



Investigatory Powers
Commissioner's Office

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Mr John Metcalfe
Chief Executive
Isle of Wight Council
County Hall
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7 October 2020

Dear Chief Executive,

Remote Inspection of Isle of Wight 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.

Due to the ongoing Coronavirus situation your authority was recently subject to a remote inspection by one of my Chief Inspectors, [REDACTED]. All the documentation and arrangements necessary for my Chief Inspector to carry out the process was provided by Ms Jenny Ager, your Lawyer (Litigation & Property Team), who also holds the position of the RIPA Coordinating Officer. She, together with Mr Justin Thorne, your Strategic Manager of Legal Services and RIPA Senior Responsible Officer, arranged to be interviewed via MS Teams by [REDACTED], and from the documentation examined and the information provided during the interview, the level of compliance shown by your authority removes, for the present, the requirement for a physical inspection.

At the last inspection, conducted in 2016 by [REDACTED], your authority was subject to two recommendations, which required some minor revisions to your RIPA Policy and a review of your practices in relation to under-age test purchase operations. The July 2020 iteration of your RIPA Policy has been inspected and as both recommendations have been fully addressed, they are now discharged.

Your RIPA Policy was provided in advance of the inspection and is a very clear and comprehensive document. It does require an update however in relation to communications data, following the repeal of Part 1 RIPA and the changes brought about by the Investigatory Powers Act 2016 and the introduction of OCDA (Office for Communications Data Authorisations). As I understand was discussed during the inspection, local authorities now have access to more data than previously, which the associated Home Office Code of Practice produced in November 2018 helps to explain. The Policy could also be enhanced by the inclusion of, or a link to, paragraphs 3.10-3.17 of the 2018 Surveillance Code of Practice, which build upon your helpful content relating to the use of social media in investigations.

Your RIPA Policy has been given to a key Cabinet Member on an annual basis, but has not been specifically approved by the Elected Members as envisaged by paragraph 4.47 of the Code. An annual update has been provided, likewise, on the use, or lack of use, of covert powers but this has been stalled by the current pandemic. My Chief Inspector was assured that you will ensure your practice going forward is in accordance with the Code.

The Council currently has four designated Authorising Officers, plus yourself for those cases mentioned at Annex A of the Home Office Codes, albeit one of the nominated Authorising Officers, a senior member of the island's Fire Service, is likely to be removed following a merger between the Fire Services for the Isle of Wight and Hampshire. This still leaves a suitable level of resilience given the lack of any extensive use of the powers for some time.

In relation to RIPA training, this has always been a strength of your Council, with internal training provided by experienced and knowledgeable members of your Legal Services annually until a brief gap in 2018-2019. Much of this has traditionally been delivered by your current SRO, Mr Thorne. Ms Ager has taken over the RIPA Coordinating Officer role from her predecessor in the past year, but delivered the most recent training to a group of 36 officers at their Prosecutors' Forum at the end of January 2020. She was to have attended some further RIPA training in her own right, but the pandemic has stalled this. Nonetheless, Ms Ager is conscious that many of those present at the last session said they would welcome more, and it is planned to progress this as soon as the current conditions have been resolved. Mr Thorne said one outcome of the pandemic was a fresh look at how training could be provided in a virtual manner, and RIPA was one such topic that may lend itself to this.

There was a discussion about how the Council can be sure that covert activity is not taking place absent the necessary authorisation, and both your legal officers explained that their position, availability, communication and longevity at the Council (like so many of its officers) give rise to a healthy position whereby they are contacted for advice should any activity be considered or where officers are unclear whether they may be entering the realms of RIPA. Ms Ager will see all the documentation and cases brought forward for possible prosecution and should be able to identify any potential concerns as to the acquisition of intelligence or evidence.

Your Council does not appear to have a formal written policy regarding how it will approach those cases for which an authorisation under RIPA is not available – such as where the criminality in question does not meet the crime threshold set by The Protection of Freedoms Act 2012. My Chief Inspector discussed how other councils have adopted a “non-RIPA process” whereby there is not dissimilar documentation and approval by a senior officer for activities that cannot be authorised, but which provides an audit trail in the face of any challenge on the grounds of privacy and human rights. Your legal team will give this further consideration.

Since the last inspection in 2016, there has been a single use of directed surveillance, to seek to prove an alleged Personal Care Allowance fraud. My Chief Inspector was able to review the application and authorisation, the magistrate's approval and subsequent cancellation records. I am advised that these were in exemplary order and would make a very good example for internal training, suitably redacted. Both the applicant and Authorising Officer had provided comprehensive and meaningful considerations in relation to the key issues of necessity, collateral intrusion and proportionality. This alleged fraud had, if correct, been

ongoing for several years and had led to a potential fraud involving a six figure sum. The only minor observation required was that the authorisation had been tightly aligned to the timings each day when the surveillance would be undertaken, leaving no room for manoeuvre should the attendance of the alleged carer vary from what was anticipated. Interestingly, the Authorising Officer, at that time Mr Thorne, had discussed this with the investigative team and explained that they were effectively tying their hands by such rigid timings, but they were insistent. It is, of course, for the Authorising Officer to determine what parameters he may wish to set in an individual case – a point not lost on Mr Thorne. But that aside, my Chief Inspector identified this authorisation paperwork to be one of the best she has seen. This bodes well for future compliance should you increase your use of the powers in future.

Your Council operates a CCTV camera system, and this is operated in accordance with a clear and comprehensive Policy document in partnership with Hampshire Constabulary and the IoW Healthcare Trust. Its recent revision (May 2020) contains clear advice regarding RIPA and human rights, with an entire appendix dedicated to this topic. The managers and operators of the system are provided with relevant training.

You have hopefully seen my earlier letter regarding Data Assurance and my Chief Inspector was pleased to see that the issue of retention, review and disposal of authorisation paperwork and any material so obtained has already been captured to a good degree within your RIPA Policy documents, but your SRO now needs to check that there is sufficiently clear guidance and understanding amongst officers as regards the handling and eventual destruction of any product obtained through the use of covert powers, using the six bullet points in my letter as a steer. An additional column entry on your Central Record could helpfully be added to manage the retention, review and disposal cycle to provide a complete audit trail. (Your Central Record also requires additional columns to record any reviews of authorisations and the magistrate's actions, to be in full compliance with paragraph 8.1 of the Code of Practice.)

Your Council is registered with the National Anti Fraud Network (NAFN) although your officers had been looking recently at whether this provided value for money in light of not using its services for some time. A fresh look at the data that can now be obtained through NAFN to assist your investigations may prove worthwhile.

In conclusion, whilst there has been only a single use of these powers since 2016, your Council has the requisite policies, awareness training and internal governance arrangements in place and overseen by an experienced RIPA Coordinator and SRO, to suggest that where they are used in future, the levels of compliance should be of a good standard. You certainly have a helpful example to use from Operation W005, as inspected.

I hope that you find the outcome of this remote inspection helpful and constructive, and my Office is available to you should you have any queries following the receipt of this letter, or at any point in the future. Whilst there are no formal recommendations, my Chief Inspector has highlighted a few areas for remedial work or further exploration, and I should be grateful if you can acknowledge the findings within the next two months.

The Chief Inspector would like to thank Mr Thorne and Ms Ager for their engagement and providing the necessary documentation and remote connections to enable this inspection. Their time afforded during the current pandemic is much appreciated by IPCO.

Yours sincerely,



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