



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

Restricted

22 August 2012

Dear Mr. Everett,

Covert Surveillance

On 26 July 2012, an Assistant Surveillance Commissioner, Sir David Clarke, 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 your Council continues to have a sound RIPA structure with good policies and procedures and a generally high standard of authorisations. Mr Evans is an effective and knowledgeable RIPA Monitoring Officer.

The two recommendations are that your Procedural Guide be amended as indicated in paras 13 and 14 of the report and that RIPA training attended by AOs (including you) and a wider pool of investigators take place soon.

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,
Christopher Rose*

Mr Colin Everett
Chief Executive
Flintshire County Council
County Hall
Mold
Flintshire, CH7 6NB

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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

Flintshire County Council

26th July 2012

**Assistant Surveillance Commissioner:
Sir David Clarke**

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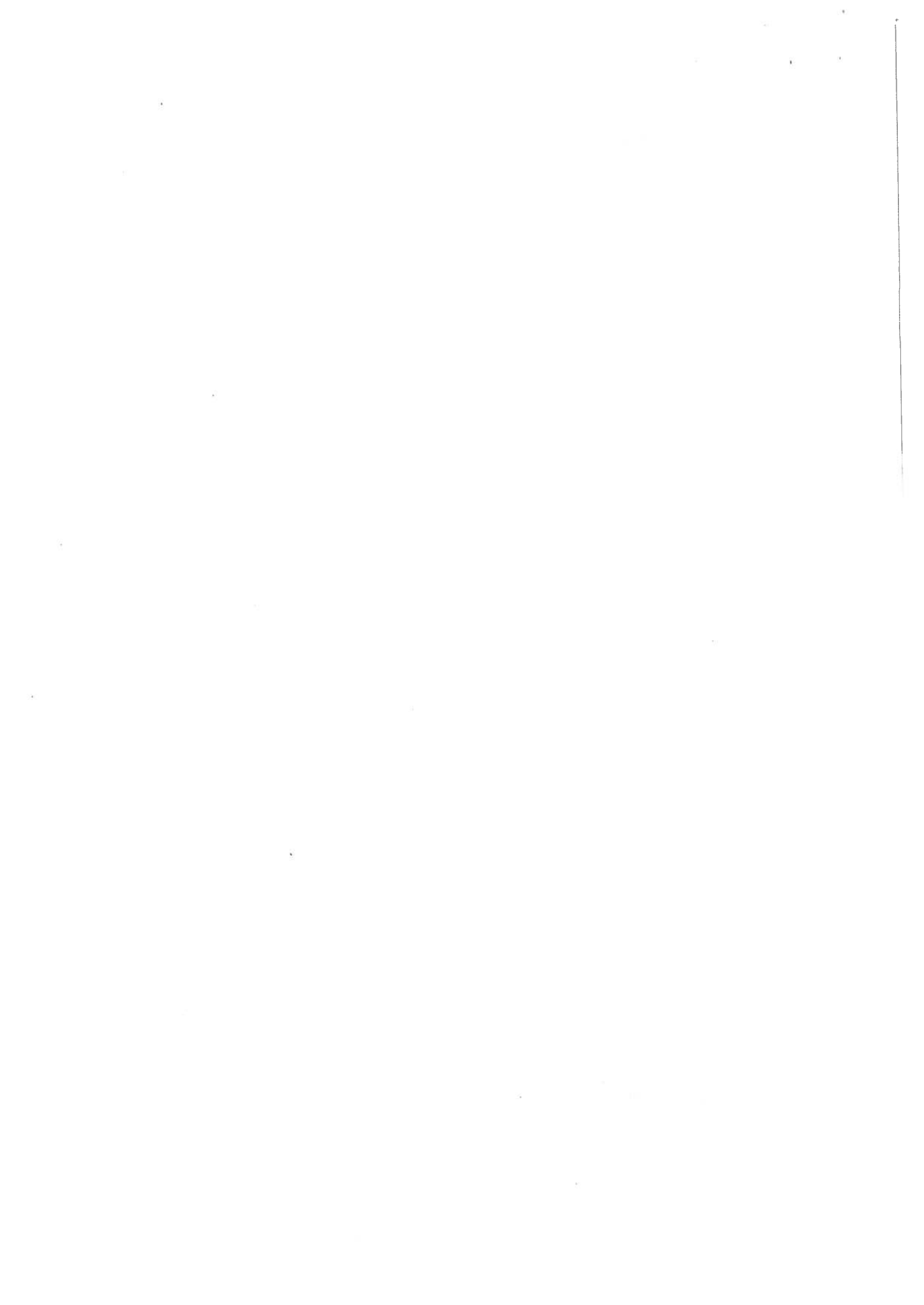
The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

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Office of Surveillance
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Office of Surveillance Commissioners,
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26th July 2012

