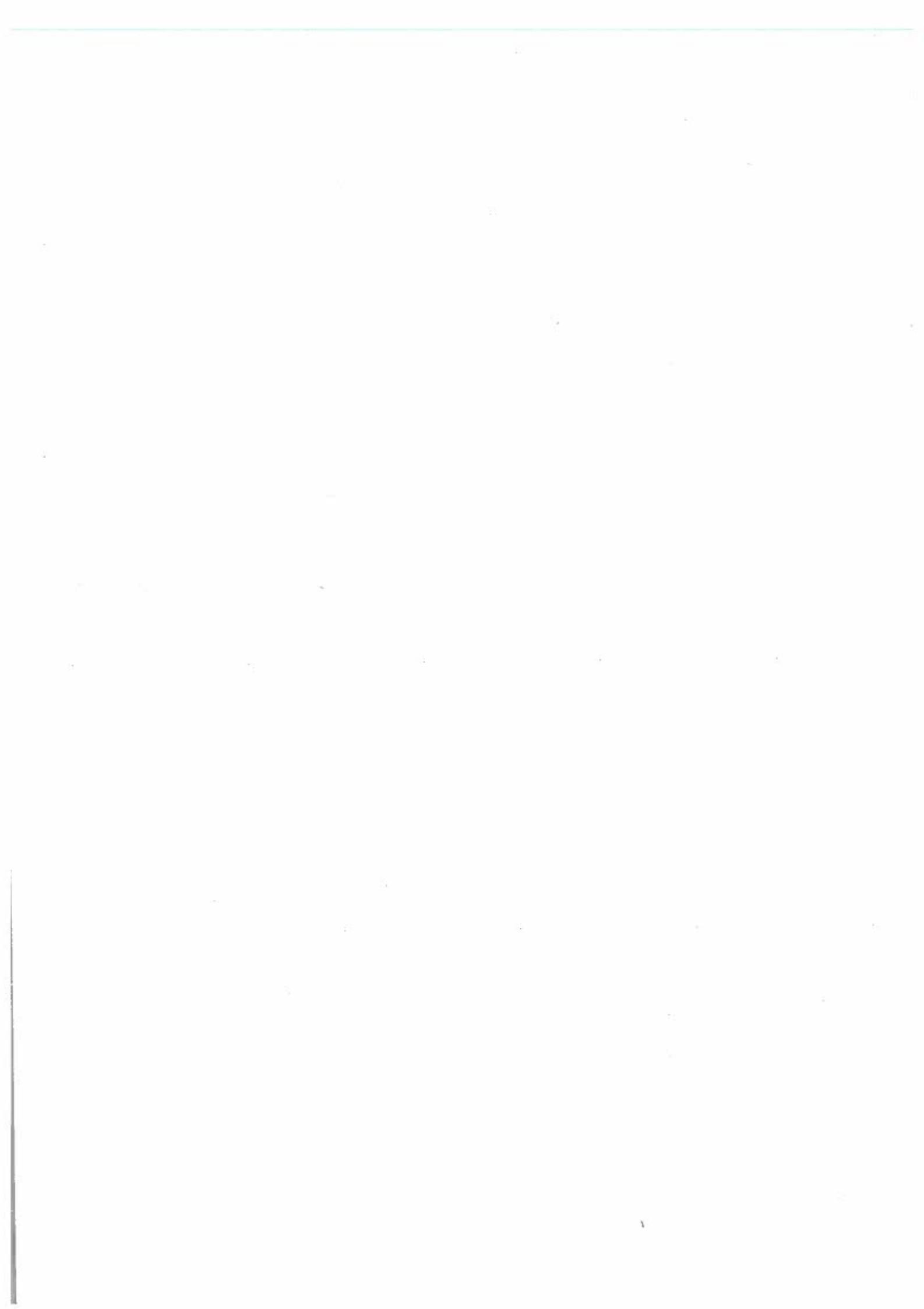
INSPECTION REPORT

Denbighshire County Council

21st May 2015

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

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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.

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Office of Surveillance
Commissioners

Office of Surveillance Commissioners,
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24th May 2015

DENBIGHSHIRE COUNTY COUNCIL

INSPECTION REPORT

Inspection date 21st May 2015

Inspector Sir David Clarke
 Assistant Surveillance Commissioner

Accompanied by Martin Andrew
 Surveillance Inspector (observing)

Introduction

1. The Council (DCC) is a unitary authority serving a population of some 95,000 across a wide area of North Wales from the coast at Rhyl to the Dee valley at Llangollen. The principal towns are Rhyl, Prestatyn, Rhuddlan, St Asaph, Denbigh, Ruthin, Corwen and Llangollen.
2. The senior corporate management structure is headed by the Chief Executive, supported by three Corporate Directors.¹ They, together with the Head of Legal, Human Resources and Democratic Services (Monitoring Officer) and the Head of Finance (s.151 Officer), form the Corporate Executive Team (CET).
3. The Chief Executive is Mohammed Mehmet, whose address is County Hall, Wynnstay Road, Ruthin, Denbighshire LL15 1YN.
4. The most recent OSC inspection of DCC was conducted by me on 14th June 2012.
5. DCC is a very sparing user of its RIPA powers, having granted one directed surveillance authorisation since the last inspection.

