

IPCO

Investigatory Powers Commissioner's Office

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Mr. Marshal Scott
Chief Executive
Ribble Valley Borough Council
Council Offices
Church Walk
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2 July 2020

Dear Mr. Scott,

Inspection of Ribble Valley Borough 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.

Your Council was recently the subject of a telephone and desktop-based inspection by one of my Inspectors, This has been facilitated through your Senior Responsible Officer (SRO), Head of Legal and Democratic Services – Ms. Mair Hill, who was interviewed over the telephone and provided the supporting documentation requested by the Inspector. My Inspector is extremely grateful to Ms. Hill, who responded quickly to the requests, even having only recently assumed the SRO role.

The information provided has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection. Accompanying this letter are advisory details regarding data retention and destruction, specifically for information gathered using covert powers. Whilst I am aware that your Council has procedures in place to manage the flow, retention and destruction of data, the gathering of information whilst utilising covert powers requires a bespoke policy to address the safeguards within the codes of practice, robust management and regular review. I trust you will find the details within this additional letter of benefit, and it will be for your SRO to ensure the six bullet point requirements are addressed.

The last inspection was conducted by IPCO Inspector : in August 2017. On that occasion there were two formal recommendations required, albeit these were relatively minor in nature. The recommendations, to highlight within the RIPA policy that a risk assessment should be completed before authorisation of a CHIS, and recording identities used and the sites visited if social media investigations are undertaken, were addressed soon after the inspection in November 2017.

The covert powers available have not been engaged since 2014, nevertheless it is vital that the relevant staff are appropriately trained should the need arise to authorise covert activity. It is also important that officers engaged in investigatory or enforcement areas where RIPA considerations are not so immediately apparent, maintain their levels of knowledge. The last refresher training session took place in August 2017. Given the time that has elapsed since the last training event, the updates to the Codes of Practice and new legislation in the form of the Investigatory Powers Act 2016, it is advisable and would be advantageous to have a renewed series of training events undertaken. These sessions may take the form of 'in house' table top exercises which would not only educate your staff but test competence levels.

My Inspector is satisfied the Council policy, reviewed in 2018, underpinning the use of RIPA is suitably comprehensive, providing the necessary detail to practitioners who may contemplate the use of directed surveillance and CHIS. I note there is a section within the policy at paragraphs 3.11 to 3.16 containing guidance on the use of the internet/social media and open source research in the course of investigations. Whilst the policy references paragraphs from the revised code of practice, given the increasing potential for its use, and the benefits it may bring to council investigations, an observation is made that the policy could be enhanced by making specific reference to paragraphs 3.10 to 3.17 of the Covert Surveillance and Property Interference, revised Code of Practice, 2018. Contained within these paragraphs is good guidance and operational examples around the use of social media for investigative purposes. By making these examples bespoke, to reflect the types of investigation dealt with regularly by your staff, a more informative policy should be created. Given the current risk around its use and the focus placed on it by privacy groups, it may be advisable that practitioners are signposted to these sections to ensure staff remain compliant in the use of the tactic.

This guidance should be reinforced to staff at regular intervals given that there may be occasions where online social media research may be carried out in respect of Council priorities which would not generally be within the purview of RIPA. It is important that regardless of the reasons for conducting such research, 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.

It may be advantageous that an auditable process is developed in circumstances where online research is considered necessary in investigations which may not meet the threshold for use of the RIPA legislation. I would draw your attention to the Investigatory Powers Tribunal's decision in *BA & others v Chief Constable of Cleveland IPT/11/129/CH (13 July 2012)* where the IPT commended the adoption in non-RIPA cases of "a procedure as close as possible" to that required by the legislation. A documented decision trail would ensure parameters are set, both to avoid any interference with Convention Rights which is or may be disproportionate to the legitimate aim pursued, and for the protection of individual employees. It is also important that the policies you have in place ensure that staff are aware of the dangers aligned to the use of their own social media accounts for business purposes, especially those of a covert nature, and that they are cognisant of their own personal online security and of the vulnerabilities attached to using any insecure or personal online platform.

The SRO has given assurances to the Inspector that the integrity of your Council's processes and governance procedures will be strengthened as suggested by the Inspector to ensure that the good standards of compliance with the Act and relevant codes of practice, noted, are to continue.

My Office is available to you should you have any queries following the recent inspection, or at any point in the future. Contact details are provided at the foot of this letter. I shall be grateful if you would acknowledge receipt of this letter within two months.

Yours sincerely,

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