FLINTSHIRE COUNTY COUNCIL

INSPECTION REPORT

Inspection date 26th July 2012

Inspector Sir David Clarke
Assistant Surveillance Commissioner

INTRODUCTION

1. The Council (FCC) is, in population terms, the largest of the six unitary authorities of North Wales, serving a population of about 150,000 in a mixed urban and rural area. The principal towns are Flint, Mold, Holywell, Buckley and Connah's Quay.
2. The Senior Corporate Management structure is headed by the Chief Executive, supported by three Directors and a number of Heads of Service. The Head of Legal and Democratic Services, reporting directly to the Chief Executive, is Gareth Owens, a barrister, who has recently joined FCC from another authority. The solicitors in his department include Peter Evans, the Democracy and Governance Manager, and Anwen Jones, Principal Litigation Solicitor.
3. The Chief Executive is Colin Everett, whose address is County Hall, Mold, Flintshire CH7 6NA.
4. The most recent OSC inspection of FCC was conducted by HH Norman Jones QC, Assistant Surveillance Commissioner, on 10th June 2009; his report was dated 25th June 2009.
5. FCC is a decreasing user of RIPA, having granted only seven authorisations since the last inspection. This compares with fifteen authorisations in the rather shorter period reviewed by Mr Norman Jones.
6. None of these authorisations had used the urgency provisions, none was concerned with the likely acquisition of confidential information, and none concerned Covert Human Intelligence Sources (CHIS).

Inspection

7. I carried out the inspection on 26th July 2012 at County Hall. I met the following council officers:
 - Gareth Owens, Head of Legal Services;
 - Peter Evans, Democracy and Governance Manager;
 - Mike Lovatt, Community Protection Manager, an Authorising Officer (AO);
 - Richard Powell, Team Leader (Trading Standards Investigations)
8. I was warmly welcomed by Mr Owens and Mr Evans. The inspection then took the form of a detailed discussion with Mr Evans, covering FCC's RIPA management, policy and procedures in the light of the revised Codes of Practice and OSC Guidance, the designated AOs, training, and the actions taken on the recommendations in the last OSC report. I then inspected the Central Record and the RIPA authorisations themselves. I then met Mr Lovatt, with Mr Evans, to discuss my preliminary findings as they affect the role of AO, before briefly meeting Mr Powell to obtain the perspective of an investigator/applicant. Finally I met Mr Owens and Mr Evans again for a brief feedback discussion before departing County Hall.
9. In view of the satisfactory findings in 2009 I did not consider it necessary to visit the CCTV control room on this occasion.
10. I am grateful to all concerned, particularly Mr Evans who had made the arrangements and provided material in advance, for their helpful cooperation which greatly eased my task.

RIPA Structure

11. As reported in 2009, FCC has an excellent *Procedural Guide to RIPA*, clear, succinct and readable. The amendments recommended by Mr Norman Jones were duly made in November 2009. These included the formal appointment of a RIPA Monitoring Officer, not Ms Anwen Jones (as he anticipated) but Mr Evans, listing the duties specified in paragraph 29 of the report.
12. That recommendation, and FCC's prompt response to it, predated the 2010 revised Codes of Practice for Covert Surveillance etc., and for CHIS. When these were issued, FCC heeded them and appointed the then Head of Legal and Democratic Services, Barry Davies, as RIPA Senior Responsible Officer (SRO). Mr Davies has recently retired and his successor, Mr Owens, is now RIPA SRO, to exercise the responsibilities set out in paragraphs 2.28-29 of the Covert Surveillance Code. Mr Owens has prior RIPA experience, including OSC inspections, from his service in other local authorities.
13. Notwithstanding Mr Evans's present designation as RIPA Monitoring Officer, he agrees with me that this term can cause confusion in a local authority. He is likely to be re-designated as RIPA Coordinator when the *Procedural Guide* is revised.

14. I made a small number of textual suggestions to enhance the clarity of the *Procedural Guide* yet further; these were noted by Mr Evans and require no formal recommendation. But there is one point of substance to be made in relation to the CHIS passage. Though it is unlikely that FCC will ever make a CHIS authorisation, the *Procedural Guide* needs to draw attention to the risk that an informant may in reality be a CHIS even if not tasked to obtain information covertly. I drew attention to section 26(8)(c) of RIPA and to paragraph 2.22 of the CHIS Code of Practice. 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 *Procedural Guide*, with an exhortation to refer any such instance for legal advice before acting on the information received from such an informant.

See recommendation I

15. In the light of Mr Norman Jones's recommendation in 2009, the number of designated AOs has been reduced to four named persons, though the Chief Executive and the three Directors (who rotate as Acting Chief Executive in Mr Everett's absence) are also listed.

16. The Central Record is maintained by Mr Evans. It contains most, but not all, the information set out in paragraph 8.1 of the Covert Surveillance Code of Practice, and would be further improved as a useful management tool by the addition of the further columns. I make no formal recommendation, however, because my examination of the documents showed me that Mr Evans already exercises good quality control, with tight adherence to review dates and the like.