Inspection

¹ One corporate director has recently died. It is contemplated that he will not be replaced and that the number of corporate directors will be reduced to two

6. Accompanied by Mr Andrew, I carried out the inspection on 21st May 2015 at County Hall. We met the following council officers:
- Gary Williams, Head of Legal, Human Resources and Democratic Services, Monitoring Officer and RIPA Senior Responsible Officer (SRO);
 - Lisa Jones, Solicitor, Deputy Monitoring Officer and RIPA Coordinator;
 - Rebecca Maxwell, Corporate Director, Economic and Community Ambition, a RIPA Authorising Officer (AO);
 - Ian Millington, Public Protection Manager;
 - Graham Smith, CCTV Team Leader.
7. The inspection started with a discussion, with Mr Williams and Miss Jones, of DCC's RIPA management, policy and procedures, the designated authorising officers (AOs), training, and the actions taken on the recommendations in the last OSC report. We then inspected the Central Record and the single RIPA authorisation. We then held a round table discussion with all five officers about RIPA usage and practice.
8. I am grateful to all concerned, particularly Miss Jones who made the arrangements and provided the relevant documents in advance, for their helpful cooperation which greatly eased my task.

Response to recommendations

9. In my 2012 report I made three formal recommendations.

I. That DCC's Policy document be amended in accordance with paragraphs 12 and 13 of this report

This recommendation was heeded and is discharged.

II. That a single sequential Central Record of RIPA authorisations, with sequential URNs, be established and maintained.

This change has not been made, but all the necessary information is properly kept by Miss Jones and – with such minimal use of RIPA powers – the need for a single central record is no longer pressing. I am content to regard the recommendation as discharged.

III. That the issues raised in paragraphs 21-24 of this report be borne in mind for future cases and addressed through internal quality assurance and updated training as necessary.

With only a single authorisation to be examined, DCC's response to this recommendation cannot be fully assessed; however, it was not entirely satisfactory and the recommendation must remain extant.

RIPA Structure

10. DCC has an excellent *Corporate Policy and Procedures* document in place. It is clear, practical and sound. It was prepared by Miss Jones shortly before the 2009 OSC inspection. It annexes a useful quality assurance checklist which

Miss Jones completes for each authorisation, to provide feedback to applicants and AOs. The *Policy* has been kept updated, the latest revision having been made in early 2015.

11. The revised *Policy* includes most of the 2012 legislative changes, raising the threshold requirements for directed surveillance and introducing the magistrates' approval requirement for authorisations and renewals of directed surveillance and CHIS. However, all references to urgent oral authorisation should be removed, since this procedure is no longer available to local authorities.²
12. As to the magistrate's approval requirement, the *Policy* cites the Home Office's Guidance that the investigating officer should attend the hearing before the magistrate; I drew attention to paragraphs 291-292 of OSC Procedures & Guidance, expressing the Commissioners' view that the best officer to make the application is the AO, since it is his decision which the magistrate is called upon to approve.
13. At Miss Jones's instigation, a RIPA Working Group had been established before my 2012 visit, comprising nominated managers from each relevant department of DCC. This continues to meet periodically, and is clearly good practice, as is the practice of reporting regularly to the Corporate Governance Committee of the elected members.
14. The Central Record comprises pre-printed tabulated forms, completed in handwriting by Miss Jones. There is one sheet for each relevant department for each year, kept separately in each departmental section of the bulky file of RIPA authorisation papers. Though this is not a single accessible sequential central record of authorisations, it suffices for present purposes. With more usage, such a single sequential record would be advisable.
15. It continues to be DCC's RIPA policy that only members of the CET are designated as AOs. They are significantly higher in the hierarchy than the officers specified in SI 2010/521, and this gives some reassurance as to the quality of future authorisations.

RIPA usage

16. The single authorisation was made in 2013 in support of a juvenile test purchase operation. DCC, unlike some unitary and county councils, continues to comply with the guidance contained in OSC Procedures & Guidance, paragraph 243 (2014 edition), which is endorsed in the Code of Practice for Age Restricted Sales issued by the Better Regulation Delivery Office (BRDO). In discussion, attention was drawn to the language of the OSC guidance, stating that RIPA authorisation is *desirable* (rather than *mandatory*). I pointed out that the Commissioners are not law-makers and that the OSC does not provide formal legal advice; the decision of a public authority, as to whether OSC guidance is followed, is one for the public authority to make, taking its own legal advice as necessary and appropriate. As the BRDO Code

² OSC Procedures & Guidance, paragraph 294. This amendment to section 43 of RIPA was effected by SI 2012/1500

makes clear, a council which does not follow OSC guidance must justify itself to the OSC.