RIPA usage

17. In the period under review there have been no authorisations in relation to a number of activities which commonly give rise to RIA usage elsewhere, namely fly-tipping, benefit fraud and licensing enforcement. I sought assurance that there is no risk of unauthorised covert surveillance taking place in any of these areas.

18. FCC has recently obtained CCTV equipment for use in fly-tipping and/or dog fouling hotspots, but advice has been taken and the intention is to erect clear signage, warning of the CCTV coverage, to render the surveillance overt. In relation to benefit fraud, no covert surveillance is used, but evidence is obtained by other techniques (data matching etc) before proceeding to interview under caution. Licensing enforcement is carried out by officers in Mr Lovatt's department, led by a RIPA-trained team leader. I consider that this shows a sufficient general level of RIPA awareness across relevant areas of FCC's activities.

Training

19. FCC continues to use the services of Bond Solon to deliver periodic RIPA training, but none has been provided since November 2009. I was shown the attendance record of that training day, which included all the named AOs and three investigators (RIPA applicants), as well as officers from an adjoining local authority invited to participate.
20. Arrangements are being made for a further training day to take place in the light of SI 2012/1500, introducing with effect from 1st November 2012 the new crime threshold for directed surveillance (but not CHIS) authorisations¹.
21. I was a little concerned that so few investigators (applicants) attended the last training session. My concern was somewhat allayed, in two ways. Firstly, I found a high standard of applications when examining the papers. Secondly, Mr Lovatt has prepared, and distributed to investigative staff across the Public Protection Division, an excellent practical guidance note on covert surveillance, which (as Mr Powell told me) is widely available and widely read.
22. The Chief Executive and Directors, though referred to in the *Procedural Guide* as AOs, did not attend the training day. Although the need for the Chief Executive (or a Director in his absence) to act as AO is likely to arise very rarely², it may arise unexpectedly and FCC should be ready for it. I consider that the Chief Executive should attend the next training day.
23. Furthermore, I consider that a wider cross-section of FCC's investigators should attend the training session, to ensure good RIPA awareness in departments which have not used FCC's RIPA powers in recent times. I note the concern expressed by Mr Norman Jones in 2009 that some officers did not consider that they needed training.

See recommendation II

Examination of Records.

24. I examined the six trading standards authorisations, and the one other authorisation which related to antisocial behaviour. Almost all were completed to a high general standard, with necessity and proportionality well articulated by applicants and AO alike. The two earliest authorisations contained inadequate statements as to proportionality, but the file contains a contemporaneous note by Mr Evans who had spotted this and advised the AO (Mr Lovatt) accordingly. Mr Lovatt clearly learned from this intervention and his standard has remained high thereafter. Correct expiry dates are specified, suitable review dates set, and proper formal cancellations effected.
25. Two of the authorisations were for juvenile test purchase operations at multiple off-licences, seven and ten in number respectively. The applicant stated that "*where appropriate*" these premises had been previously visited

¹ Bond Solon have indicated to FCC that they believe the magistrates' approval requirement (s.38 of the Protection of Freedoms Act 2012) will come into force at the same time, but I advised FCC that they should not assume this to be correct.

² Covert Surveillance Code of Practice, paras 4.22-23 and Appendix A

and advised on their responsibility as regards under-age sales. I inferred that some had not been visited in this way, in which event different considerations would apply to the necessity and proportionality of covert tactics. I drew attention to paragraph 263 of OSC's Procedures and Guidance, particularly the penultimate sentence.

26. Others concerned counterfeit goods, street markets and the like. I discussed with Mr Lovatt the distinction between simple test purchase (which may not call for directed surveillance authorisation) and observation coupled with test purchase (which does). The point was taken; FCC sensible adopt a cautious approach.
27. The antisocial behaviour authorisation was appropriate and well-articulated, and was promptly cancelled when it became apparent that the surveillance was no longer necessary.
28. Some of the authorisations were allowed to continue at review, even though the authorised directed surveillance had been completed. In one juvenile test purchase case, the review appeared to authorise future surveillance at additional premises. This is impermissible; these authorisations should have been cancelled at first review.

Conclusion

29. FCC continues to have a sound RIPA structure, with good policies and procedures and a generally high standard of RIPA authorisations. Mr Evans is as effective and knowledgeable in the role of RIPA Monitoring Officer (or Coordinator) as Mr Norman Jones expected Ms Anwen Jones to be. The few small lessons from my inspection will be easily learned.

30. I make the following

Recommendations

- I. *That the Procedural Guide be further amended in the light of this report (paragraphs 13 and 14)*
- II. *That the next RIPA training take place soon, attended not only by Authorising Officers (including the Chief Executive) but also by a wider pool of investigators from across the Council's regulatory activities*

David Clarke
Assistant Surveillance Commissioner

11/10/20
11/10/20