17. There has been no further RIPA usage in other areas of DCC's activity. Some of the authorisations made during the previous inspection period would not now pass the enhanced threshold. I was told that the RIPA Working Group has been considering the possibility of carrying out directed surveillance in such cases without RIPA authorisation, when it is necessary and proportionate to do so as a last resort. DCC has recognised that, contrary to some public misconception, the lack of RIPA authorisation does not automatically render such covert activity unlawful. The intention is to follow a quasi-RIPA process, formal application and authorisation being given and the records maintained so as to be able to demonstrate that human rights considerations have been fully taken into account. A possible example is the prevention and detection of dog-fouling, particularly in such places as children's playgrounds.
18. DCC are aware that they would do this at their own risk, but I expressed my view that to follow this process would strengthen their hand in resisting any challenge or criticism for acting contrary to the spirit of the legislation.

Training

19. Having previously used external trainers, the decision was made shortly before my 2012 visit that practical RIPA training would be undertaken by Mr Williams and Miss Jones in house. A training day for RIPA applicants took place very soon after that inspection, as well as a separate one for AOs, including the Chief Executive.
20. No formal RIPA training has taken place since then, but further similar training has now been arranged for dates in July 2015. We were shown the training materials, which include dummy RIPA applications for various scenarios. It was interesting to see, in the completed dummy applications to be used in the training session for AOs, a number of deliberate errors inserted there to test them. This imaginative approach should provide excellent practical guidance for all. All the training materials are based on those previously used by Mr Williams when he worked at Wrexham Council.

Examination of Records

21. The juvenile test purchase authorisation was made in respect of 13 retail premises, most of them in Rhyl. As I said in 2012, this is permissible, so long as necessity and proportionality are properly addressed in respect of each, but once again I found that this was not done at all. Accordingly, on the face of the application, this bore the hallmarks of a fishing expedition; see paragraph 244 of the revised OSC Procedures & Guidance.
22. The AO, however, recorded that "*previous failures have been identified at premises on the list (including one prosecution), or intelligence has been received about age restricted sales*". She evidently recognised that such information should have been included by the applicant. In future, the applicant should indicate which premises have previously failed, and which

are the subjects of relevant intelligence, in order to inform the AO's individual judgments on necessity and proportionality.

23. The AO authorised the operation to take place on 18th December 2013. She did not, however, specify an early review; she purported to set a review date coincident with the expiry date, almost three months later, but mis-stated that date as 15/3/13 (*sic*); the expiry date itself was left blank. This was noticed by Miss Jones in completing her check list, but the error should not have occurred.
24. A review was sought on 20th January because six of the premises had not been tested on 18th December because of time constraints. If the authorisation had not been so restrictive in its terms, no such review would have been necessary. However, there was no apparent reason for the delay between 18th December and 20th January. The AO authorised the further testing visits, but the subsequent cancellation merely stated that the operation had been completed, without indicating whether all 13 premises had been tested. A compliant cancellation should record the information listed in paragraph 109 of OSC Procedures & Guidance, including the AOs directions as to the handling of the product of surveillance.
25. The lessons to be learned from this authorisation should be emphasised at the forthcoming training sessions.

CCTV

26. The CCTV system, owned and staffed by DCC, is located at Rhyl Police Station. It covers public spaces in Rhyl, Prestatyn and Rhuddlan.³
27. Mr Smith, who has managed the system for over three years, is a member of DCC's RIPA Working Group. He explained to us that North Wales Police do occasionally seek to use the system for live monitoring of the movements of specific targets. All the operators are trained to demand sight of the RIPA notifications, copies of which are kept on the file. These notifications are usually redacted versions of the authorisations themselves, but include the URNs and brief details of the scope of authorised surveillance. If a police officer asks to conduct live monitoring without producing the RIPA authorisation, he is firmly refused access.
28. Half of the CCTV operators attended the 2012 RIPA training, and the other half are to attend the next session in July 2015. I am satisfied that compliant procedures are in place, and did not need to visit the control room.

Conclusions

29. In 2012 I was left with the clear impression that until the arrival of Mr Williams in October 2011, Miss Jones had not been sufficiently supported in her RIPA role by those above her in the hierarchy, but I expressed confidence that the picture had brightened. This structural improvement has been

³ DCC also has the facility to link into CCTV coverage of Denbigh and Llangollen, which are owned and managed by the respective town councils. These are not RIPA-scheduled public authorities.

maintained. It is clear that Mr Williams and Miss Jones now work closely together to maintain a compliant RIPA structure, with a sound *Policy* document and with good refresher training provided.

30. That said, the deficiencies in the one RIPA authorisation show that there remains room for further practical improvement.

31. I make the following

Recommendations

I. That DCC's Policy document be further amended in accordance with paragraph 11 of this report;

II. That the issues raised in paragraphs 21-24 of this report be borne in mind for future cases, and addressed through ongoing internal quality assurance and updated training as necessary (repeat recommendation).

David Clarke
Assistant Surveillance Commissioner